



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
2600 North Central Avenue
Phoenix, Arizona 85004



IN REPLY REFER TO:
Real Estate Services
MS-420

AUG 04 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Honorable Benny Tso
Chairman, Las Vegas Paiute Tribe
One Paiute Drive
Las Vegas, Nevada 89106

Dear Chairman Tso:

This letter serves to provide a decision on your on-reservation fee-to-trust (FTT) application dated April 15, 2014. The non-gaming application, filed pursuant to 25 U.S.C. § 465 and 25 CFR Part 151, covers two parcels of land (APN 139-27-602-003 and 004) contiguous to the Las Vegas Paiute Tribe's Downtown Reservation, within the city limits of Las Vegas, Nevada. The parcels comprise 10.98 acres,¹ located within the NE¼ of Section 27, T. 20 S., R. 61 E., Mount Diablo Meridian, Clark County Nevada. The lands are currently owned by the Las Vegas Paiute Tribe (Tribe)² in fee simple status. For the reasons set forth below, it is our decision to **approve** the application for trust status for the Tribe. The lands are further described as follows:

PARCEL I:

THAT PORTION OF LAND IN THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 27, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER OF SAID SECTION 27, AS DESIGNATED BY SURVEY MADE ON FILE IN FILE 3, PAGE 22 OF REGISTERED PROFESSIONAL ENGINEER'S FILE IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA;

THENCE NORTH 88°55'20" EAST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 27 A DISTANCE OF 338.60 FEET TO THE

¹ The application states 10.89 acres but through the Legal Description Review process, our Bureau of Land Management Indian Lands Surveyor determined the acreage to be 10.98 acres.

² The Tribe's official name is the *Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada*, as shown in the Federal Register Notice of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." The notice is an annual publication.

EASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, BEING A CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS OF 3869.83 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $0^{\circ}47'47''$ AN ARC LENGTH OF 53.79 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH $88^{\circ}55'20''$ EAST ALONG THE NORTH LINE OF THE SOUTH 50.00 FEET OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF SAID SECTION 27, A DISTANCE OF 416.69 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 30.00 FEET;

THENCE EASTERLY AND NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $60^{\circ}56'10''$ AN ARC LENGTH OF 31.91 FEET TO A POINT OF TANGENCY WITH THE NORTHWESTERLY RIGHT OF WAY LINE OF MAIN STREET (86 FEET WIDE);

THENCE NORTH $27^{\circ}59'10''$ EAST ALONG SAID RIGHT OF WAY LINE OF MAIN STREET A DISTANCE OF 490.66 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO GOMER L. JONES, ET UX BY DEED RECORDED SEPTEMBER 26, 1945 AS DOCUMENT NO 204406 IN CLARK COUNTY, NEVADA RECORDS;

THENCE SOUTH $89^{\circ}06'21''$ WEST ALONG THE NORTH LINE OF SAID PARCEL 537.89 FEET TO THE AFOREMENTIONED EASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE SOUTHWESTERLY ALONG THE CURVE OF SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF $6^{\circ}56'25''$ AN ARC LENGTH OF 468.76 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE STATE OF NEVADA BY DEED RECORDED APRIL 5, 1978 IN BOOK 868 AS DOCUMENT NO 827646 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THE MOBILE HOME OR MANUFACTURED HOUSING UNIT AND APPURTENANCES, IF ANY, LOCATED ON SAID LAND.

PARCEL II:

THAT PORTION OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 27, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., DESCRIBED AS FOLLOWS:

PARCEL 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 74 OF PARCEL MAPS, PAGE 67 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Said parcels to total 10.98 acres, more or less.

Background – The Applicant

The Tribe is a federally recognized Indian tribe, organized in accordance with Section 16 of the Act of June 18, 1934, 25 U.S.C. § 476. The Tribe's initial reservation was established on December 30, 1911, with rancher Helen J. Stewart deeding 10 acres to the United States of America "for the use of the Paiute Indians." Public Law 90-584, 82 Stat. 1147, was enacted on October 17, 1968, "to provide for the disposition of funds appropriated to pay a judgment in favor of the Southern Paiute Nation of Indians in Indian Claims Commission dockets numbered 88, 330, 330-A, and for other purposes." The "Las Vegas Band" is specifically mentioned in this Act and reference is also made to the 1940 census roll of the "Las Vegas Colony, Nevada." A tribal constitution was ratified and approved by the Assistant Secretary of the Interior on July 27, 1970, pursuant to Section 16 of the Indian Reorganization Act, mentioned above. The Tribe received an additional 3,800 acres of land in northwest Las Vegas, pursuant to Public Law 98-203, 97 Stat. 1383, enacted on December 2, 1983. Those lands are known as the Snow Mountain Reservation. The 1983 Act also affirmed that the 10 acres deeded from Helen Stewart is part of the Tribe's reservation.

