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United States Department of the Interior

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

MAR 14 2019

Governor's Office of Planning & Research

MAR 19 2019

STATE CLEARINGHOUSE

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7016 3010 0001 0589 3109

Leanne Walker-Grant, Chairperson
Table Mountain Rancheria
P.O. Box 410.
Friant, CA 93626

Re: Big Sandy Rancheria Band of Western Mono Indians v. Acting Pacific Regional Director, Bureau of Indian Affairs, Docket No. IBIA 16-006

Dear Chairperson Grant:

On August 10, 2017, the Interior Board of Indian Appeals ("IBIA or Board"), issued an Order Affirming Decision in Part, Vacating in Part and Remanding in Part directing the Bureau of Indian Affairs (BIA), Regional Director consider Big Sandy Rancheria Band of Western Mono Indian (Appellant) concerns regarding enforcement of its easement rights and clarify or reconsider findings regarding the effect of land acquisition on historic properties and seek concurrence from the State Historic Preservation Officer (SHPO). Additionally, the Regional Director was to complete, as appropriate, Section 106 consultation with consulting parties concerning the proposed undertaking.

The undertaking concerns an application from Table Mountain Rancheria (Tribe) to have 147 acres, more or less, located in Fresno County, California accepted into trust. On March 22, 2012, a Notice of Application (NOA) was circulated for public comments. The distribution list for the NOA included Appellant. The Appellant submitted comments on the proposed acquisition during the comment period by letter dated April 24, 2012. Additionally, the Appellant requested that BIA exclude the portion of Parcel 6 containing the easement from the acquisition, transfer title of the land consisting of the easement to the Appellant, or convert the easement to a County road. Finally, the Appellant requested that enforceable restrictions be placed on the land title and that BIA provide enforceable assurances from the BIA that Appellant's exclusive and unfettered access to the easement will be assured by written agreement between BIA, the Tribe, and the Appellant that includes a waiver of immunity from the Tribe. The Regional Director acknowledged receipt and responded to the Appellant by letter dated August 12, 2013. The letter

stated that BIA "does not have the authority to exclude portions of the Tribe's application based on the request of another Tribe," or require that Table Mountain waive its sovereign immunity, but if BIA took the Parcels in trust, the land would be "subject to all exceptions determined valid and acceptable under the Department of Justice Title Standards." The BIA issued a decision dated September 3, 2015 to approve the land acquisition request.

On January 31, 2013, the Regional Director notified the California SHPO of the BIA's intent to initiate the Section 106 consultation concerning Table Mountain's fee-to-trust application, with respect to parcels identified as the Area of Potential Effect (APE) of the proposed undertaking, and stated that Table Mountain did not propose any change in land use for the APE. It was explained that the Tribal Cultural Resources Department conducted a Phase I cultural resources inventory of the APE between February 10, 2005, and September 26, 2008, which identified five new archaeological resources and two previously recorded resources. BIA recommended that all seven of the archaeological sites be treated as eligible for inclusion on the National Register of Historical Places, and concluded that, because the fee-to-trust acquisition would not result in a change in land use, "there will be *No Adverse Effect* as a result of this proposed federal undertaking." It was also stated that "SHPO concurrence with this determination evidences BIA fulfillment of federal regulations pursuant to 36 C.F.R. § 800.4(d)(1), and in compliance with Section 106 of the NHPA."

Additionally, a number of tribes were invited, including the Appellant, to participate as consulting parties in the Section 106 consultation process. In the invitation letters, the Regional Director stated that BIA understands the "sensitive nature" of information regarding historic properties, and that such information would be "used only to meet the requirements under Section 101(d)(6)(B) of the NHPA. The Appellant accepted the Regional Director's invitation and expressed concerns that the acquisition could have impacts upon cultural resources within the Parcels.

On February 15, 2013, BIA received the SHPO's response to BIA's January 31, 2013, letter initiating consultation in regard to the proposed acquisition. The SHPO accepted BIA's delineation of the APE and identification of historic properties stating: "Pursuant to 36 C.F.R. part 800.5(b),...I concur with BIA's 'No Adverse Effect' as the undertaking proposes no changes in current land use and only involves the transfer of land into Federal ownership." On July 1, 2013, the Regional Director informed Appellant that the SHPO had concurred with BIA's determination of No Adverse Effect concerning the trust acquisition of the Parcels and that the Section 106 historic preservation compliance consultation process...has now been completed.

On October 2, 2015, the Board received notice of appeal from the Big Sandy Rancheria Band of Western Mono Indians.

In response to the IBIA remand Order, the BIA is providing our clarification of findings regarding the enforcement of easement rights and the effect on any historic properties located on the real property submitted by the Table Mountain Rancheria. The land referred to herein is situated in the State of California, County of Fresno, as set forth in the attached description.

Easement

With respect to the enforceability of Appellant's easement, attached to the Tribe's application was a copy of the title commitment for the parcels proposed to be acquired in trust, which lists subject easement deed under exceptions to title coverage under the policy to be issued. The Tribe specifically states that several exceptions to title will remain after the property is accepted into trust, which includes the Appellant's easement, pursuant to tribal Resolution No. 2010-10, dated May 11, 2010.

The easement at issue was incorporated in deeds that were recorded with the County before the proposed acquisition in trust. Transfer of title from John and Marrión Slater and Steve and Linda Wilson, to QBS, LLC a Nevada Limited Liability Company (an entity of Big Sandy), was also completed before the proposed acquisition. The deed recorded with the County on July 29, 2013, shows Big Sandy Rancheria Band of Western Mono Indians as the title holder of the easement.

By letter dated August 29, 2017, the Tribe stated that they will not dispute the existence of the easement and its attachment to the land, or any other required enforcement language that may be needed to ensure that the easement owner can use the easement encumbering the burden property. Again, by letter dated October 9, 2017, Table Mountain Rancheria states that the Tribe will not dispute the existence of an easement in favor of QBS, LLC, from which Big Sandy claims an interest as a result of QBC, LLC's transfer of its LLC to a member of Big Sandy's Tribal Council.

The Tribe obtained an updated Title Commitment dated November 29, 2018, which reflects ownership of the easement resides with Big Sandy Rancheria Band of Western Mono Indians. The said easement was recorded July 29, 2013. Additionally, the Tribe has provided Resolution No. 2019-09 dated February 19, 2019, stating that Tribe has acknowledged that the easement ownership is properly described in the Title Commitment and that the Tribe will allow and not prohibit access to the easement pursuant to the ownership interest reflected in aforesaid Title Commitment.

The non-exclusive easement at issue provides ingress, egress and public utilities to and from the Appellant's property and is necessary for entry onto and off of the property. The easement runs through the Tribe's property from Millerton Road to the Appellant's property, which is currently landlocked. The surrounding parcels are owned by the Tribe which are accessible through the easement or from Millerton Road. The legally recorded easement and the nature or rights to use of the easement by its current and future owners will not be affected if the United States accepts the underlying property into trust, as such property will be subject to the superior easement interest and our acceptance would not extinguish the easement.

The Tribe's Resolution and letters, along with additional supporting documentation memorialize Table Mountain Rancheria's commitment to honoring access to and use of the existing easement.

NHPA Section 106 Consultation Process

In 2013, the BIA consulted on the proposed undertaking and requested SHPO concur with the BIA "No historic properties affected" conclusion based on a "No adverse effects" determination pursuant to 36 CFR § 800.5(b). In February 2013, the SHPO concurred with the "No adverse effects" determination pursuant to 36 CFR § 800.5(b). The Area of Potential Effects (APE) for this undertaking has not changed since the initial consultation in 2013.

To address the Board's findings, BIA contacted Big Sandy Rancheria on October 18, 2017, inviting them to participate as a consulting party in the re-initiation of the Section 106 consultation process and to provide any information or concerns they may have regarding historic properties. Big Sandy Rancheria responded to the invitation by letter dated November 24, 2017, reiterating their concerns over the risk to sensitive cultural resources that would occur if the land were to transfer into trust, listing several archaeological sites within the proposed property, as was expressed in their earlier letter in 2013.

On January 4, 2018, the BIA submitted a second consultation to SHPO that, with the exception of four additional letters of correspondence with the Big Sandy Band of Western Mono Indians, was identical to the 2013 submittal. The BIA again requested SHPO concurrence with the BIA "No historic properties affected" conclusion, but, in this case, articulated that the conclusion was based on 36 CFR § 800.4(d)(1). The BIA requested concurrence with the "No historic properties affected" determination because the proposed action is an administrative action involving only the transfer of land and no ground disturbance, and because the undertaking should place historic properties in the APE under Federal jurisdiction and subject to BIA oversight, warranting concurrence with BIA's determination pursuant to 36 CFR § 800.4(d)(1). As such, the SHPO concurred with the No historic properties affected determination by letter dated August 7, 2018. On March 5, 2019, the Regional Director informed Appellant that the SHPO had concurred with BIA's determination of No historic properties affected concerning the trust acquisition of the Parcels and that the Section 106 historic preservation compliance consultation process...has now been completed.

CONCLUSION

Based on the foregoing, the BIA accepts the property described in its Decision of September 30, 2015, into trust. The subject acquisition will vest title in the United States of America in trust for the Table Mountain Rancheria in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202).

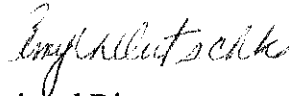
Should any of the below-listed known interested parties believe they are adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia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

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

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

Sincerely,



Regional Director

Enclosures:

Notice of Decision dated September 30, 2015
43 CFR 4.310-4.340

cc: See Distribution List

DISTRIBUTION LIST

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State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Senior Advisor for Tribal Negotiations - 7016 3010 0001 0589 3017
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

U.S. Senator Dianne Feinstein – 7016 3010 0001 0589 3024
331 Hart Senate Office Building
Washington, DC 20510

Board of Supervisors – 7016 3010 0001 0589 3031
County of Fresno
2281 Tulare Street, Room 301
Fresno, California 93721-2198

Fresno County Treasurer and Tax Collector – 7016 3010 0001 0589 3048
Hall of Records
P. O. Box 1247
Fresno, California 93721

Planning Director – 7016 3010 0001 0589 3055
Planning Department
County of Fresno Plaza
2220 Tulare Street, Suite 800
Fresno, California 93721

Fresno County Dept. of Public Works – 7016 3010 0001 0589 3062
Fresno Plaza
2220 Tulare Street, Suite 700
Fresno, California 93721

Bart Bohn, County Administrative Officer – 7016 3010 0001 0589 3079
Hall of Records
2281 Tulare Street, Suite 304
Fresno, California 93721

Chairperson – 7016 3010 0001 0589 3086
Big Sandy Rancheria
P.O. Box 337
Auberry, CA 93602

Chairperson – 7016 3010 0001 0589 3093
Cold Springs Rancheria
P.O. Box 209
Tollhouse, CA 93667

Regular Mail:

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capitol Mall
Sacramento, CA 95814

Pacific Southwest Regional Solicitor
Office of the Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

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

Parcel 1: APN 300-210-23

That portion of the Southwest quarter of Section 12, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, more particularly described as follows, to wit:

Commencing at a point distant 1310.32 feet South 89°19'18" East from the Southwest corner of said Section 12, said point being the Southeast corner of Lot 20 of Tract No. 1833, according to the map thereof recorded in Book 20, Pages 58 and 59 of Plats, Fresno County Records, and being the True Point of Beginning of this description; thence North 01°24'42" East, and along the Easterly line of said Tract, a distance of 1,302.09 feet to the Northeast corner of said Lot 20; thence North 89°43'09" West, and along the North line of said Lot 20, a distance of 182.80 feet; thence South 03°18'27" West, a distance of 1,199.19 feet, a little more or less, to a point on the Southwesterly line of said Lot; thence traversing along the Southerly line of said Lot, South 34°55'15" East, a distance of 126.49 feet; thence South 89°19'18" East, a distance of 147.51 feet to the True Point of Beginning of this description.

Parcel 2: APN's 300-032-32 and 300-380-19

Parcel A of Lot line adjustment No. 99-05 in the unincorporated area, county of Fresno, State of California, as evidenced by a Grant Deed recorded June 30, 2000, as instrument No. 00-78860 of Official Records, in the Office of the county Recorder of said County and being more particularly described as follows:

Parcel A:

The Southeast quarter of the Southwest quarter of Section 12, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats.

Parcel B:

The North half of the Northeast quarter of the Northwest quarter; the Southeast quarter of the Northeast quarter of the Northwest quarter; and that portion lying North and East of Millerton Road in the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian.

Excepting therefrom any portion of said land lying South and West of the Northeasterly line of the land conveyed to the County of Fresno by the Deed recorded September 15, 1983, as instrument No. 83-085435, Official Records of Fresno County.

Also excepting therefrom any portion of said Section 13, lying within the hereinabove described land and being more particularly described as follows:

Commencing at the North Quarter corner of said Section 13 as shown on the map recorded in Book 33 of Record of Surveys at page 49, Fresno County Records; thence North 84°46'29" East, along the North line of Section 13, a distance of 285.31 feet; thence South 00°32'28" East, a distance of 748.01 feet to the true point of beginning; thence continuing South 00°32'28" East, a distance of 389.55 feet; thence South 16°09'31" West a distance of 207.42 feet, more or less, to a point on the Northeasterly line of the parcel deeded to the County of Fresno by the deed recorded September

15, 1983, as instrument No. 83-85435, Official Records of Fresno County; thence Northeasterly along said Northeasterly line of the following courses: North 59°04'47" West, a distance of 49.96 feet to the point of curvature of a tangent curve concave Northeasterly and having a radius of 865.00 feet; thence Northwesterly along said curve, through a central angle of 21°14'20", an arc distance of 320.65 feet; thence North 37°50'27" West, a distance of 205.67 feet; thence North 42°42'38" East, leaving said Northeasterly line, a distance of 175.64 feet; thence North 74°17'46" East, a distance of 217.73 feet; thence North 89°27'32" East, a distance of 132.98 feet to the true point of beginning.

Parcel C:

That certain real property situate and being a portion of the Northeast quarter of Section 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the government township plats and more particularly described as follows:

Commencing at the Northwest corner of the Northeast quarter of said Section 13; thence South 0°12'55" West, 1152.43 feet along the Westerly line of said Northeast quarter to a point in the center line of Millerton Lake Road; thence along the centerline of said road as follows: South 42°16'38" East 47.20 feet; thence along a curve to the left having a radius of 650.00 feet, through a central angle of 17°04'40", an arc distance of 193.74 feet; thence South 59°21'18" East 57.41 feet more or less to an intersection with the Southwesterly extension of an existing fence; thence leaving the centerline of said road and along said extension and said fence North 16°09'31" East 238.68 feet and North 0°32'28" West 1137.56 feet to a point on the Northerly line of said Section 13; thence South 84°46'29" West 285.31 feet along the Northerly line of said Section 13 to the Point of Commencement.

Excepting therefrom that portion of said land conveyed to the county of Fresno by the Deed recorded September 15, 1983, as instrument No. 83-085435, Official Records of Fresno County.

Also excepting therefrom any portion of said Section 13, lying within the hereinabove described land and being more particularly described as follows:

Commencing at the North Quarter corner of said Section 13 as shown on the map recorded in Book 33 of Record of Surveys at page 49, Fresno County Records; thence North 84°46'29" East, along the North line of Section 13, a distance of 285.31 feet; thence South 00°32'28" East, a distance of 748.01 feet to the true point of beginning; thence continuing South 00°32'28" East, a distance of 389.55 feet; thence South 16°09'31" West a distance of 207.42 feet, more or less, to a point on the Northeasterly line of the parcel deeded to the County of Fresno by the deed recorded September 15, 1983, as instrument No. 83-85435, Official Records of Fresno County; thence Northeasterly along said Northeasterly line of the following courses: North 59°04'47" West, a distance of 49.96 feet to the point of curvature of a tangent curve concave Northeasterly and having a radius of 865.00 feet; thence Northwesterly along said curve, through a central angle of 21°14'20", an arc distance of 320.65 feet; thence North 37°50'27" West, a distance of 205.67 feet; thence North 42°42'38" East, leaving said Northeasterly line, a distance of 175.64 feet; thence North 74°17'46" East, a distance of 217.73 feet; thence North 89°27'32" East, a distance of 132.98 feet to the true point of beginning.