The Application – 25 CFR Part 151 Regulatory Requirements

Regulations governing fee-to-trust acquisitions are found in 25 CFR Part 151, Land Acquisitions. The basic Land Acquisition Policy is set forth in Section 151.3, the criteria for On-reservation Acquisitions are set forth in Sections 151.10, and the Title Review requirements are set forth in Section 151.13. All of these sections are evaluated in our analysis of the Tribe's application. See the information below.

151.3 - Land Acquisition Policy

The proposed acquisition is consistent with the acquisition policy of the Bureau of Indian Affairs (BIA), in that 25 CFR § 151.3 (a)(3) allows tribes to acquire land in trust status where the "land is necessary to facilitate tribal self-determination, economic development, or Indian housing." In this case, the land will be used to promote positive economic or residential development opportunities for the Tribe.

151.10 – On-reservation Acquisitions - Decision Criteria

As required by 25 CFR § 151.10, we have considered the following factors in making this decision relating to the Tribe's proposed trust acquisition of parcels contiguous to its Las Vegas Colony reservation lands (lands that are contiguous to a Tribe's reservation are considered to be "on-reservation").

As part of the application process, state and local governments are notified when BIA is in receipt of a fee-to-trust application submitted by the Tribe, with the notice asking for written comments as to the potential impacts on regulatory jurisdiction, real property taxes and any special assessments. The notice also asks the recipients to forward the notice to any other governmental entity or taxing authority that may be impacted, so that we may receive their comments as well. On February 1, 2016, we sent our "Notice of (Non-Gaming) Land Acquisition Application" to the state and local jurisdictions and received one comment forwarded from the Nevada State Clearinghouse. The comment was from the Nevada State Historic Preservation Office regarding Section 106 Consultation; since that comment does not address regulatory jurisdiction or taxes, it will not be included as part of our analysis.

The decision criteria are as follows:

25 CFR § 151.10(a) – Existence of Statutory Authority

As indicated above, the Tribe's colony was originally established in 1911, with additional lands added to it either through purchase or legislation in subsequent years, resulting in approximately 19 acres in trust at the Downtown reservation. In 1970, the Tribe formally organized under Section 16 of the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. § 476). Since the Tribe was under federal jurisdiction well before 1934, the Tribe is not subject to any constraints imposed by the Supreme Court's decision in Carcieri v. Salazar,³ meaning the property may be accepted in trust status pursuant to Section 5 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 985, U.S.C. § 465).

25 CFR § 151.10(b) – Need for Additional Land

The Tribe is seeking trust status for the subject property so that it may exercise its governmental jurisdiction over the property and to promote economic and/or residential development opportunities for the Tribe and its members. The Tribe has a thriving tribal Smoke Shop at the Colony and the Tribe states it is among the top 10 non-gaming businesses in the State of Nevada. Any future commercial development at this downtown location will surely benefit from the local business traffic.

³ Carcieri v. Salazar, 129 Supreme Court 1058 (2009). The decision bars the United States from acquiring land in trust under the authority of 25 U.S.C. § 465, Section 5 of the IRA, for Indian tribes that were not under federal jurisdiction when the IRA was enacted on June 18, 1934.

25 CFR § 151.10(c) – Purpose

The purpose of acquiring the subject property in trust status is to promote economic and/or residential development opportunities, under the governmental jurisdiction of the Tribe; taxes and operating revenues raised will benefit its tribal members by helping to defray costs of tribal government when providing services to its members.

25 CFR § 151.10(e) – Impact of Removal of the Land from the Tax Rolls

The Tribe indicated in its application that placing the subject property in trust status would not have a significant impact on the tax base for Clark County (County); the Tribe reports that for 2014, the County collected \$103,179,415 in total property taxes with the Tribe paying \$12,175 in annual property tax which amounts to a 0.01 percentage of the total property tax collected. Since the tax loss for these parcels is well below the 1% threshold that the Interior Board of Indian Appeals has characterized as minimal,⁴ we conclude that the tax loss to the County and any subsequent taxing jurisdictions will not have a significant impact to the tax rolls.