Parcel 3: APN 300-380-20

Lot Line Adjustment No. 99-05 (A) as evidenced by a Certificate of Compliance recorded August 18, 2000, as instrument No. 00-99402 of Official Records being that portion of Section 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, in the unincorporated area,

County of Fresno, State of California, according to the Government Township Plats and more particularly described as follows:

Commencing at the North Quarter corner of said Section 13 as shown on the map recorded in Book 33 of Record of Surveys at page 49, Fresno County Records; thence North $84^{\circ}46'29''$ East, along the North line of Section 13, a distance of 285.31 feet; thence South $00^{\circ}32'28''$ East, a distance of 748.01 feet to the true point of beginning; thence continuing South $00^{\circ}32'28''$ East, a distance of 389.55 feet; thence South $16^{\circ}09'31''$ West a distance of 207.42 feet, more or less, to a point on the Northeasterly line of the parcel deeded to the County of Fresno by the deed recorded September 15, 1983, as instrument No. 83-85435, Official Records of Fresno County; thence Northeasterly along said Northeasterly line of the following courses: North $59^{\circ}04'47''$ West, a distance of 49.96 feet to the point of curvature of a tangent curve concave Northeasterly and having a radius of 865.00 feet; thence Northwesterly along said curve, through a central angle of $21^{\circ}14'20''$, an arc distance of 320.65 feet; thence North $37^{\circ}50'27''$ West, a distance of 205.67 feet; thence North $42^{\circ}42'38''$ East, leaving said Northeasterly line, a distance of 175.64 feet; thence North $74^{\circ}17'46''$ East, a distance of 217.73 feet; thence North $89^{\circ}27'32''$ East, a distance of 132.98 feet to the true point of beginning.

PARCEL 4: APN 300-032-33 and APN 300-380-02

All that certain real property situate in the City of Fresno, State of California, and being a part of Sections 12 and 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, and being more particularly described as follows:

Commencing at the North quarter corner of said Section 13; thence along the West line of the Northeast quarter of Section 13, South $0^{\circ}12'55''$ West 1,152.43 feet to a point in the centerline of Millerton Road; thence along the centerline of Millerton Road the following:

South $42^{\circ}16'38''$ East 47.20 feet; thence along a curve to the left having a radius of 650.00 feet, a central angle of $17^{\circ}04'40''$, an arc distance of 193.74 feet; thence South $59^{\circ}21'18''$ East 202.94 feet; along a curve to the right, having a radius of 850.00 feet a central angle of $10^{\circ}05'35''$ an arc distance of 149.73 feet to a point on said curve whose radial bears North $40^{\circ}44'17''$ East; thence leaving the centerline of Millerton Road and along a line parallel to and 30.00 feet Westerly of the centerline of an existing dirt road the centerline of which is described as follows:

Continuing along the aforementioned centerline of Millerton Road, along a curve to the right, having a radius of 850.00 feet through a central angle of $2^{\circ}31'29''$, an arc distance of 37.46 feet to a junction with the aforementioned centerline of said dirt road and the Point of Beginning of courses parallel to and 30.00 feet East of the actual boundary; thence North $5^{\circ}13'29''$ East 317.04 feet, North $8^{\circ}39'17''$ East 188.55 feet, North $33^{\circ}35'07''$ East 213.28 feet, North $70^{\circ}33'34''$ East 202.77 feet, North $87^{\circ}01'44''$ East 248.65 feet, North $74^{\circ}32'21''$ West 89.84 feet, North $62^{\circ}01'26''$ West 60.22 feet, North $42^{\circ}56'41''$ West 53.42 feet, North $15^{\circ}35'25''$ West 49.90 feet, North $5^{\circ}12'21''$ West 49.21 feet, North $11^{\circ}57'38''$ East 73.61 feet, North $28^{\circ}12'19''$ East 98.41 feet, North $35^{\circ}16'08''$ East 54.98 feet, North $25^{\circ}25'30''$ East 107.99 feet, North $67^{\circ}21'54''$ East 79.66 feet, North $29^{\circ}30'14''$ East 141.93 feet, North $57^{\circ}55'57''$ East 81.96 feet, South $78^{\circ}44'44''$ East 147.11 feet, South $84^{\circ}09'43''$ East 28.49 feet, North $36^{\circ}41'31''$ East 21.98 feet, North $17^{\circ}27'21''$ West 29.96 feet, North $30^{\circ}52'23''$ West 72.31 feet, North $42^{\circ}52'07''$ West 45.48 feet, North $42^{\circ}17'47''$ West 51.55 feet, North $29^{\circ}7'32''$ West 46.61 feet, North $21^{\circ}51'00''$ West 44.64 feet, North $4^{\circ}36'31''$ West 46.98 feet, North $12^{\circ}21'32''$ East 158.30 feet, North $4^{\circ}51'09''$ West 48.80 feet, North $22^{\circ}29'11''$ West 58.51 feet, North $11^{\circ}34'40''$ West 142.91 feet, North $5^{\circ}32'13''$ East 151.49 feet, North $24^{\circ}01'46''$ East 44.53 feet, North $10^{\circ}49'40''$ East 35.43 feet, North $8^{\circ}07'50''$ West 58.63 feet, North $2^{\circ}36'11''$ East 82.02 feet, North $16^{\circ}01'30''$ West 84.75 feet to a point in a Northeast-

Southwest fence line; thence leaving the centerline of said dirt road along said fence line South 76°26'36" West 30.03 feet to the actual boundary of this Parcel; thence South 76°26'36" West 10.90 feet, South 63°36'18" West 87.10 feet, South 82°25'28" West 285.60 feet, South 57°44'37" West 523.17 feet to a point of the West line of the Southeast quarter of Section 12; thence along the West line of the Southeast quarter South 1°30'53" West 639.49 feet to a point on the North line of the Northeast quarter of Section 13; thence along said North line of the Northeast quarter South 84°46'29" West 436.56 feet to Point of Commencement.

EXCEPTING THEREFROM that parcel of land more particularly described as follows:

Commencing at the Northwest corner of the Northeast quarter of said Section 13, thence South 0°12'55" West 1152.43 feet along the Westerly line of said Northeast quarter to a point in the centerline of Millerton Lake Road; thence along the centerline of said road as follows; South 42°16'38" East 47.20 feet; thence along a curve to the left having a radius of 650.00 feet, through a central angle of 17°04'40", an arc distance of 193.74 feet; thence South 59°21'18" East 57.41 feet, more or less, to an intersection with the Southwesterly extension of an existing fence; thence leaving the centerline of said road and along said extension and said fence North 16°09'31" East 238.68 feet and North 0°32'28" West 1137.56 feet to a point on the Northerly line of said Section 13; thence South 84°46'29" West 285.31 feet along the Northerly line of said Section 13 to the Point of Commencement.

PARCEL 5: APN 300-032-34

All that certain real property situate in the City of Fresno, State of California, more particularly described as follows:

Beginning at the South quarter corner of Section 12, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, said corner being a 1 1/2 inch iron pipe, tagged L.S. 2737, said corner being shown on the Record of Survey, recorded in Book 30, page 83, Official Records of Fresno County, thence North 1°36'41" East 892.96 feet to the True Point of Beginning, of this description, thence North 1°36'41" East 677.05 feet, thence North 90°00'00" East 804.08 feet, thence South 1°36'41" West 318.76 feet to the Northeast corner of the parcel conveyed to the Table Mountain Rancheria Band of Indians by Joseph and Doris Jenkins in grant deed recorded as document 2004-145113 by the Fresno County Recorder on June 30, 2004, thence South 76°26'36" West 10.90 feet, thence South 63°36'18" West 87.10 feet, thence South 82°25'28" West 285.60 feet, thence South 57°44'37" West 523.17 feet to the Point of Beginning.

TOGETHER WITH a non-exclusive easement along and upon that certain existing oiled and dirt road adjacent to the East boundary line of the property conveyed by Deed dated May 1979, recorded July 20, 1979, in Book 7332 of Official Records of Fresno County, California, at page 266, and the herein-described real property from its entrance on Millerton Road at the Bull Pine Ranch entrance to the Northeast corner of the herein described parcel.

Parcel 6: APN 300-380-08

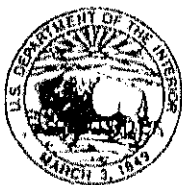
All of that portion of the Northeast quarter of Section 13 and the Southeast quarter of Section 12, all in Township 11 South, Range 21 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at a point on the East line of said Northeast quarter of Section 13 which bears North 00°00'00" West a distance of 1552.48 feet from the Southeast corner thereof; thence S. 75°51'25" W., a distance 328.00 feet; thence S. 25°24'59" W., a distance of 177.33 feet to the beginning of a

100.00 foot radius tangent curve, concave to the Northwest; thence Southwesterly, along said curve, through a central angle of $64^{\circ}35'10''$ an arc distance of 112.72 feet; thence S. $90^{\circ}00'00''$ W., a distance of 406.30 feet; thence S. $49^{\circ}59'52''$ W., a distance of 855.01 feet to the centerline of Millerton Road and the beginning of a 900.00 foot radius non-tangent curve, concave to the Southwest, a radial to said beginning bears N. $62^{\circ}59'46''$ E.; thence Northwesterly along said curve and along said centerline through a central angle of $21^{\circ}30'47''$, an arc distance of 337.93 feet; thence leaving said centerline of Millerton Road, N. $06^{\circ}22'50''$ E., along a line 30.00 feet Westerly from and parallel with the centerline of an existing dirt road as described in the deed to Joseph D. Jenkins and Doris J. Jenkins recorded July 20, 1979 in Book 7332, Page 266, official Records of Fresno County a distance of 302.57 feet; thence continuing along said parallel line of the following courses: N. $09^{\circ}48'38''$ E., a distance of 196.08 feet, N. $34^{\circ}44'28''$ E., a distance of 229.89 feet, N. $71^{\circ}42'55''$ E., a distance of 217.14 feet, N. $88^{\circ}11'05''$ E., a distance of 101.59 feet, N. $41^{\circ}47'20''$ W., a distance of 73.93 feet, N. $14^{\circ}26'04''$ W., a distance of 59.93 feet, N. $04^{\circ}03'00''$ W., a distance of 56.46 feet, N. $13^{\circ}06'59''$ E., a distance of 82.42 feet, N. $29^{\circ}21'40''$ E., a distance of 104.54 feet, N. $36^{\circ}25'29''$ E., a distance of 54.25 feet, N. $26^{\circ}34'51''$ E., a distance of 116.90 feet, N. $68^{\circ}31'15''$ E., a distance of 80.87 feet, N. $30^{\circ}39'35''$ E., a distance of 139.24 feet, N. $59^{\circ}05'18''$ E., a distance of 101.47 feet and S. $77^{\circ}35'23''$ E., a distance of 159.00 feet; thence leaving said parallel line N. $87^{\circ}12'09''$ E., a distance of 771.72 feet to said East line of the Northeast quarter of Section 13; thence S. $00^{\circ}00'00''$ E., a distance of 866.81 feet to the point of the Beginning of this description.

Excepting therefrom that portion deeded to the County of Fresno in deed recorded April 12, 1982 in Book 7889 Page 678 Document no. 30392 of Official Records.

The above-described real property is identified in Fresno County records as Assessor's Parcel Nos. 300-210-23; 300-032-32; 300-032-33; 300-032-34; 300-380-02; 300-380-08; 300-380-19; and 300-380-20, containing 147 acres, more or less.



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office

2800 Cottage Way

Sacramento, California 95825

SEP - 8 2015

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED - 7013 2630 0001 5557 6377

Leanne Walker-Grant, Chairperson
Table Mountain Rancheria
P.O. Box 410.
Friant, CA 93626

Dear Ms. Grant:

This is notice of our decision upon the application of Table Mountain Rancheria to have the below described real property accepted by the United States of America in trust for the Table Mountain Rancheria of California. The land referred to herein is situated in the State of California, County of Fresno, being more particularly described as follows:

Parcel 1: APN 300-210-23

That portion of the Southwest quarter of Section 12, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, more particularly described as follows, to wit:

Commencing at a point distant 1310.32 feet South 89°19'18" East from the Southwest corner of said Section 12, said point being the Southeast corner of Lot 20 of Tract No. 1833, according to the map thereof recorded in Book 20, Pages 58 and 59 of Plats, Fresno County Records, and being the True Point of Beginning of this description; thence North 01°24'42" East, and along the Easterly line of said Tract, a distance of 1,302.09 feet to the Northeast corner of said Lot 20; thence North 89°43'09" West, and along the North line of said Lot 20, a distance of 182.80 feet; thence South 03°18'27" West, a distance of 1,199.19 feet, a little more or less, to a point on the Southwesterly line of said Lot; thence traversing along the Southerly line of said Lot, South 34°55'15" East, a distance of 126.49 feet; thence South 89°19'18" East, a distance of 147.51 feet to the True Point of Beginning of this description.

Parcel 2: APN's 300-032-32 and 300-380-19

Parcel A of Lot line adjustment No. 99-05 in the unincorporated area, county of Fresno, State of California, as evidenced by a Grant Deed recorded June 30, 2000, as instrument No. 00-78860 of

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Official Records, in the Office of the county Recorder of said County and being more particularly described as follows:

Parcel A:

The Southeast quarter of the Southwest quarter of Section 12, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats.

Parcel B:

The North half of the Northeast quarter of the Northwest quarter; the Southeast quarter of the Northeast quarter of the Northwest quarter; and that portion lying North and East of Millerton Road in the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian.

Excepting therefrom any portion of said land lying South and West of the Northeasterly line of the land conveyed to the County of Fresno by the Deed recorded September 15, 1983, as instrument No. 83-085435, Official Records of Fresno County.

Also excepting therefrom any portion of said Section 13, lying within the hereinabove described land and being more particularly described as follows:

Commencing at the North Quarter corner of said Section 13 as shown on the map recorded in Book 33 of Record of Surveys at page 49, Fresno County Records; thence North $84^{\circ}46'29''$ East, along the North line of Section 13, a distance of 285.31 feet; thence South $00^{\circ}32'28''$ East, a distance of 748.01 feet to the true point of beginning; thence continuing South $00^{\circ}32'28''$ East, a distance of 389.55 feet; thence South $16^{\circ}09'31''$ West a distance of 207.42 feet, more or less, to a point on the Northeasterly line of the parcel deeded to the County of Fresno by the deed recorded September 15, 1983, as instrument No. 83-85435, Official Records of Fresno County; thence Northeasterly along said Northeasterly line of the following courses: North $59^{\circ}04'47''$ West, a distance of 49.96 feet to the point of curvature of a tangent curve concave Northeasterly and having a radius of 865.00 feet; thence Northwesterly along said curve, through a central angle of $21^{\circ}14'20''$, an arc distance of 320.65 feet; thence North $37^{\circ}50'27''$ West, a distance of 205.67 feet; thence North $42^{\circ}42'38''$ East, leaving said Northeasterly line, a distance of 175.64 feet; thence North $74^{\circ}17'46''$ East, a distance of 217.73 feet; thence North $89^{\circ}27'32''$ East, a distance of 132.98 feet to the true point of beginning.

Parcel C:

That certain real property situate and being a portion of the Northeast quarter of Section 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the government township plats and more particularly described as follows:

Commencing at the Northwest corner of the Northeast quarter of said Section 13; thence South $0^{\circ}12'55''$ West, 1152.43 feet along the Westerly line of said Northeast quarter to a point in the center line of Millerton Lake Road; thence along the centerline of said road as follows: South $42^{\circ}16'38''$ East 47.20 feet; thence along a curve to the left having a radius of 650.00 feet, through a central angle of $17^{\circ}04'40''$, an arc distance of 193.74 feet; thence South $59^{\circ}21'18''$ East 57.41 feet more or less to an intersection with the Southwesterly extension of an existing fence; thence leaving the centerline of said road and along said extension and said fence North $16^{\circ}09'31''$ East 238.68 feet and North $0^{\circ}32'28''$ West 1137.56 feet to a point on the Northerly line of said Section

13; thence South 84°46'29" West 285.31 feet along the Northerly line of said Section 13 to the Point of Commencement.