25 CFR § 151.10(f) – Jurisdictional Problems and Potential Land Use Conflicts

The Tribe does not anticipate any potential jurisdictional or land use conflicts with trust acquisition of the property; the Tribe has established a quality working relationship with the City and has included city officials in discussions regarding potential future uses and development of the subject property. The Tribe enjoys City, State, and Congressional support for this trust acquisition.

25 CFR § 151.10(g) – Additional Responsibilities for the Bureau of Indian Affairs

The Tribe expects that additional responsibilities accruing to the BIA will be minimal and we agree with that statement. General oversight will most likely be limited to approving a lease or right of way and managing trust land inventory records, including this property, through our Trust Asset and Accounting Management System (TAAMS), which is our trust land records system.

25 CFR § 151.10(h) – NEPA Compliance and Hazardous Substances Determination

Approval of the Tribe's fee-to-trust application by the BIA constitutes a federal action which requires compliance with requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347). The NEPA process is intended to facilitate public participation, analyze the significant impacts that a proposed action may have on the quality of the human environment, and help federal officials make decisions to "protect, restore and enhance the

⁴ Roberts County, South Dakota and Sisseton School District No. 54-2; City of Sisseton, South Dakota; and Wilmot School District No. 54-7 v. Acting Great Plains Regional Director, Bureau of Indian Affairs, 51 IBIA 35, 51 n.13 (Dec. 30, 2009).

environment.” Public scoping letters were sent to interested parties, Federal and State agencies, local governments and adjoining landowners by SWCA Consultants, the environmental consultant hired by the Tribe to compile the NEPA documentation for review. In addition, the scoping notice was published in the Las Vegas Review-Journal on September 11, 2015. No public comments were received during the 30-day comment period. On November 26, 2015, a Notice of Availability was published in the Las Vegas Review-Journal affording the same entities and the public-at-large the opportunity to comment for a 30-day period on the Draft Environmental Assessment (EA), with no comments being received. The EA was finalized and the Agency Superintendent executed a Finding of No Significant Impact (FONSI) on January 7, 2016. The FONSI provided, in part, that “The Proposed Action... would not have an adverse impact on the human or natural environment.”

In accordance with the Department of the Interior’s policy guidance on pre-acquisition Hazardous Substance Determinations, as set forth in the Departmental Manual at 602 DM 2, a Phase I Environmental Site Assessment (Phase I Report), dated June 13, 2012, was prepared by Western Technologies, Inc., of Las Vegas, Nevada. This Phase 1 Report was supplemented by an Addendum dated April 29, 2016. Our Branch of Environmental Management reviewed the Phase I Report and Addendum and by memorandum dated May 6, 2016, the Regional Environmental Scientist advised that the Report(s) met “the requirements of ASTM 1527 and 40 CFR § 312” and that “appropriate inquiry, assessment and review has been conducted and documentation submitted in accordance with 602 DM 2.”

25 C.F.R. § 151.13 - Title Examination

On April 14, 2016, we referred a Commitment for Title Insurance (including copies of the title exception documents), as issued by First American Title Insurance Company on January 21, 2016, to the Office of the Solicitor, Intermountain Region, Salt Lake City, for a preliminary title opinion.⁵ With our referral memorandum, we provided the following:

- Tribal Resolution requesting the Bureau of Indian Affairs to take the land into trust;
- Maps of the location of the proposed trust lands;
- A copy of the Certificate of Inspection and Possession dated February 3, 2016;
- A Finding of No Significant Impact (FONSI) to address the National Environmental Policy Act requirements;
- The Phase 1 Environmental Site Assessment Report and Addendum;

⁵ On May 16, 2016, the Assistant Secretary-Indian Affairs, issued a Final Rule in Federal Register Notice, 81 FR 30173, which changed the title evidence requirements for trust land acquisitions. The Summary states “This rule deletes the requirement for fee-to-trust applicants to furnish title evidence that meets the “Standards for the Preparation of Title Evidence in Land Acquisitions by the United States” issued by the U.S. Department of Justice (DOJ), and replaces the requirement with a more targeted requirement for title evidence, because adherence to the DOJ standards is not required for acquisitions of land in trust for individual Indians or Indian tribes.” The effective date of the Final Rule was May 16, 2016, making it applicable to the Tribe’s application.

- A draft Warranty Deed conveying the property from the Tribe to the United States of America in Trust for the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada.
- A copy of the Listing of Federally Recognized Tribes showing the Tribe's name as listed in the Federal Register.