Excepting therefrom that portion of said land conveyed to the county of Fresno by the Deed recorded September 15, 1983, as instrument No. 83-085435, Official Records of Fresno County.

Also excepting therefrom any portion of said Section 13, lying within the hereinabove described land and being more particularly described as follows:

Commencing at the North Quarter corner of said Section 13 as shown on the map recorded in Book 33 of Record of Surveys at page 49, Fresno County Records; thence North 84°46'29" East, along the North line of Section 13, a distance of 285.31 feet; thence South 00°32'28" East, a distance of 748.01 feet to the true point of beginning; thence continuing South 00°32'28" East, a distance of 389.55 feet; thence South 16°09'31" West a distance of 207.42 feet, more or less, to a point on the Northeasterly line of the parcel deeded to the County of Fresno by the deed recorded September 15, 1983, as instrument No. 83-85435, Official Records of Fresno County; thence Northeasterly along said Northeasterly line of the following courses: North 59°04'47" West, a distance of 49.96 feet to the point of curvature of a tangent curve concave Northeasterly and having a radius of 865.00 feet; thence Northwesterly along said curve, through a central angle of 21°14'20", an arc distance of 320.65 feet; thence North 37°50'27" West, a distance of 205.67 feet; thence North 42°42'38" East, leaving said Northeasterly line, a distance of 175.64 feet; thence North 74°17'46" East, a distance of 217.73 feet; thence North 89°27'32" East, a distance of 132.98 feet to the true point of beginning.

Parcel 3: APN 300-380-20

Lot Line Adjustment No. 99-05 (A) as evidenced by a Certificate of Compliance recorded August 18, 2000, as instrument No. 00-99402 of Official Records being that portion of Section 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, in the unincorporated area, County of Fresno, State of California, according to the Government Township Plats and more particularly described as follows:

Commencing at the North Quarter corner of said Section 13 as shown on the map recorded in Book 33 of Record of Surveys at page 49, Fresno County Records; thence North 84°46'29" East, along the North line of Section 13, a distance of 285.31 feet; thence South 00°32'28" East, a distance of 748.01 feet to the true point of beginning; thence continuing South 00°32'28" East, a distance of 389.55 feet; thence South 16°09'31" West a distance of 207.42 feet, more or less, to a point on the Northeasterly line of the parcel deeded to the County of Fresno by the deed recorded September 15, 1983, as instrument No. 83-85435, Official Records of Fresno County; thence Northeasterly along said Northeasterly line of the following courses: North 59°04'47" West, a distance of 49.96 feet to the point of curvature of a tangent curve concave Northeasterly and having a radius of 865.00 feet; thence Northwesterly along said curve, through a central angle of 21°14'20", an arc distance of 320.65 feet; thence North 37°50'27" West, a distance of 205.67 feet; thence North 42°42'38" East, leaving said Northeasterly line, a distance of 175.64 feet; thence North 74°17'46" East, a distance of 217.73 feet; thence North 89°27'32" East, a distance of 132.98 feet to the true point of beginning.

Parcel 4: APN 300-032-33 and APN 300-380-02

All that certain real property situate in the City of Fresno, State of California, and being a part of Sections 12 and 13, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, and being more particularly described as follows:

Commencing at the North quarter corner of said Section 13; thence along the West line of the Northeast quarter of Section 13, South 0°12'55" West 1,152.43 feet to a point in the centerline of Millerton Road; thence along the centerline of Millerton Road the following:

South 42°16'38" East 47.20 feet; thence along a curve to the left having a radius of 650.00 feet, a central angle of 17°04'40", an arc distance of 193.74 feet; thence South 59°21'18" East 202.94 feet; along a curve to the right, having a radius of 850.00 feet a central angle of 10°05'35" an arc distance of 149.73 feet to a point on said curve whose radial bears North 40°44'17" East; thence leaving the centerline of Millerton Road and along a line parallel to and 30.00 feet Westerly of the centerline of an existing dirt road the centerline of which is described as follows:

Continuing along the aforementioned centerline of Millerton Road, along a curve to the right, having a radius of 850.00 feet through a central angle of 2°31'29", an arc distance of 37.46 feet to a junction with the aforementioned centerline of said dirt road and the Point of Beginning of courses parallel to and 30.00 feet East of the actual boundary; thence North 5°13'29" East 317.04 feet, North 8°39'17" East 188.55 feet, North 33°35'07" East 213.28 feet, North 70°33'34" East 202.77 feet, North 87°01'44" East 248.65 feet, North 74°32'21" West 89.84 feet, North 62°01'26" West 60.22 feet, North 42°56'41" West 53.42 feet, North 15°35'25" West 49.90 feet, North 5°12'21" West 49.21 feet, North 11°57'38" East 73.61 feet, North 28°12'19" East 98.41 feet, North 35°16'08" East 54.98 feet, North 25°25'30" East 107.99 feet, North 67°21'54" East 79.66 feet, North 29°30'14" East 141.93 feet, North 57°55'57" East 81.96 feet, South 78°44'44" East 147.11 feet, South 84°09'43" East 28.49 feet, North 36°41'31" East 21.98 feet, North 17°27'21" West 29.96 feet, North 30°52'23" West 72.31 feet, North 42°52'07" West 45.48 feet, North 42°17'47" West 51.55 feet, North 29°7'32" West 46.61 feet, North 21°51'00" West 44.64 feet, North 4°36'31" West 46.98 feet, North 12°21'32" East 158.30 feet, North 4°51'09" West 48.80 feet, North 22°29'11" West 58.51 feet, North 11°34'40" West 142.91 feet, North 5°32'13" East 151.49 feet, North 24°01'46" East 44.53 feet, North 10°49'40" East 35.43 feet, North 8°07'50" West 58.63 feet, North 2°36'11" East 82.02 feet, North 16°01'30" West 84.75 feet to a point in a Northeast-Southwest fence line; thence leaving the centerline of said dirt road along said fence line South 76°26'36" West 30.03 feet to the actual boundary of this Parcel; thence South 76°26'36" West 10.90 feet, South 63°36'18" West 87.10 feet, South 82°25'28" West 285.60 feet, South 57°44'37" West 523.17 feet to a point of the West line of the Southeast quarter of Section 12; thence along the West line of the Southeast quarter South 1°30'53" West 639.49 feet to a point on the North line of the Northeast quarter of Section 13; thence along said North line of the Northeast quarter South 84°46'29" West 436.56 feet to Point of Commencement.

EXCEPTING THEREFROM that parcel of land more particularly described as follows:

Commencing at the Northwest corner of the Northeast quarter of said Section 13, thence South 0°12'55" West 1152.43 feet along the Westerly line of said Northeast quarter to a point in the centerline of Millerton Lake Road; thence along the centerline of said road as follows; South 42°16'38" East 47.20 feet; thence along a curve to the left having a radius of 650.00 feet, through a central angle of 17°04'40", an arc distance of 193.74 feet; thence South 59°21'18" East 57.41 feet, more or less, to an intersection with the Southwesterly extension of an existing fence; thence leaving the centerline of said road and along said extension and said fence North 16°09'31" East 238.68 feet and North 0°32'28" West 1137.56 feet to a point on the Northerly line of said Section 13; thence South 84°46'29" West 285.31 feet along the Northerly line of said Section 13 to the Point of Commencement.

Parcel 5: APN 300-032-34

All that certain real property situate in the City of Fresno, State of California, more particularly described as follows:

Beginning at the South quarter corner of Section 12, Township 11 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, said corner being a 1 1/2 inch iron pipe, tagged L.S. 2737, said corner being shown on the Record of Survey, recorded in Book 30, page 83, Official Records of Fresno County, thence North 1°36'41" East 892.96 feet to the True Point of Beginning, of this description, thence North 1°36'41" East 677.05 feet, thence North 90°00'00" East 804.08 feet, thence South 1°36'41" West 318.76 feet to the Northeast corner of the parcel conveyed to the Table Mountain Rancheria Band of Indians by Joseph and Doris Jenkins in grant deed recorded as document 2004-145113 by the Fresno County Recorder on June 30, 2004, thence South 76°26'36" West 10.90 feet, thence South 63°36'18" West 87.10 feet, thence South 82°25'28" West 285.60 feet, thence South 57°44'37" West 523.17 feet to the Point of Beginning.