The Senior Attorney-Advisor, Office of the Solicitor, issued his preliminary title opinion on June 17, 2016, confirming the sufficiency of both the title evidence and the draft conveyance instrument.

As part of the title review process, legal land descriptions are reviewed by our Bureau of Land Management Indian Lands Surveyor (BILS). On April 21, 2016, the BILS issued her Land Description Review noting that there was a typographical error with the legal description for Parcel 1 "which can be easily verified and corrected. The correction is recommended to properly orient the direction of the curve and to be consistent with historical conveyances and local survey records." She ended her review with "The total calculated acreage (for Parcels I and II) is approximately 10.98 acres, according to the descriptions and surveys of record."

Decision and Right to Appeal

Based on our evaluation of the Tribe's application and the above-referenced environmental and title evidence conclusions, ***we hereby approve the application*** for trust status with respect to the subject property. Please be advised that under 25 CFR § 151.12(b), we are required to provide copies of this decision to all parties that were notified of (or commented on) the application, with notice of their administrative appeal rights. Therefore, by copies of this letter, we are advising those parties of this decision.

In accordance with the regulations set forth in 43 CFR § 4.310-4.340 (enclosed), any appeals of our decision to approve the proposed acquisition may be made directly to the following: Interior Board of Indian Appeals, Office of Hearings and Appeals, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203. Any Notice of Appeal must be signed by the appellant or its attorney and postmarked (if mail is used) or delivered (if some other means of delivery is used, such as FedEx or UPS) within 30 days of the date of receipt of the decision. The regulations do not authorize filings by facsimile/fax or by electronic means.

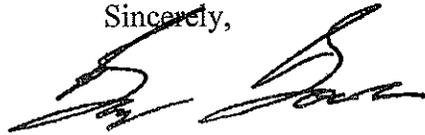
Any Notice of Appeal should clearly identify the decision being appealed, and copies must be sent to: (1) the Assistant Secretary – Indian Affairs, U. S. Department of Interior, MS 4141 MIB, 1849 C Street, N.W., Washington, DC 20240; (2) all interested parties known to the appellant; and, (3) this office. Any Notice of Appeal sent to the Board must certify that copies have been sent to all of the required parties, and should identify them by names/titles or addresses.

Upon the filing of a Notice of Appeal, the Board will notify the appellant of further appeal 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 extensions may be granted for filing a notice of appeal.

If you have any questions regarding the approval determination for this application, please contact Michael Johnson, Regional Realty Specialist, or Stan Webb, Regional Realty Officer, at 602-379-6781, or by email at michael.johnson@bia.gov or stan.webb@bia.gov.

Sincerely,



Regional Director

Enclosure

cc: Honorable Kelvin Atkinson
Senator, Nevada State Senate, District 4
1221 Equator Avenue
North Las Vegas, Nevada 89032

Assemblyman Harvey J. Munford
Assembly District 6
809 Sunny Place
Las Vegas, Nevada 89106-3637

Dina Titus, Congresswoman
Congressional District 1
Las Vegas District Office
550 East Charleston Boulevard, Suite B
Las Vegas, Nevada 89104

Cedrid Crear
Board of Regents District 1
101 Convention Center Drive, Suite 1115
Las Vegas, Nevada 89109

Superintendent, Southern Paiute Agency

The following cc's will be mailed Certified Mail – Return Receipt Requested w/copy of enclosure:

Honorable Brian Sandoval,
Governor, State of Nevada
Grant Sawyer State Office Building
555 E. Washington Ave., Suite 5100
Las Vegas, Nevada 89101

✓ Adam Paul Laxalt, Attorney General
State of Nevada
Grant Sawyer State Office Building
555 E. Washington Ave., Suite 5100
Las Vegas, Nevada 89101

State of Nevada Clearinghouse
Division of State Lands
901 S. Stewart Street, Suite 5003
Carson City, Nevada 89701-5246

Don Burnette, County Manager
Clark County
550 S. Grand Central Parkway
Las Vegas, Nevada 89155

Honorable Carolyn G. Goodman
Mayor, City of Las Vegas
City Hall
495 S. Main Street
Las Vegas, Nevada 89101

Honorable Andy A. Hafen
Mayor, City of Henderson
Henderson City Hall
240 Water Street
Henderson, Nevada 89015

Honorable John J. Lee
Mayor, City of North Las Vegas
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

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

SOURCE: 70 FR 11825, Mar. 9, 2005, unless otherwise noted.