TOGETHER WITH a non-exclusive easement along and upon that certain existing oiled and dirt road adjacent to the East boundary line of the property conveyed by Deed dated May 1979, recorded July 20, 1979, in Book 7332 of Official Records of Fresno County, California, at page 266, and the herein-described real property from its entrance on Millerton Road at the Bull Pine Ranch entrance to the Northeast corner of the herein described parcel.

Parcel 6: APN 300-380-08

All of that portion of the Northeast quarter of Section 13 and the Southeast quarter of Section 12, all in Township 11 South, Range 21 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at a point on the East line of said Northeast quarter of Section 13 which bears North 00°00'00" West a distance of 1552.48 feet from the Southeast corner thereof; thence S. 75°51'25" W., a distance 328.00 feet; thence S. 25°24'59" W., a distance of 177.33 feet to the beginning of a 100.00 foot radius tangent curve, concave to the Northwest; thence Southwesterly, along said curve, through a central angle of 64°35'10" an arc distance of 112.72 feet; thence S. 90°00'00" W., a distance of 406.30 feet; thence S. 49°59'52" W., a distance of 855.01 feet to the centerline of Millerton Road and the beginning of a 900.00 foot radius non-tangent curve, concave to the Southwest, a radial to said beginning bears N. 62°59'46" E.; thence Northwesterly along said curve and along said centerline through a central angle of 21°30'47", an arc distance of 337.93 feet; thence leaving said centerline of Millerton Road, N. 06°22'50" E., along a line 30.00 feet Westerly from and parallel with the centerline of an existing dirt road as described in the deed to Joseph D. Jenkins and Doris J. Jenkins recorded July 20, 1979 in Book 7332, Page 266, official Records of Fresno County a distance of 302.57 feet; thence continuing along said parallel line of the following courses: N. 09°48'38" E., a distance of 196.08 feet, N. 34°44'28" E., a distance of 229.89 feet, N. 71°42'55" E., a distance of 217.14 feet, N. 88°11'05" E., a distance of 101.59 feet, N. 41°47'20" W., a distance of 73.93 feet, N. 14°26'04" W., a distance of 59.93 feet, N. 04°03'00" W., a distance of 56.46 feet, N. 13°06'59" E., a distance of 82.42 feet, N. 29°21'40" E., a distance of 104.54 feet, N. 36°25'29" E., a distance of 54.25 feet, N. 26°34'51" E., a distance of 116.90 feet, N. 68°31'15" E., a distance of 80.87 feet, N. 30°39'35" E., a distance of 139.24 feet, N., 59°05'18" E., a distance of 101.47 feet and S. 77°35'23" E., a distance of 159.00 feet; thence leaving said parallel line N. 87°12'09" E., a distance of 771.72 feet to said East line of the Northeast quarter of Section 13; thence S. 00°00'00" E., a distance of 866.81 feet to the point of the Beginning of this description.

Excepting therefrom that portion deeded to the County of Fresno in deed recorded April 12, 1982 in Book 7889 Page 678 Document no. 30392 of Official Records.

The subject property consists of eight parcels of land, encompassing approximately 147.00 acres more or less, commonly referred to as Assessor's Parcel Numbers: 300-210-23; 300-032-32; 300-032-33; 300-032-34; 300-380-02; 300-380-08; 300-380-19; and 300-380-20. The parcels are contiguous to the Table Mountain Rancheria at the easterly boundary. Currently, the property is limited to five residences and six wells. There is no proposed change in land use.

Federal Law authorizes the Secretary of the Interior, or his authorized representatives, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of an Indian reservation, or adjacent thereto, or within a tribal consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. §2202, et seq). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On March 22, 2012, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee to trust application from the California State Clearinghouse; Sara J. Drake, Deputy Attorney General; Mr. Jacob Appelsmith, Deputy Legal Affairs Secretary; Office of U.S. Senator Dianne Feinstein; Board of Supervisors, County of Fresno; Fresno County Treasurer and Tax Collector; Planning Director, Planning Department, County of Fresno; Fresno County Department of Public Works; Bart Bohn, County Administrative Officer, County of Fresno; Chairperson, Big Sandy Rancheria; Chairperson, Cold Springs Rancheria; and Anderson Indian Law.

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

1. Letter dated April 2, 2012 from the Department of Transportation stating that Caltrans has no objections to the proposed action.
2. Letters dated April 24, 2012 from the Big Sandy Rancheria stating the following:
 - Big Sandy Rancheria (BS) has serious concerns that converting the parcels into trust status for Table Mountain Rancheria (TMR) would pose a serious threat of infringement and encroachment by TMR onto Big Sandy's aboriginal land base;
 - The Tribe is concerned that it would no longer have access to its aboriginal territory and the cultural and historical sites located therein;
 - Converting the land into trust without proper consultation with the Tribe would be a serious affront to the Tribe's sovereignty; and
 - The application does not reflect the current beneficial owner of a non-exclusive easement for ingress, egress and public utilities over a portion of APN 300-380-08.

By letter dated July 5, 2012, the Table Mountain Rancheria's response is as follows:

- *Big Sandy Rancheria's views of its own aboriginal territory, have no bearing on Table Mountain's current application to have this tract of land converted to trust status;*
- *The Tribe states that the easement in question is under QBC, LLC, a Nevada formed and organized LLC, not a tribal entity that is authorized to do business in California;*
- *No documents showing the transfer of ownership of the easement from QBC, LLC to Big Sandy Rancheria have been presented. BSR requests proper recording of the easement in the name of Big Sandy Rancheria. If BSR wishes to have the easement transferred from QBC, LLC to BSR, or convert QBC, LLC to a tribal entity, comments on the proposed acquisition is not the forum to take up that issue; and*
- *The opportunity to provide comments on the proposed acquisition, pursuant to 25 C.F.R. § 151.10, was provided. Big Sandy Rancheria's comments are a part of the consultation process with local entities.*

On February 19, 2015 a letter dated August 26, 2013 with attachments was sent to Table Mountain providing documentation of Big Sandy's ownership of the easement access across the subject property.

By letter dated March 2, 2015, Table Mountain stated that they are currently moving fencing and removing the gate that has blocked the easement access.

3. Letter dated May 4, 2012 from the State of California, Department of Justice, stating the following:
 - Failure to demonstrate necessity; and
 - Failure to demonstrate compliance with 25 C.F.R. § 151.11– Off Reservation. Three of the eight parcels have a common boundary with the Table Mountain's existing Rancheria.
 - The Tribe fails to demonstrate that the County's existing zoning in any way threatens the Rancheria;
 - There is no contention that either the Rancheria or the tribal members are unable to pay the property taxes assessed against the parcels;
 - These parcels are not presently required for additional housing or economic development and the existing housing use is not threatened as a result of the underlying land's fee status;
 - The Rancheria, fails to provide any evidence of the extent of Table Mountain's traditional land base, or more importantly, that the subject parcels were formerly part of that land base;
 - While the Rancheria appears to be composed of people from the Chukchansi Band of Yokuts and the Monache or Mono Tribe, nothing in the application

demonstrates that the Rancheria is the lawful successor in interest to the political rights of either of those groups or what their traditional lands were;

- Even if the Table Mountain Rancheria were the lawful successor in interest of the political rights of those tribes, it is estopped to make any claim to the reestablishment of political control over those lands pursuant to federal law because it and all other California tribes waived any claims to those lands as a result of its receipt of compensation for those aboriginal rights from the United States Claims Commission in the 1950s; and
- As a political entity the Table Mountain Rancheria did not exist until it was established with the 160 acres it received from the federal government in 1914. Thus, to the extent, the Rancheria has "traditional lands," those lands are limited to the 160 acres it received at the time.