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§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:

- (1) For most documents, the date of mailing or the date of personal delivery; or
- (2) For a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e), the date that the Board receives the motion.

(b) *Serving notices of appeal and pleadings.* Any party filing a notice of appeal or pleading before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery or mailing.

(1) 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.

(2) Where a party is represented by more than one attorney, service on any one attorney is sufficient.

(3) The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document:

(1) 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;

(2) The last day of the period is to be included, unless it is a nonbusiness day (e.g., Saturday, Sunday, or Federal holiday), in which event the period runs until the end of the next business day; and

(3) When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal holidays, and other nonbusiness days are excluded from the computation.

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

(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.

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§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receiving the notice of docketing. The 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 receiving the appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other interested parties. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) The 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) BIA is considered an interested party in any proceeding before the Board. The Board may request that 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.

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§4.312 Board decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse, or set aside any proposed finding, conclusion, or order of an administrative law judge, Indian probate judge, or BIA 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.

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§4.313 Amicus curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene, to join other parties, 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. The Board may grant the permission or relief requested for specified purposes and subject to limitations it established. 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.

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§4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge, Indian probate judge, or BIA official that 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 it has been made effective pending a 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.

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§4.315 Reconsideration of a Board decision.

(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.

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§4.316 Remands from courts.

Whenever any matter is remanded from any Federal court to the Board for further proceedings, the Board will remand the matter to an administrative law judge, an Indian probate judge, or BIA. In the alternative, to the extent the court's directive and time limitations 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.

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§4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries about 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 this action appropriate. If, before 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 OHA Director will determine the matter of disqualification.

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§4.318 Scope of review.

An appeal will be limited to those issues that were before the administrative law judge or Indian probate judge 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.

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APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 70 FR 11826, Mar. 9, 2005, unless otherwise noted.

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§4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

- (a) On a petition for rehearing;
- (b) On a petition for reopening;
- (c) Regarding purchase of interests in a deceased Indian's estate; or
- (d) Regarding modification of the inventory of an estate.

[76 FR 7505, Feb. 10, 2011]

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§4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of §4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in §1.3 of this subtitle, and must be 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.

[73 FR 67288, Nov. 13, 2008]

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§4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under §4.321(a) or an opening brief filed under §4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

[73 FR 67288, Nov. 13, 2008]

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§4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

[73 FR 67288, Nov. 13, 2008]

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§4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify:

- (1) The agency concerned; and
- (2) The LTRO where the original record was filed under §30.233 of this subtitle.

(b) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original transcript in the record.

(c) Within 30 days of the receipt of the transcript, the LTRO must do the following:

- (1) Prepare a table of contents for the record;
- (2) Make two complete copies of the original record, including the transcript and table of contents;
- (3) Certify that the record is complete;
- (4) Forward the certified original record, together with the table of contents, to the Board by certified mail or other service with delivery confirmation; and
- (5) Send one copy of the complete record to the agency.

(d) While the appeal is pending, the copies of the record will be available for inspection at the LTRO and the agency.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under §4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:

- (1) An interlocutory appeal under §4.28;
- (2) An appeal from a decision under §§30.126 or 30.127 regarding modification of an inventory of an estate; or
- (3) An appeal from a decision under §30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

[76 FR 7505, Feb. 10, 2011]

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§4.325 How will the appeal be docketed?

The Board will docket the appeal on receiving the probate record from the LTRO or the administrative record from the judge, and will provide a notice of the docketing and the table of contents for the record to all interested parties as shown by the record on appeal. The docketing notice will specify the deadline for filing briefs and will cite the procedural regulations governing the appeal.

[73 FR 67288, Nov. 13, 2008]

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§4.326 What happens to the record after disposition?

(a) After the Board makes a decision other than a remand, it must forward to the designated LTRO:

- (1) The record filed with the Board under §4.324(d) or (f); and
- (2) All documents added during the appeal proceedings, including any transcripts and the Board's decision.

(b) The LTRO must conform the duplicate record retained under §4.324(b) to the original sent under paragraph (a) of this section and forward the duplicate record to the agency concerned.

[73 FR 67288, Nov. 13, 2008]

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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.

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§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).

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§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.

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§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]

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§4.333 Service of notice of appeal.

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

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

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§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.

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§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.

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§4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

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§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.

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§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.

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§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.

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§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.

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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.

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§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.