By letter dated July 5, 2012, the Table Mountain Rancheria's response is as follows:

- *The State partially quotes the regulations dealing with land acquisition policy, stating "land may be taken in trust when the Secretary of the Interior determines that the 'acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing.' (25 C.F.R. § 151.3(a) (3))." While the citation is correct, the State fails to cite the rest of the provision immediately preceding it, which states:*
 - (a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:*
 - (1) When the property is located within the exterior boundaries of the tribe's 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 acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.*

*The proposed acquisition meets all three possible criteria. The property is adjacent to the Tribe's reservation, the Tribe owns an interest in the land, and the trust acquisition is necessary to tribal self-determination, economic development, and Indian housing, including use of the residences and wells on the property. The Tribe is also interested in providing additional land for housing that will allow tribal members to come under the tax scheme contemplated by a long line of federal and Supreme Court cases barring state taxation of income tax received by a tribal member living on tribal trust land.¹ The case *Mike v. Franchise Tax Board* further confirms that a state may impose income taxes on tribal members living either off-reservation or on another tribe's reservation.² The Tribe has limited land on which to potentially construct housing. More immediately, without this land in trust, the tribal members currently living on the land are subject to state income taxation.*

¹ *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973).

² 182 Cal. App. 4th 817 (2010).

Because of all of these purposes and statuses of the land, the application meets the standards for trust acquisition.

The State's construction of the regulations to require a threat from the local County is not in accord with the text of the regulations or the land acquisition statute at 25 U.S.C. § 465. The statute broadly states the purpose of trust acquisition as "for the purpose of providing land for Indians." The State further adds that "there is not contention that either the Rancheria or the tribal members are unable to pay the property taxes assessed against those parcels." Again, nowhere is inability to pay property taxes a criterion for trust land acquisitions. The State does not cite any law or policy for either contention. The State's argument is at best a misinterpretation of the law, and at worst an attempt to supplant the BIA's policy authority with its own.

*The State concedes that its position on trust acquisitions is in contradiction to numerous court decisions: "The state is aware of prior Interior Board of Indian Appeals decisions and federal court decisions concluding that the Bureau is not required to determine with any specificity that placing property into trust is necessary or essential to the accomplishment of a tribal housing or economic development purpose and that it may be sufficient if a tribe merely asserts that it needs more land." The state explicitly chooses to supplant the judgment of federal courts that have examined and interpreted trust acquisition law and policy with its own opinions. As one of the courts has noted, "To require the Secretary to discuss the history and purpose of the IRA each time the United States is requested to take land into trust for an individual Indian or tribe is not required and would be unnecessary."³ Further, "The regulation [25 C.F.R. § 151.3(a)(3)] merely requires the Secretary to 'consider' whether the acquisition is 'necessary.'" *Id.* at 946. In the same case, the Court of Appeals stated: "We agree with the district court that it would be an unreasonable interpretation of 25 C.F.R. § 151.10(b) to require the Secretary to detail specifically why trust status is more beneficial than fee status in the particular circumstance."⁴*

- *The State further determines that the "principle rationale" of the application is to reestablish the Tribe's traditional land base. While this is one of the Tribe's goals, it falls under the trust acquisition purposes of facilitating tribal self-determination, economic development, and Indian housing. Going far beyond the regulatory purpose for comments by state and local entities, the State's comments attack the Tribe's history and claim to the land as a traditional land base. Whether or not the land is within the Tribe's traditional land base is not a criteria for the trust acquisition.*

As the State notes, the Rancheria was established with 160 acres purchased by the federal government, although the date was 1916, not 1914. Appropriation

³ South Dakota v. United States Department of Interior, 314 F.Supp.2d 935, 943 (2004).

⁴ South Dakota v. United States Department of Interior, 423 F.3d 790, 801 (2005).

Act of May 18, 1916. In suggesting that "to the extent of the Rancheria has 'traditional lands,' those lands are limited to the 160 acres it received at the time," the State fails to note that additional land was placed in trust allotments for tribal members. From 1895 to 1925, over 2,400 acres contiguous to the Rancheria was placed in trust.⁵ These allotments were subsequently acquired by the Bureau of Reclamation or sold. Then, pursuant to the California Rancheria Act, the United States terminated the federally recognized status of the Tribe and the status of the Rancheria as "Indian lands."⁶ Finally, Table Mountain was restored as a federally recognized Tribe and the exterior boundaries of the Rancheria were re-established in 1983.⁷ While the State's allegations as to the Tribe's history and aboriginal land base are not relevant to the application, the Tribe feels compelled to correct the State's mischaracterization of the Tribe's history with this brief statement.

- *The State posits that the application should be considered an off-reservation acquisition because of the eight parcels in the application; the parcels on the western portion share a boundary with or touch the reservation boundary, while the parcels next to them do not also touch the reservation boundary. The Tribe's application consists of a 147-acre tract of land that is inarguably contiguous to the reservation boundaries. The proposed acquisition is contiguous to both the original 1916 borders and to the current restored borders as recognized in the 1983 case.⁸*

An acquisition is considered on-reservation when "the land is located within or contiguous to an Indian reservation" 25 C.F.R. § 151.10. "Land" is defined as "real property or an interest therein." 25 C.F.R. § 151.2(g). The State's argument reads distinctions into the regulations between individual parcels where none exist.

4. Letters dated May 15, 2012 from the County of Fresno, County Administrative Office, stating the following:

- Information regarding the property taxes currently levied on the subject property;
- Information on a special assessments on the subject property;
- The County currently provides law enforcement, health, and land use regulatory services to the parcels;
- All of the parcels are zoned AE40 (Exclusive Agriculture, 40-acre minimum parcel size) District, with the exception of APN Nos. 300-032-32, 300-380-19 and 20 which are zoned R-R (c) (Rural Residential, two-acre minimum parcel size, Conditional) District;

⁵ Act of February 8, 1887 (24 Stat. 388 as amended).

⁶ 72 Stat. 619, as amended.

⁷ *Table Mountain Rancheria Association, et al. v. Watt*, U.S.D.C. N.D. Calif. Case No. C-80-4595.

⁸ *Table Mountain Rancheria Association, et al. v. Watt*, U.S.D.C. N.D. Calif. Case No. C-80-4595.

- County records indicate the existence of four single-family residences on the subject parcels, where the notice indicated five existing residences. It is likely the fifth residence may have been constructed prior to 1958 (when the County began requiring Building Permits), which is fairly common in the rural areas of the County;
- A conversion of a single-family residence to an office without permits and inspections at 8906 Millerton Road (APN No. 300-380-20);
- The County recently completed an alignment study and concluded that an additional right-of-way is required on both the south and north side of Millerton Road to bring the road into compliance. While placing the land into trust may impact the ability of the County to construct the ultimate right-of-way, Table Mountain Rancheria has worked corporately with the County and has funded or committed to funding ultimate expansion of portions of Millerton Road;
- If the land is accepted into trust, it will create intervening peninsula/islands of non-trust parcels which could result in irregular boundaries; and
- During a Board of Supervisors Hearing, public testimony was provided by a member of the Big Sandy Rancheria citing concerns regarding alleged access restrictions involving an easement that provides sole access to certain Big Sandy lands. This easement is purported to exist across certain parcels included in the trust application.

By letter dated July 5, 2012, the Table Mountain Rancheria's response is as follows:

The county of Fresno states the amount of property taxes currently assessed on the property pursuant to the request. No response to this assessment is necessary.

The County of Fresno notes some possible discrepancies in the current zoning and land use. If the property is taken into trust, this issue of county inspection and permitting will no longer be relevant. The County does not provide any reference to where it believes these peninsula/islands will be created. It is the Tribe's position that no such checker-boarding will be created. In any event, the Tribe will continue to work with the County to provide for effective and efficient government services.

With termination, Table Mountain Rancheria experienced the loss of land and services promised to the Tribe. Being stripped of land and federal recognition caused the Tribe to lose the ability to provide adequate governmental services for tribal members. The tribal land base remains inadequate to provide sufficiency for tribal self-determination, economic development, and housing needs.

Pursuant to CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purpose for which the land will be used; (3) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and (6) the extent to which the applicant has provided information that allows the Secretary to comply with the implementing procedures of the

Department of the Interior, 516 DM 1-7, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination. Accordingly, the following analysis of the application is provided.

Factor 1 - Need for Additional Land

The Table Mountain Rancheria was originally established with the purchase of one hundred and sixty (160) acres by the United States of America, under the authority of the Appropriation Act of May 18, 1916. In accordance with the Act of August 18, 1958 (*72 Stat. 619*), a land exchange was consummated to secure water for the inhabitants of the Rancheria, resulting in the reduction of the land base to approximately 110 acres.

Pursuant to the California Rancheria Act (*Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended*), the United States terminated the federally recognized status of the Table Mountain Rancheria of California and the status of the rancheria as "Indian lands." Congress intended termination of the trust relationship to take place only after specific services were provided to prepare Tribes for the discontinuation of federal aid and supervision, and only after the affected tribe consented to termination. In practice, however, federal status was terminated without providing the preparatory services.

The Federal Court on June 13, 1983 issued a judgment re-recognizing the Table Mountain Rancheria of California as a sovereign Indian Nation and reestablished the exterior boundaries of the rancheria, said lands being defined as Indian Country within the meaning of 18 U.S.C. §1151. This decision was the result of the litigation before the Federal District Court entitled Table Mountain Rancheria Association v. Watt, Case No. C-80-4595 MHP.

The current trust acres for the Rancheria consist of 937.81 acres, of which 353.57 are held in federal trust on behalf of the Tribe. There are approximately 200 tribal members. Since Federal Recognition status was reaffirmed in 1983, the Tribe has been attempting to re-establish its traditional land base.

The acquisition of the 147 acre property will enhance the Tribe's self-determination and self-governance by allowing the Tribe to exercise jurisdiction and Tribal sovereign authority over land that is owned by the Tribal Government. The ability to exercise self-determination and self-governance will serve to preserve the integrity of the Tribe's land for future generations. If allowed to be taken into trust, the parcels will serve to allow the Tribal Government to exercise sovereign authority over all land that it owns, and protect and enhance the well-being of tribal people and natural resources.

It is our determination that the Tribe has an established need to protect and preserve the Rancheria and to provide for the cultural, economic, and self determination needs of its members in a manner consistent with tribal practices. Additionally, reestablishment of a tribal land base and assumption of jurisdiction by the Tribe will in our opinion, not only facilitate self-determination, but will aid in the promotion of economic stability.

Factor 2 - Proposed Land Use

The Tribe intends to utilize the land to further enhance self-determination and increase the general welfare of tribal members. Currently, development the subject property is limited to five residences and six wells. The Tribe does not propose to change any use of the property or to introduce any ground disturbing activity as part of the fee-to-trust request.

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

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2014-2015 tax years, the property tax assessed on the subject parcels totaled \$72,197.42. For the 2014-15 Secured Tax Roll Year the Fresno County Auditor-Controller/Treasurer-Tax Collector mailed out secure property tax bills totaling over \$801.5 million. The reduction in property tax revenue resulting from removal of the subject property from the County's jurisdiction would not impact the county's ability to provide governmental services.

No existing retail activity occurs on the subject property. The State would not lose any ongoing sales or use tax revenues if the property were placed into federal trust status. During the comment period, none of the solicited agencies indicated that any adverse impacts would result from the removal of the subject parcel from the tax roles.

It is our determination that no significant impact will result from the removal of this property from the county tax roles given the relatively small amount of tax revenue assessed on the subject parcel and the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services.

Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The acceptance of the property into federal trust status for the benefit of the Tribe will remove the property from State and local jurisdiction. 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 land is presently subject to full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and Fresno County. There will be no change in criminal jurisdiction as jurisdiction in California is subject to 18 U.S.C. § 1163 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 and to adjudicate in the State courts civil causes of action arising on the land involving Indians as Parties. The Area IV patrol district of Fresno County Sheriff's Department will continue to provide law enforcement services to the subject property. Criminal prosecutions of offenses committed on the lands would continue to be brought in State courts. Fire protection will continue to be provided by the Fresno County Fire Protection District and Emergency medical care will be provided by the American Ambulance and Skylife.

No jurisdictional problems or conflicts of land use would occur as a result of acquisition of the property in trust for the Tribe. If any concerns arise, the Tribe will continue to work with local communities, municipalities, and area residents to address any concerns which may arise.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Accepting the property into trust is not anticipated to impose any significant additional responsibilities or burdens on the Bureau of Indian Affairs beyond those already inherent in the Federal trust relationship between the BIA and the Tribe. The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for Tribes. This acquisition anticipates no significant change in land use; and therefore, any additional responsibilities resulting from this transaction will be minimal. Further, the Tribe has taken on additional governance responsibilities through Public Law 638 contracting, which has alleviated the BIA from part of its responsibilities. As such, the Bureau of Indian Affairs will administer any additional responsibilities that may result from this acquisition.

Factor 6 – 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

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. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated May 19, 2015 reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action in this case, 516 DM 10.5I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on August 12, 2013, and compliance with NEPA has been completed.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Table Mountain Rancheria of California in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202).

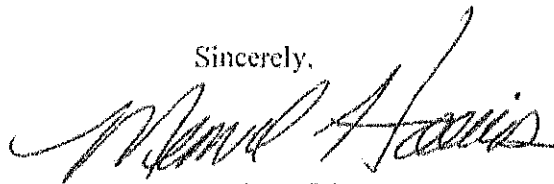
Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203,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

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

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

Sincerely,



David Harris

Acting Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Mr. Joe Dhillon - 7013 2630 0001 5557 6407
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

U.S. Senator Dianne Feinstein -- 7013 2630 0001 5557 6414
331 Hart Senate Office Building
Washington, DC 20510

Board of Supervisors -- 7013 2630 0001 5557 6421
County of Fresno
2281 Tulare Street, Room 301
Fresno, California 93721-2198

Fresno County Treasurer and Tax Collector -- 7013 2630 0001 5557 6438
Hall of Records
P. O. Box 1247
Fresno, California 93721

Planning Director -- 7013 2630 0001 5557 6445
Planning Department
County of Fresno Plaza
2220 Tulare Street, Suite 800
Fresno, California 93721

Fresno County Dept. of Public Works -- 7013 2630 0001 5557 6452
Fresno Plaza
2220 Tulare Street, Suite 700
Fresno, California 93721

Bart Bohn, County Administrative Officer – 7013 2630 0001 5557 6469
Hall of Records
2281 Tulare Street, Suite 304
Fresno, California 93721

Chairperson – 7013 2630 0001 5557 6476
Big Sandy Rancheria
P.O. Box 337
Auberry, CA 93602

Chairperson – 7013 2630 0001 5557 6483
Cold Springs Rancheria
P.O. Box 209
Tollhouse, CA 93667

Regular Mail:

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capitol Mall
Sacramento, CA 95814

Office of the Secretary, Interior

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

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

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

§4.306 Time for payment.

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

§4.307 Title.

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

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

§4.308 Disposition of income.

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

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

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

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

§4.310 Documents.

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

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

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

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

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

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

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

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

§4.311 Briefs on appeal.

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

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

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

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

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

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

§4.312 Decisions.

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

§4.313 Amicus Curiae; intervention; joinder motions.

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

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

§4.314 Exhaustion of administrative remedies.

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

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

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

§4.315 Reconsideration.

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

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

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

§4.316 Remands from courts.

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

§4.317 Standards of conduct.

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

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

§4.318 Scope of review.

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

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

SOURCE: 66 FR 67666, 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 48 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. A

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

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

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

[36 FR 67656, Dec. 31, 2001, as amended at 67 FR 4363, 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 § 4.322 of this part.

§ 4.322 Docketing.

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

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

§ 4.323 Disposition of the record.

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

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

SOURCE: 64 FR 6437, Feb. 10, 1999, 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;

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(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 6467, Feb. 10, 1989, as amended at 67 FR 4366, Jan. 30, 2002]

§ 4.333 Service of notice of appeal.

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

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

§4.334 Extensions of time.

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

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

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

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

(1) The decision appealed from;
(2) The notice of appeal or copy thereof; and

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

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

§4.336 Docketing.

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

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

§4.337 Action by the Board.

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

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

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

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

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

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

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

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

§ 4.340 Disposition of the record.

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

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

SOURCE: 56 FR 61333, 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 61333, 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: