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MAR 22 1991
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTTS VALLEY BAND OF POMO INDIANS OF THE SUGAR BOWL RANCHERIA, et al. Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	NO. C-86-3660 WWS STIPULATION FOR ENTRY OF JUDGMENT (LYTTON)

The Lytton Indian plaintiffs[1], the Federal defendants and the County of Sonoma (hereinafter "the parties") enter into the following stipulation for the purpose of reaching a compromise and final settlement of the claims relating to the Lytton Rancheria alleged by said plaintiffs against the federal defendants in the Second Amended Class Action Complaint for Declaratory and Injunctive Relief and Damages, filed herein on August 25, 1987. The settling parties understand that this stipulation shall provide the basis for entry of a judgment by the court which will serve to implement, in an orderly and timely fashion, the substantive and procedural matters agreed to herein. Accordingly, the parties stipulate and agree as follows:

1. Federal defendants agree that the Lytton Rancheria was not terminated, and the rancheria assets were not distributed, in accordance with the provisions of the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619 ("the Rancheria Act"). Federal defendants further agree that the Indian status of the persons named as distributees in the distribution plans for the Lytton Rancheria was not terminated in accordance with the Rancheria Act.

2. Federal defendants agree that the distributees and dependent members of the Lytton Rancheria, and their lineal descendants, will have the individual and collective status and rights, including the rights to organize for their common welfare and to govern their affairs, which they had prior to termination.

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[1] The named plaintiffs, representing the interests of the Lytton Indians, are the Lytton Indian Community and Carol J. Steele.

Federal defendants further agree to deal with these Indians on the same basis on which they deal with other Indians of a similar status.

3. Federal defendants agree that within 30 days of the Court's approval of the entry of judgment pursuant to this stipulation the Assistant Secretary will transmit to the Federal Register for publication a proclamation stating:

(a) that the Lytton Rancheria was not lawfully terminated and its assets were not distributed in accordance with the provisions of the Rancheria Act, Act of August 18, 1958, P.L. 85-671, 72 Stat. 619.

(b) that the distributees of the Lytton Rancheria are eligible for all rights and benefits extended to Indians under the Constitution and laws of the United States; and

(c) that the Lytton Indian Community and its members shall be eligible for all rights and benefits extended to other federally recognized Indian tribes and their members, including Indian tribes defined and organized under the provisions of the Indian Reorganization Act (IRA), 25 U.S.C. § 461 et seq.

4. Effective as of the date of entry of this stipulation by the Court, the Lytton Indian Community shall, consistent with Federal law, have the right to determine its own membership and otherwise to govern its internal and external affairs as a tribal entity consistent with its status prior to termination. When and if the members of the Lytton Indian Community organize pursuant to federal statute, the federal

defendants agree to add them to the list of federally recognized tribal entities then being used and will include them on any list of tribal entities published in the Federal Register. The name of the tribal entity entered on the list(s) shall be the name chosen by the Lytton Indian Community in its governing document. The Federal defendants further agree to advise the Commissioner of the Internal Revenue Service promptly that the Lytton Indian Community has organized to exercise governmental functions and has been added to the list of tribal entities.

5. Future Land Acquisitions.

It is the intent of the parties to create a procedure in this agreement for resolution of certain disputes that may arise regarding land use on any future-acquired lands of the Lytton Indian Community in Sonoma County, the acceptance in trust of which is contemplated. It is the further intent of the parties to provide specific criteria that will govern both the acceptance in trust and any future modification in use of any lands that may be acquired in the future by the Lytton Indian Community in the area known as the Alexander Valley, Sonoma County. In furtherance of this express intent, the parties agree that:

(a) General Rule: The policy of the Secretary of the Interior dated July 19, 1990, and the guidelines set forth therein, for placing lands in trust status for American Indians, a copy of which is attached hereto as Exhibit A, shall apply to the acceptance of land in Sonoma County to be placed in trust for the benefit of the Lytton Indian Community.

(b) Lytton Rancheria: With respect to land within the

exterior boundaries of the former Lytton Rancheria, a description and map of which is attached hereto as Exhibit B, the above-referenced policy and guidelines would preclude the Secretary from accepting such land in trust for any use that is inconsistent with the Sonoma County General Plan.

(c) Alexander Valley: With respect to land within the Alexander Valley, as described by the map attached hereto as Exhibit C, the above-referenced guidelines would preclude the Secretary from accepting such land in trust to be used for gambling purposes, including but not limited to high stakes bingo, unless such use is authorized under the County's General Plan.

(d) Dispute Resolution: Any dispute whether a proposed acceptance of land in trust within the Alexander Valley complies with the Secretary's policy and guidelines, and the specific interpretations thereof that have been agreed to by the parties, shall be resolved in the following manner:

(1) The County of Sonoma will make an initial determination whether the proposed use of any land sought to be placed in trust within the Alexander Valley is consistent with the Secretary's policy and guidelines and will communicate its views in writing to the Secretary and to the Lytton Indian Community.

(2) If the County determines that the proposed use

is inconsistent with the Secretary's policy and guidelines, and the Lytton Indian Community disputes that finding and requests the hearing provided for herein, the Secretary will refer the matter to an administrative law judge (ALJ) within the Office of Hearings and Appeals (OHA) of the Department of the Interior for hearing and final decision. The decision of the ALJ shall be final, and the parties specifically agree that there shall be no further right of review, administrative or judicial.

6. Modification of Land Use -- Alexander Valley

The parties agree that any change in the use of land located in the Alexander Valley and held in trust for the Lytton Indian Community shall comply with the following standards and procedures:

(a) the proposed change in use shall be subject to criteria 4, 5 and 7 of the Secretary's policy and guidelines and the specific construction thereof agreed to by the parties in paragraphs 5(b) and 5(c).

(b) any dispute between the County and the Lytton Indian Community regarding such a change in use shall be referred to and decided by the OHA in accordance with the procedures set forth in paragraph 5(d).

7. Interests in Allotted Indian Lands Outside the Boundaries of the Former Lytton Rancheria

Since persons listed in the plan for distribution of assets

of the Lytton Rancheria may have acquired interests in trust lands outside the Rancheria, which interests may no longer be held in trust because of the purported termination of the Indian status of the listed persons, Federal defendants agree to accept in trust any fee interests in trust or former trust allotments issued to such persons, if such interests are currently held in the name of the distributee, or of his/her dependent or Indian heir, or successor in interest, provided the successor is an Indian of the rancheria or reservation where the allotment is located. The parties acknowledge that there are no public domain allotments located in Sonoma County and that the provisions contained in this paragraph and paragraph 8 do not affect any land located in Sonoma County.

8. Process for Restoring Trust Status -- Interests in Allotments

Federal defendants agree that restoration of lands to trust status under the provisions of Paragraph 7 above shall be accomplished as follows:

(a) Notice - Publication: Federal defendants shall publish a copy of the judgment in a newspaper of general circulation within the county in which the trust lands are located. Additionally, a copy of this judgment shall be mailed to:

(1) each individual Indian person listed in the Termination Proclamation for the Lytton Rancheria, and

(2) such other persons, based on all available information in the possession of the Federal

defendants and any other information supplied by the plaintiffs, who may be related to or descended from any such individual, for whom the Bureau of Indian Affairs has a current or last known address;

(b) Election to Convey: Each Indian of the Lytton Indian Community who has retained any interest in or to allotted lands, fee patent to which was issued upon or, in the judgment of the Secretary, as a direct result of the purported termination of the Lytton Rancheria, may elect to convey his or her interest to the United States, to be held in trust for the benefit of a person who is related by blood or, at the time of this decree, is the individual's spouse and is otherwise eligible to have land held in trust as an Indian by the United States for his or her benefit;

(c) Form of Conveyance Instrument; Conditions and Restrictions: Conveyance of title to the United States made pursuant to paragraph 8(b) may, at the election of the grantor, provide that the United States will hold title in trust for an Indian or Indians, as provided above, and be subject to such conditions or restrictions as set forth in the instrument of conveyance; provided such conditions and restrictions are acceptable to the United States; and, provided further, that the United States shall not unreasonably withhold its

acceptance;

(d) Recording Conveyance: Upon acceptance of any instrument or instruments conveying to the United States title to interests in allotted lands pursuant to this stipulation and the judgment entered thereon, the Secretary of the Interior or his designee shall promptly record said instruments with the County Recorder of the County in which said lands are located.

9. Nothing in this stipulation shall be construed to require the Secretary to accept in trust any land which has on it hazardous substances or contaminants. Before the Secretary accepts any land in trust pursuant to this stipulation, a hazardous substance determination shall be made in accordance with 602 DM 2 and the instructions for implementing that chapter of the Department Manual described in 54 BIAM Bulletin 1, dated March 9, 1990, and any duly adopted revisions of the manual or instructions. Copies of 602 DM 2 and 54 BIAM Bulletin 1 are attached hereto as Exhibits D and E, respectively.

10. Should lands be acquired in the future on behalf of the Lytton Indian Community, if organized under the IRA, the Secretary shall within 180 days of acquisition consider and respond to a request to issue a proclamation in accordance with 25 U.S.C. § 467 that such newly acquired lands constitute an Indian reservation.

11. The Federal defendants will, following the execution of this stipulation by their counsel, prepare a comprehensive needs assessment for the Lytton Indian Community, including the

projected needs of the Community for Federal programs and services through Fiscal Year 1994.

The Federal defendants will provide workshops prior to March 1992 to be conducted by a technical team comprised of representatives from the Bureau of Indian Affairs, the Indian Health Service, the Department of Housing and Urban Development, and such other consultants as may be necessary, for the purpose of providing needed technical assistance to the Lytton Indian Community and other participating Indian groups. The scheduling and content of the workshops will be developed by the Federal defendants in consultation with representatives from the Lytton Indian Community and other participating Indian groups and will be designed to provide, at a minimum, specific information regarding Federal programs available to Indian tribes, including the tribal contracting requirements of Public Law 93-638, and an overview of those Indian programs available to meet the developmental needs of individual Indians, such as health care, education and vocational training. The Federal defendants shall cover the costs of attendance at the workshops of at least one representative from the Lytton Indian Community.

12. The Lytton Indian plaintiffs will provide the federal defendants with the names, current or last known residential address of each potential class member to whom it has given notice of this proposed settlement and the names and ages of all minors who are dependents of potential class members. The Lytton Indian plaintiffs will give written notice of the terms of the settlement to all members of the plaintiff class, as such class is defined in Paragraph 10 of the Second Amended Class

Action Complaint, filed herein on August 25, 1987. The costs of giving such notice shall be borne solely by the Federal defendants. The form of notice, the deadline for responding to the notice, and other procedures for class members to opt in or out of the settlement, shall be set forth in a separate stipulation to be filed with the Court.

13. The Lytton Indian plaintiffs, in consideration of the above agreements, will (a) release and forever discharge federal defendants from and against any and all liability, including attorneys' fees and costs, arising out of this litigation and settlement, provided, this release and discharge shall not apply to claims relating to hazardous substances or contaminants which may be identified in any survey conducted in order to make the determination required by paragraph 9 of this agreement; and (b) will dismiss with prejudice all money damages claims alleged herein against the federal defendants, including any individual and tribal claims.

14. In consideration of the agreements reached herein, the County of Sonoma (a) will dismiss with prejudice its cross-claim for declaratory and injunctive relief filed herein on December 14, 1990, and (b) agrees to assist the Lytton Indian Community in identifying lands within Sonoma County suitable for housing and economic development. Such assistance shall include:

(1) Providing information on specific areas of Sonoma County that would be suitable for housing or economic development, or both, including identification of specific parcels where basic services, such as water and sanitation, are either

available or could be developed without excessive cost.

(2) Identifying and providing information on specific land parcels, if known, that might be available for acquisition in the geographic areas identified under subparagraph (1), and which are of sufficient size to be feasible for community housing or economic development, or both. The Community will provide the County with a preliminary assessment of the needs and priorities of its members.

(3) Conducting an informational workshop for representatives of the Lytton Indian Community on any low and moderate-income housing programs administered by the County, including ways in which redevelopment funds might be used to assist the Lytton Indian Community in land acquisition for housing.

15. The parties recognize that this agreement contemplates the future reorganization and federal recognition of the Lytton Indian Community as a tribal entity exercising self-governing powers under the Indian Reorganization Act. The members of the Lytton Indian Community agree that when such reorganization is complete, the authorized governing body of the Lytton Indian Community will adopt a resolution specifically confirming this agreement and directing that it be signed by the chief executive officer of the Community.

16. It is agreed that plaintiffs will not seek, and federal defendants will not agree, to reestablish the former

boundaries of the Lytton Rancheria, and that no action taken in connection with this settlement shall be construed as reestablishing the former rancheria boundaries.

17. It is understood that none of the terms of this agreement shall deprive a federal official of his authority to revise, amend or promulgate regulations, nor shall this agreement be construed to commit a federal official to expend funds not appropriated by Congress. Furthermore, the sole remedy of a party to this agreement for the failure of another party to comply with its terms shall be to initiate such proceedings in this action as may be available, or file a new action in the United States district court, to enforce the provisions of this stipulation and the judgment entered thereon.

Dated: March 14, 1991

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Dated: March 21st, 1991

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Dated: March 14, 1991

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IA cc:200

THE SECRETARY OF THE INTERIOR

WASHINGTON

RECEIVED
FOR INDIAN AFFAIRS
EXECUTIVE SECRETARIAT
'90 JUL 19 P4:11

July 19, 1990

JUL 1990
California Indian Legal

Memorandum

To: Assistant Secretary - Indian Affairs

From: The Secretary

Subject: Policy for Placing Lands in Trust Status for American Indians

I have completed review of the report of the Department's Ad Hoc Task Force on Indian Trust Lands and your recommendation, and I am directing the following actions be taken.

It shall be the policy of the Department of the Interior in acquiring lands in trust status for American Indians, located either within or contiguous to the tribal reservation's exterior boundaries, to review such acquisition requests in light of the presently existing Bureau regulations found in 25 CFR 151.10. The Secretarial review of these acquisition requests shall be delegated to the respective Area Directors.

For off-reservation acquisition requests (other than lands contiguous to the reservation), the policy shall be to consider each request on its own merits. These requests shall meet the following criteria:

1. All existing land acquisition regulations found in 25 CFR 151.10; i.e.:

   a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

   b) The need of the tribe for additional land;

   c) The purpose for which the land will be used;

   d) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from tax rolls;

   e) Jurisdictional problems and potential conflicts of land use which may arise;

f) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

2. The property is free of all hazardous and toxic material (as required in 602 DM 2).

3. Trust land to be acquired is located within the states in which a tribe or band presently owns trust land. In general, as the distance from the trust or reservation land base increases, the tribe will be required to justify greater economic benefit from the acquisition.

4. In consultation with local, city, county, and state governments, an effort must be made by the tribe to resolve possible conflicts over taxation, zoning and jurisdiction. If the acquisition is opposed or raises unresolved concerns from the governments, the proposal will automatically be referred to the Assistant Secretary for Indian Affairs for review and approval/disapproval.

5. The tribe shall provide an economic development plan specifying the proposed uses for the trust land with a cost/benefit analysis of the proposal.

6. Applications for trust land located within an urbanized, and primarily non-Indian, community must demonstrate that trust status is essential for the planned use of the property and the economic benefits to be realized from said property.

7. Acknowledgment that, after consideration of all local ordinances including (but not limited to) fire safety, building codes, health codes, and zoning requirements, the tribe will adopt standards that provide at least comparable safeguards;

In addition to the requirements listed above, all requests to acquire land in trust for gaming purposes will:

1. Be in compliance with the Indian Gaming Regulatory Act (P.L. 100-497);

2. When appropriate, be reviewed by the National Indian Gaming Commission;

3. Approval/disapproval by BIA's Central Office after discussion with the Secretary of the Interior;

4. Inclusion of an analysis by the tribe or band showing that it explored all reasonable alternatives (other than gaming) which would provide equivalent economic benefits from said property;

5. Inclusion of provisions that the appropriate portion of individual winnings from gaming activities will be withheld for taxes by the IRS.

This policy shall be effective upon appropriate public notification and comment.

cc: Solicitor
Assistant Secretary - Policy, Management and Budget

LEGAL DESCRIPTION

All that real property situate in the Rancho Sotoyome, County of Sonoma, State of California, described as follows: Commencing at the Northeast corner of Section 4, T. 9 N., R. 9 W., M.D.M., running thence S. 1/2° E. 1.825 chains to an iron pin driven at the intersection with the center line of a road leading to Lytton; thence along said center line, S. 89-1/4° W. 25.74 chains to an iron pin; thence S. 89-1/2° W. 14.68 chains to an iron pin; thence South 17.00 chains to a station; thence West, 15.25 chains to a station; thence South 19.60 chains to a station, being the point of beginning of the premises herein described: thence S. 45° E. 12.67 chains to a station in the center of the highway leading to Alexander Valley; thence N. 49-3/4° E. 2.21 chains to a station; thence leaving said Highway, North 7.53 chains to a station; thence West, 10.65 chains to the place of beginning, containing 5 acres, more or less, and being a portion of Section 4, Township 9 North, Range 9 West, M.D.M., in the Rancho Sotoyome.

Also, all that real property situate in the Rancho Sotoyome, County of Sonoma, State of California, described as follows: Commencing at the Northeast corner of Section 4, T. 9.N., R. 9 W., M.D.M., running thence S. 1/2° E. 1.825 chains to an iron pin driven at the intersection with the center line of a road leading to Lytton; thence along said center line, S. 89-1/4° W. 25.74 chains to an iron pin; thence S. 89-1/2° W. 4.90 chains to an iron pin, the place of beginning of the herein described lands, being a corner of the land of Arthur E. J. Nuhn (formerly Hall); thence continuing said center line, S. 89-1/2° W. 9.78

chains to an iron pin; thence South 17.00 chains to a station; thence West, 15.25 chains to a station; thence South 19.60 chains to a station; thence East, 10.65 chains to a station; thence South 7.53 chains to a station in the center of the highway leading to Alexander Valley; thence along said highway, N. 49-3/4° E. 0.78 chains to a station, the South west corner of the Lytton School lot; thence along the boundary lines of said lot, North 10.00 chains to the Northwest corner thereof; thence East, 3.79 chains to the Northeast corner thereof; and the West boundary lines of the land of Arthur E. J. Nuhn (formerly Hall); thence along said lines, North 13.73 chains to an iron pin; thence N. 50-3/4° E. 13.34 chains to an iron pin, near a post; thence N. 1-3/4° W. 11.70 chains to the place of beginning, containing 45 acres, more or less, and being a portion of Section 4, Township 9 North, Range 9 West, M.D.M., in the Rancho Sotoyome.

EXHIBIT B P. 2 of 3

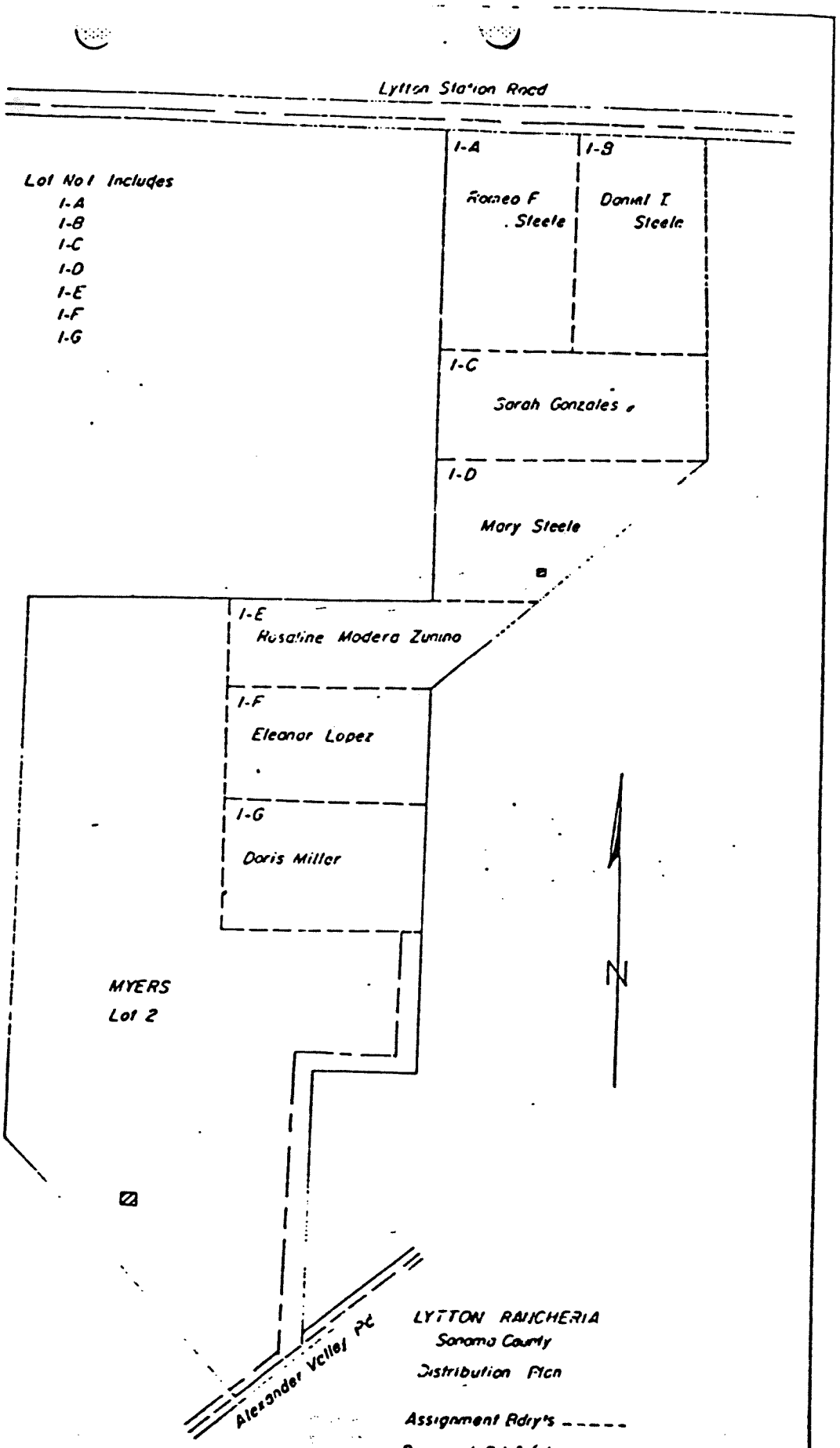

EXHIBIT B P. 3 OF 3

ALEXANDER VALLEY

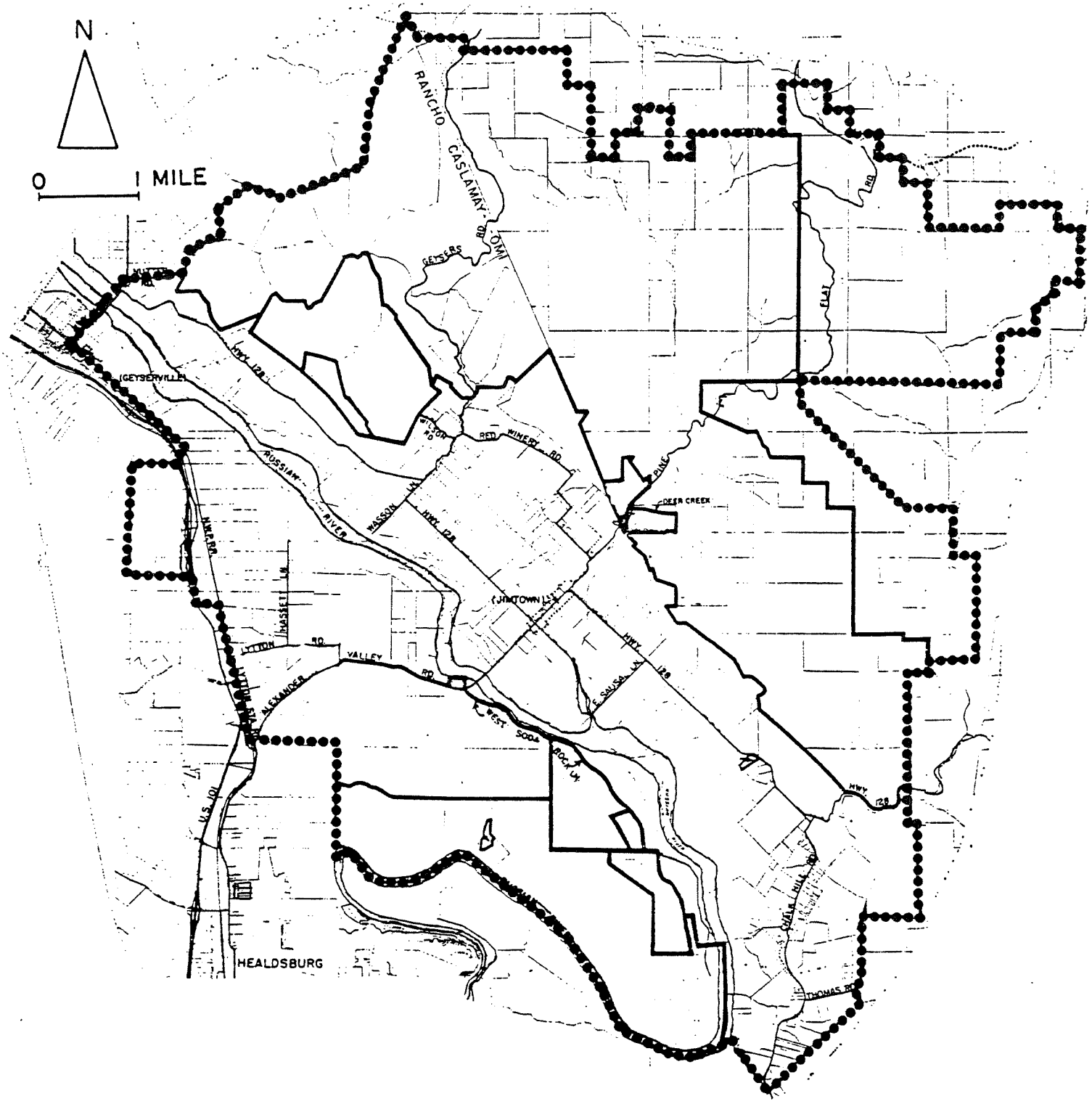

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EXHIBIT "C"

N al Resources Library
U.S. Department of the Interior
Washington, D.C. 20240

DEPARTMENTAL MANUAL

TRANSMITTAL SHEET

PART	SUBJECT	RELEASE NUMBER
602 DM 2	LAND ACQUISITION	2856
FOR FURTHER INFORMATION, CONTACT: Office of Management Improvement	Hazardous Substances Determinations	DATE: JUN 2 1989

EXPLANATION OF MATERIAL TRANSMITTED:

This release, 602 DM 2, converts the provisions of Secretary's Order No. 3127 dated December 15, 1988, to the Departmental Manual. Some changes were made to the material to more accurately reflect the intent of the Secretary's Order.

Charles E. Kay
Assistant Secretary of the Interior
Deputy

FILING INSTRUCTIONS:

Remove:	Insert:
None	602 DM 2 (1 sheet)

Exhibit D

2.1 Purpose. This chapter prescribes Departmental policy, responsibilities, and functions regarding hazardous substances determinations required to be made prior to the acquisition of any land by the Department for the United States. The responsibilities and functions prescribed in this chapter are intended to ensure that each bureau charged with acquiring land determines, prior to acquisition, the likelihood of the presence and extent of hazardous substances in or on the land. Any such determinations must be a consideration in any decision to acquire land and in establishing the total cost of acquisition. The requirements contained in this chapter are based on the provisions of Secretary's Order No. 3127 dated December 15, 1988.

2.2 Scope. The responsibilities and requirements made applicable to land acquisition by this chapter shall apply to any interest in land (including but not limited to fee title, easements, rights-of-way, lapses, reverters, trust lands and leases) to be acquired by the Department or a bureau. Such acquisitions may be by purchase, condemnation, donation, exchange or otherwise.

2.3 Policy. Before any real estate is acquired by the Department for the United States, a determination will be made to acsertain whether hazardous substances are present in or on such real estate. The Department will not acquire any real estate if an expenditure of Departmental funds is required for cleanup of such real estate, except at the direction of Congress, or for good cause with the approval of the Secretary.

2.4 Responsibilities.

A. Assistant Secretaries. Each Assistant Secretary is responsible for ensuring the performance of the functions and requirements described in 602 DM 2.5, except as limited therein. The responsibilities described in 602 DM 2.5 may be relegated to bureau heads, provided that prior to such assignment, the bureau head designates an official of the bureau who shall be responsible for ensuring the bureau's compliance with the provisions of this chapter.

B. Assistant Secretary - Policy, Budget and Administration. The Assistant Secretary - Policy, Budget and Administration (PBA) may approve, consistent with the provisions of 602 DM 2.5C, any land acquisition in which the land proposed to be acquired is found to contain hazardous substances and expenditure of Departmental funds for cleanup of the land is required. This authority may not be redelegated.

2.5 Requirements, Functions and Procedures.

A. Surveys for Hazardous Substances. Whenever a tract of land is proposed for acquisition, a survey must be conducted to determine the possible presence of hazardous substances and the existence of or potential environmental harm therefrom. The survey must, at a minimum, include a review of previous ownership and uses of the site. The pertinent Assistant Secretary or his designee shall report on each survey to the Assistant Secretary - PBA. At a minimum, the report must advise that a survey was conducted, what hazardous substances, if any, were found, the estimated costs of remediation, any potential problems related to hazardous substances, the possibility of the existence of unfound hazardous substances, any proposed future action, and a certification that the pertinent Assistant Secretary has personally reviewed the report.

B. Acquisition. Following the submission of the report as required in 2.5A above, land may be acquired, provided: (1) no evidence of hazardous substances was found or, (2) if there was such evidence, there will be no estimated increased costs to the taxpayers. In all other cases land may be acquired only for good cause, and with the approval of the Secretary. The Solicitor must be consulted in cases where hazardous substances are present and the land is to be acquired, for the purpose of developing adequate protection of the United States from future liability. Such protection must be included in the Deed of Conveyance, contract or other legally enforceable instrument, as appropriate.

C. Re-programming. In cases where hazardous substances are present and reprogramming is required for the cleanup of those substances, the Assistant Secretary - Policy, Budget and Administration, based on recommendations of the relevant program Assistant Secretary, may submit a reprogramming proposal to the House and Senate Appropriations Committees according to established reprogramming procedures.

D. Statutory Acquisitions. Each Assistant Secretary must ensure that all reports to Congress, comments on legislation, testimony before Congress, and draft legislation on the acquisition of land contain a statement of the need to survey for, and assess the effects of, the presence of any hazardous substances in or on the land.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

MAR 0 8 1990

54 BIAM BULLETIN 1

Memorandum

To: Holders of 54 BIAM

From: Deputy to the Assistant Secretary - Indian Affairs (Operations)

Subject: Instructions in the Implementation of 602 DM 2, Land Acquisition: Hazardous Substances Determinations

This release provides interim instructions in the implementation of the Departmental Manual at 602 DM 2 [see Manual Release No. 2856]. 602 DM 2.3 sets forth a new Departmental policy which prohibits the acquisition of real estate containing hazardous substances "if an expenditure of Departmental funds is required for cleanup of such real estate, except at the direction of Congress, or for good cause with the approval of the Secretary."

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq. (hereinafter the Superfund Act), authorizes certain federal actions in response to releases of hazardous substances, pollutants, or contaminants which threaten the public health or the environment. Hazardous waste sites which are owned or operated by the federal government are subject to most of the requirements of the Superfund Act. In particular, federal facilities are subject to enforcement actions of the Environmental Protection Agency and citizen suits. While the Department continues to take the position that hazardous waste sites on land which the United States holds in trust for Indians are not federal facilities and thus not the responsibility of the Department, the matter has yet to be resolved with the EPA. Moreover, in a recent letter to the House Committee on Interior and Insular Affairs, the Department of Justice summarized the problem, as it relates to trust acquisitions, as follows:

> "The law governing potential federal liability for cleanup of Indian trust lands is not fully developed. However, a recent decision in the Eighth Circuit Court of Appeals in Blue Legs v. United States Bureau of Indian Affairs, 867 F. 2d 1094 (1989), indicates that caution is warranted where . . the United States is to gain title to Indian reservation land which is contaminated . . . The decision was premised, in part, on a theory that there exists a trust-based federal duty under the Snyder

BULLETIN EXPIRES: September 8, 1990

Exhibit E

MANUAL BULLETIN

> Act to insure the cleanup of contaminated sites on reservation land . . . So long as this decision stands, the utmost care is required with respect to federal acquisition, for Indian reservation purposes, of contaminated lands."

In order to implement the above-referenced Departmental policy, and to thereby reduce the risk of federal liability, the acquisition of land has largely been conditioned upon a finding that such land is not contaminated.

THE MANUAL PROVISIONS

602 DM 2.2 defines the scope of the new policy as follows:

> . . . this chapter shall apply to any interest in land (including but not limited to fee title, easements, rights-of-way, lapses, reverters, trust lands and leases) to be acquired by the Department or a bureau. Such acquisitions may be by purchase, condemnation, donation, exchange or otherwise.

The Office of the Associate Solicitor, Indian Affairs, has informally advised that the provisions of 602 DM 2 shall apply to fee to trust acquisitions (on behalf of individual Indians and tribes) and administrative transfers from other federal agencies, but not trust to trust acquisitions.

602 DM 2.4 assigns to the Assistant Secretary the authority to perform the functions described in 602 DM 2.5A, 2.5B, and 2.5D. 602 DM 2.5A requires that pre-acquisition surveys be conducted to determine the "possible presence of hazardous substances." In addition, 602 DM 2.5A requires that all surveys be reported to the Assistant Secretary - Policy, Management and Budget, and stipulates that such reports must:

> ...include a review of previous ownership and uses of the site (and) advise that a survey was done, what hazardous substances, if any, were found, the estimated costs of remediation, any potential problems related to hazardous substances, the possibility of the existence of unfound hazardous substances, any proposed future action and a certification that the pertinent Assistant Secretary has personally reviewed the report.

602 DM 2.5B suggests that acquisitions may be routinely approved, after the surveying and reporting requirements imposed by 602 DM 2.5A have been satisfied, where (1) no evidence of hazardous substances was found or (2) if there was such evidence, there will be no estimated increased costs to the taxpayers.

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602 DM 2.5D requires that all reports to Congress, comments on proposed legislation, testimony before Congress, and draft legislation address the need to survey for hazardous substances prior to any legislative land acquisition.

602 DM 2.4A also provides that the above-described functions can be relegated "to bureau heads" provided a "contact person" has been designated (by the "bureau heads)," as the official responsible for assuring compliance with the 602 DM 2. The Chief, Division of Real Estate Services, has been designated the Bureau of Indian Affairs' "contact person," and the responsibilities identified to the Assistant Secretary in 602 DM 2 are to be exercised by your office in accordance with the authority delegated in 230 DM 3. The review/certification function described in 602 DM 2.5A cannot be exercised below this level.

602 DM 2.5C provides that the Assistant Secretary - Policy, Budget and Administration may submit a reprogramming proposal in cases where hazardous substances are present and reprogramming is required for the cleanup of those substances if such an action is recommended by a programmatic Assistant Secretary. 602 DM 2.4B delegates to the Assistant Secretary - Policy, Budget and Administration the authority to approve, consistent with the provisions of 602 DM 2.5C, "any land acquisition in which the land proposed to be acquired is found to contain hazardous substances and the expenditure of Departmental funds for cleanup of the land is required."

602 DM 2.5B suggests that, in the absence of a reprogramming of funds, a contaminated site may only be acquired "for good cause and with the approval of the Secretary." 602 DM 2.5B also provides that the "Solicitor must be consulted in cases where hazardous substances are present and the land is to be acquired (sic) for the purpose of developing adequate protection of the United States from future liability."

THE DEPARTMENTAL GUIDELINE

In order to ensure uniform compliance with 602 DM 2.5A, the Assistant Secretary - Policy, Budget and Administration has developed a three-tier survey process which includes specific reporting requirements. See Interim Guidance on Implementation of S.O. 3127 and 602 DM 2: Delegations and Assignment of Functions with Regard to Land Acquisitions. In his August 23 cover memorandum, the Deputy Assistant Secretary - Policy, Budget and Administration asked all agencies to "continue to review (the guidelines) to determine what, if any, further changes need to be made in 602 DM 2 or its implementing guidance."

The Departmental guidelines require that survey reports identify "contaminants" as well as "hazardous substances", although

602 DM 2 refers only to the latter. These terms are defined in Section 101 of the Superfund Act, and those chemicals identified pursuant to that Act are set forth in "Title III List of Lists," prepared by the Environmental Protection Agency. The guidelines require that survey reports be completed within a one-year period prior to the administrative acquisition of any lands which fall within the scope of 602 DM 2.2, and also emphasize that survey reports should be prepared relative to any lands to be acquired directly by legislation (even where such reports cannot be completed until after a legislative transfer has taken place).

Although 602 DM 2 requires that <u>each</u> survey report be submitted to the Assistant Secretary - Policy, Budget and Administration, the Departmental guidelines provide for annual receipt of a list of all Level I Surveys which do not show any evidence of potential contamination. An audit of paperwork to back up the findings of these Level I Surveys is contemplated. Accordingly, this office will personally review only those Level I Survey reports which show some evidence of potential contamination as described below.

These instructions are meant to amplify and implement the Guidelines in the Bureau of Indian Affairs (since the guidelines established only minimum standards). Your survey reports may include any additional information which you deem appropriate.

LEVEL I SURVEYS

A Level I Survey must ensure that all potential sources of contamination are identified and investigated prior to a land acquisition. Attached is the Contaminant Survey Checklist incorporated in the Departmental guidelines.

Where an acquisition of a fractional interest in a tract that has been surveyed within one year prior to the issuance of these instructions, you may: (1) elect to forego a new survey if there have been no changes since previous survey; (2) describe any intervening uses in Attachment 1 of a second Level I Survey report; and (3) attach a copy of the previously completed survey report(s).

Parts A - G of a Level I Survey report may be completed by staff at the agency which would exercise administrative jurisdiction over the land to be acquired, but Part H should only be completed by the area office (under the authority delegated in 230 DM 3). Where Part B shows affirmative findings but Part H nonetheless certifies that no present/potential contaminant problems exist, forward these reports to the central office for review/certification. Where potential sources of contamination are identified in Part C, Attachment 1 should reflect that such sources were fully investigated during the on-site inspection documented in Part B. Level I Survey reports should provide the basis for one of four alternative courses of action:

1. Where you have approved a Level I Survey report in which Part B shows no affirmative findings, and Part G certifies that no present/potential contaminant problems exist, you may approve the proposed acquisition;

2. Where you have approved a Level I Survey report in which Part B shows affirmative findings, Part G certifies that no present/potential contaminant problems exist, and Attachment 1 justifies the certification (by explaining, e.g., that a "nearby" problem does not threaten the site to be acquired or that the condition noted in Part B is unrelated to contaminants), you may approve the proposed acquisition only after the report has been reviewed/certified by the Assistant Secretary - Indian Affairs and submitted to the Assistant Secretary - Policy, Management and Budget;

3. Where you have approved a Level I Survey report in which part B shows affirmative findings, and Attachment 2 shows that another party has certified that contaminants are not present and/or agreed to assume full liability for cleanup activities, you may approve the proposed acquisition only after the Office of the Solicitor has confirmed that potential liability has been shifted to another agency or limited by agreement; or

4. In all other instances where you have approved a Level I Survey report in which Part B shows affirmative findings, a Level II Survey should be initiated.

LEVEL II SURVEYS

As indicated above, where you have approved a Level I Survey report which indicates that contaminants are or may be present on the site to be acquired, a Level II Survey may be initiated in order to: (1) conclusively determine whether contaminants are present; (2) specifically describe the nature of any contamination; and (3) where feasible, estimate the cost of any requisite cleanup activities. Although a standard format for Level II Survey reports has not been established, the Departmental guidelines require that such reports include a "bibliography" of the information used and detail the methodologies used to estimate the extent of contamination and the cleanup costs. Level II Survey reports should provide the basis for one of four alternative courses of action:

1. Where you have approved a Level II Survey report which certifies that contaminants are not present on the site, you may approve the proposed acquisition only after the report (and its supporting Level I Survey report) has been reviewed/certified by the Assistant Secretary - Indian Affairs and submitted to the Assistant Secretary - Policy, Management and Budget;

2. Where you have approved a Level II Survey report which concludes that contaminants are present on the site and that the cost of the requisite cleanup activities would be prohibitive, you may disapprove the proposed acquisition; but must forward to the Assistant Secretary - Indian Affairs any recommendations for acquisitions;

3. Where you have approved a Level II Survey report which concludes that contaminants are present on the site, and the report certifies that the requisite cleanup activities could be accomplished without a reprogramming of funds, you may approve the proposed acquisition only after the report (and its supporting Level I Survey report) has been reviewed/certified by the Assistant Secretary - Indian Affairs and submitted to the Assistant Secretary - Policy, Management and Budget for approval; or

4. Where you have approved a Level II Survey report which concludes that contaminants are present on the site, but the report indicates that further research is needed or that a reprogramming of funds may be needed, a Level III Survey may be initiated.

LEVEL III SURVEYS

As indicated above, where you have approved a Level II Survey report indicating either that further cost research (which may include testing or sampling) is required, or that a reprogramming of funds may be desired, you may initiate a Level III Survey to determine the relative merits of the proposed acquisition. Although a standard format for Level III Survey reports has not been established, such reports must include a detailed analysis of the extent of the contamination and the costs and benefits associated with the proposed acquisition. Level III Survey reports provide the basis for one of four alternative courses of action:

1. Where you have approved a Level III Survey report which concludes that the cost of the requisite cleanup activities would be prohibitive, you may disapprove the proposed acquisition;

2. Where you have approved a Level III Survey report which certifies that the requisite cleanup activities could be accomplished without a reprogramming of funds, you may approve the proposed acquisition only after the report (and its supporting Level I and II Survey reports) has been reviewed/certified by the Assistant Secretary - Indian Affairs and submitted to the Assistant Secretary - Policy, Management and Budget for approval;

3. Where you have approved a Level III Survey report which concludes that the benefits associated with the proposed acquisition would offset its costs, and the report certifies that the requisite cleanup activities could be accomplished through a reprogramming of funds, you may approve the proposed acquisition pursuant to the approval of the report (and its supporting Level

I and II Survey reports) by the Assistant Secretary - Indian Affairs and approval of the report and reprogramming by the Assistant Secretary - Policy, Management and Budget;

4. Where you have approved a Level III Survey report which concludes that the benefits associated with the proposed acquisition would offset its costs, and the report certifies that a reprogramming of funds cannot be obtained to provide for the requisite cleanup activities, you may approve the proposed acquisition only after the report (and its supporting Level I and II Survey reports) has been approved by the Assistant Secretary - Indian Affairs and by the Assistant Secretary - Policy, Management and Budget.

PROCESSING

Although individual reports may be handled on an expedited basis (if adequate justification is provided), the Division of Real Estate Services will process survey reports once a month. By the fifteenth day of each month, you should provide this office copies of all survey reports relative to lands within your jurisdiction which were completed during the preceding month and which require further review or approval. The reports should be assigned site identification numbers (e.g., H50-001-90 agency number, survey number and year) and submitted to the Chief, Division of Real Estate Services. The reports (Level II and III) will then be referred to the Assistant Secretary - Policy, Management and Budget. (Copies of these referrals will be provided to the offices whose reports are being referred thereby, in order that those sites which have shown no evidence of a costly contaminant problem may be acquired without further delay). Where further approval and/or a reprogramming of funds is needed, the proposed acquisition should be delayed until a copy of the approved report has been returned to your office.

All Level I Survey reports including those which are submitted to the Central Office for review or as part of a Level II or III Survey report will be summarized in an annual report to be submitted to the Chief, Division of Real Estate Services, by March 15 of each year. The annual report will include the following information relative to each survey: (1) the site identification number; (2) the Level I Survey; and (3) the status of the proposed acquisition. A consolidated annual report will be submitted to the Assistant Secretary - Policy, Management and Budget by April 1 of each year (upon review of this consolidated report, the Assistant Secretary - Policy, Management and Budget may decide to randomly review case files in order to determine whether the conclusions in your survey reports have been substantiated).

Specific questions about the identification of potential contaminants or the preparation of survey reports may be directed to the Department's Office of Environmental Affairs, which has been

assigned responsibility (in 112 DM 4.2) for overseeing "the implementation of bureau hazardous materials surveys prior to the acquisition of an interest in lands." Requests for technical assistance may also be directed to the Environmental Protection Agency, in view of its November 1987 report to Congress pursuant to Section 126(c) of the Superfund Act. The report indicated that Environmental Protection Agency regional offices would "provide technical assistance to Indian tribes . . . in identifying potential hazardous waste sites in need of assessment (and) provide information and assistance for reporting future sites, with the goal of securing prompt response whenever a problem is confirmed."

As indicated in the Departmental guidelines, you should immediately advise the National Response Center at telephone number (800) 424-8802 if any contaminants are identified during the above-described survey process. The National Response Center will then notify the appropriate federal, state, and tribal officials.

Where an acquisition has been approved since December 15, 1988, without a contaminant survey, you must review the file and complete survey reports if you have reason to believe that a Level II Survey would have been required. Final instructions in the implementation of 602 DM 2 will be provided upon the receipt of further guidance from Departmental officials.

Filing Instructions:
54 BIAM

(a) Remove Superseded Material:
None

(b) Insert New Material:

54 BIAM	
Transmittal Memo	(4 Sheets)
Attachment 1	(2 Sheets)
Attachment 2	(1 Sheet)
Attachment 3	(3 Sheets)

(c) Pen-and-ink changes:
None

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Level I Survey:
Contaminant Survey Checklist
of Proposed Real Estate Acquisitions

INSTRUCTIONS: Check for each category. Explain briefly where something other than "No," "None," or "Not Applicable" is checked. Discuss whether a Level II or III Survey will be recommended. Describe the distance if nearby is checked and whether there is a known potential pathway for contamination on site. Attach a legal description of the real estate property covered by this Survey.

A. Background Information

Bureau Name _____

Site Name _____ County _____ State _____

Date of Survey _____

B. Site Inspection Screen: On-site and nearby

	ONSITE	NEARBY	NONE
1. Dumps, especially with drums, containers (Read labels if possible; do not open or handle! If no labels, note identifying characteristics)	___	___	___
2. Other debris: household, farm, industrial waste	___	___	___
3. Fills: possible cover for dumps	___	___	___
4. Unusual chemical odors	___	___	___
5. Storage tanks: petroleum products pesticides, etc.	___	___	___
6. Buildings: chemical storage, equipment repair, solvents	___	___	___
7. Structures -- evidence of asbestos sprayed fire proofing, acoustical plaster	___	___	___
8. Vegetation different from surrounding for no apparent reason, e.g. bare ground	___	___	___
9. "Sterile" or modified water bodies	___	___	___
10. Oil seeps, stained ground, discolored stream banks	___	___	___
11. Oil slicks on water, unusual colors on water	___	___	___
12. Spray operation base: air strip, equipment parking area	___	___	___
13. Machinery repair areas	___	___	___
14. Pipelines or major electrical equipment	___	___	___
15. Oiled or formerly oiled roads	___	___	___
16. Electric transmission lines: pole or pad mounted transformers which show evidence of leakage	___	___	___
17. Other (describe in Part E)	___	___	___

C. Record Searches (Coordinate with Realty title search, others as appropriate.)

1. Past uses which might indicate potential problems of site (CIRCLE any that are applicable.)
   Manufacturing, service stations dry cleaning, air strip, pipelines, rail lines, facilities with large electrical transformers or pumping equipment, petroleum production, landfills, scrap metal, auto, or battery recycling, military, labs, wood preserving, other describe _____ None ___

2. Nearby land uses, especially upstream or upgradient, or that might have had waste to dump at site (see list under Past Uses) Identify: _____ None ___

3. Known contaminant sites in vicinity NPL, state sites, candidate sites (check with EPA; State EPA counterpart)
   Yes ___ No ___

4. Interviews on past use: owners, neighbors, County agents and any appropriate Federal authorities: Problems?
   Yes ___ No ___

5. Agricultural drainage history: surface, subsurface drains.
   Yes ___ No ___

D. In acquiring land from another Federal agency, that agency has notified the Department of the past or current presence of a hazardous substance under section 120(h) of CERCLA (Superfund).

   Not applicable ___
   Yes ___ No ___

E. Has a non-Federal entity identified any hazardous materials problems on or near the site surveyed?
   Yes ___ No ___

F. A Level II study is recommended.
   Yes ___ No ___
   A Level III study is recommended.
   Yes ___ No ___

G. Certification

I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination.

Signed _____ Print Name _____

Date _____ Title _____

On the basis of the information collected to complete this form it is possible to reasonably conclude that there is a potential for contaminants, or the effects of contaminants, to be present on this real estate.

Signed _____ Print Name _____

Date _____ Title _____

The surveyed real estate, or a portion thereof, contains contaminants. The owner of that real estate has/will cleanup the contaminants to bureau specifications, A Level II or Level III Survey is not required.

Signed _____ Print Name _____

Date _____ Title _____

H. Approving Official

I concur with the above recommendation.

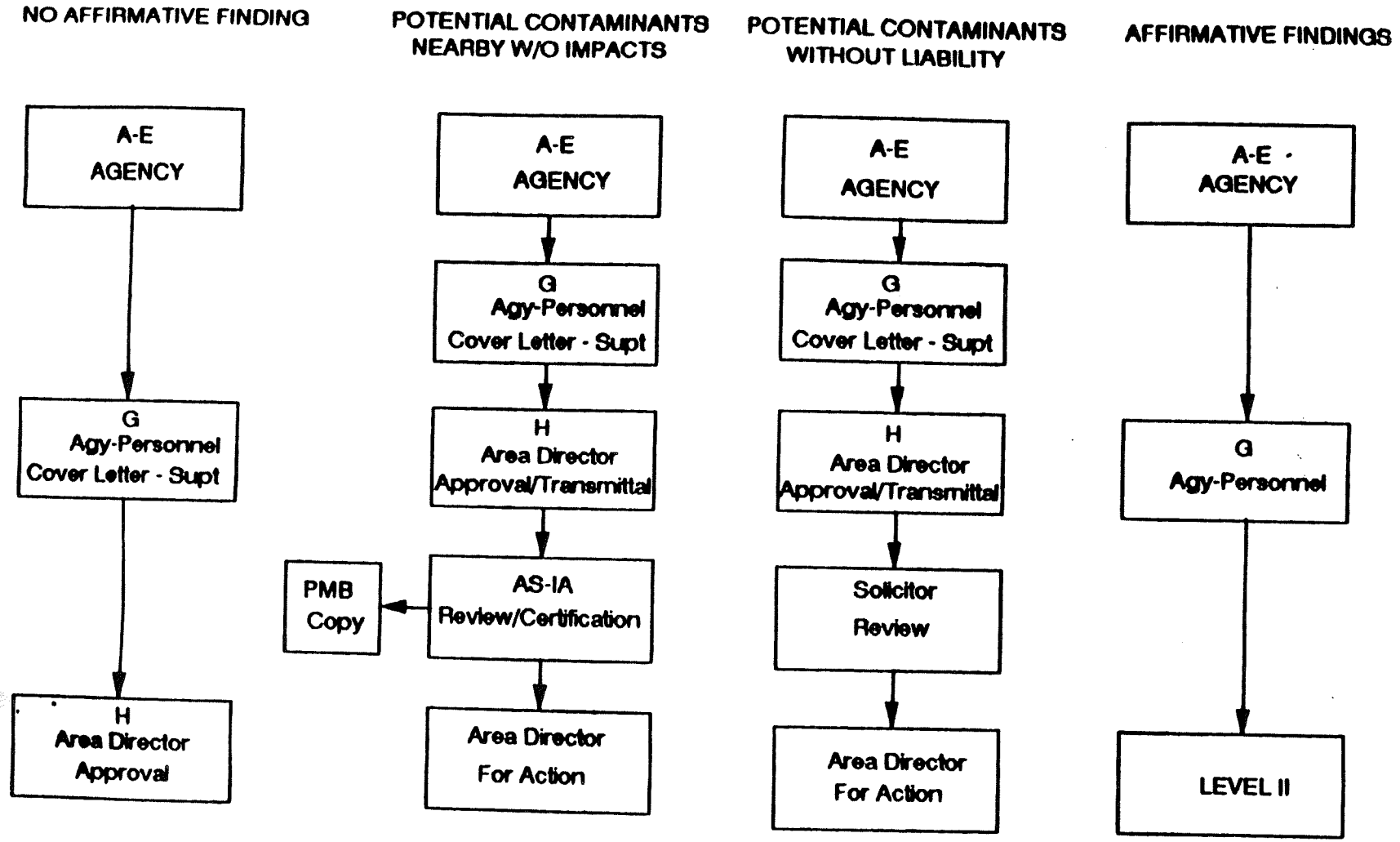
Signed _____ Print Name _____

Date _____ Title _____

Supplemental Information

Narrative description of site or potential contamination, justification for certification, photographs or maps illustrating potential contamination or location thereof, etc.

FLOW CHART FOR LEVEL I SURVEY REPORT



See Level I Survey Report for explanation of Parts A,B,C,D,E,F,G,H

Attachment 2

Potential Limits on Federal Liability

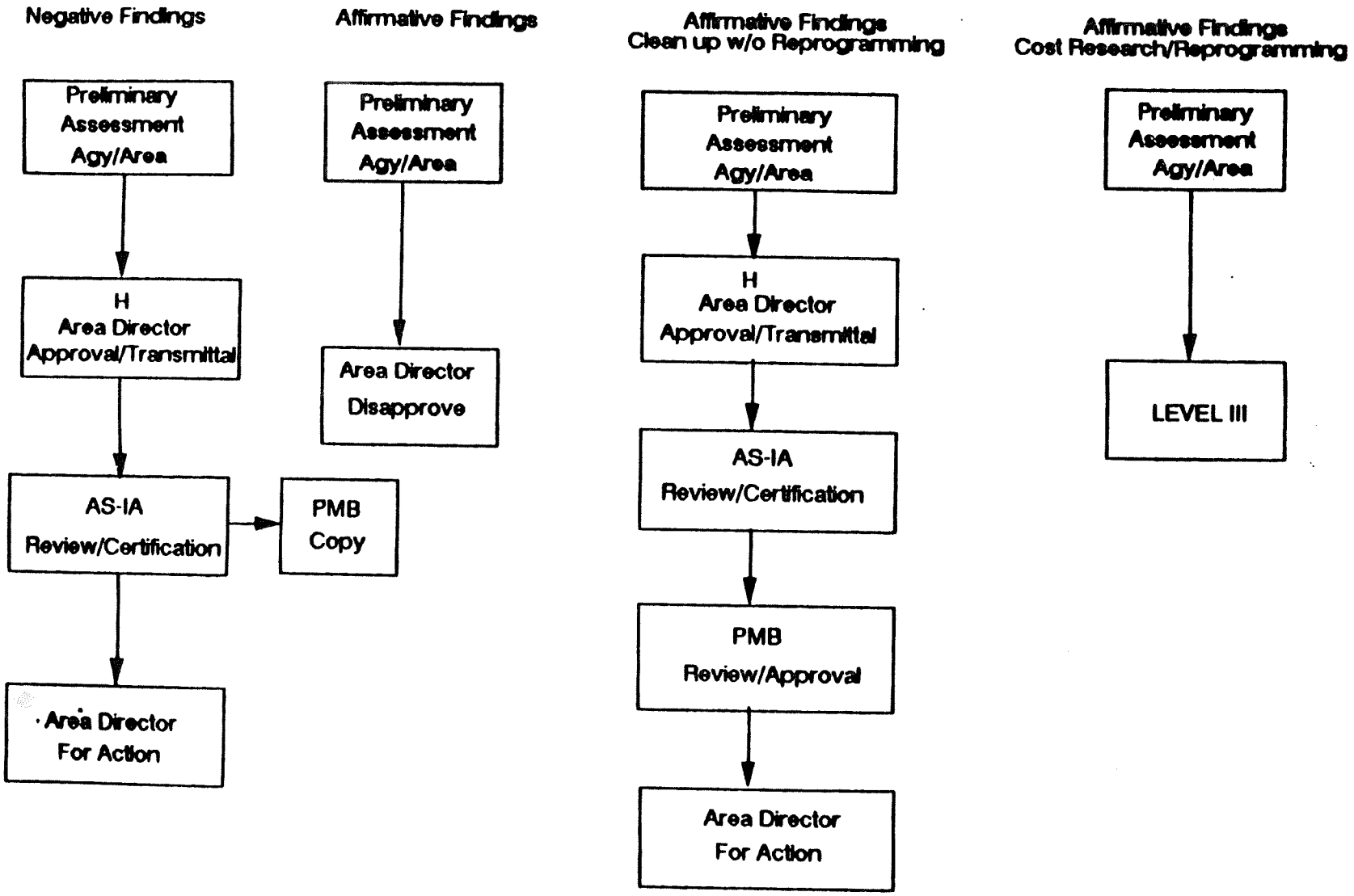
1. Another federal agency has certified that contaminants are not present on the site and/or agreed to assume full liability for any contamination which does exist. (Attach copies of documents for review by the office of the Solicitor.)

   Identify: _____

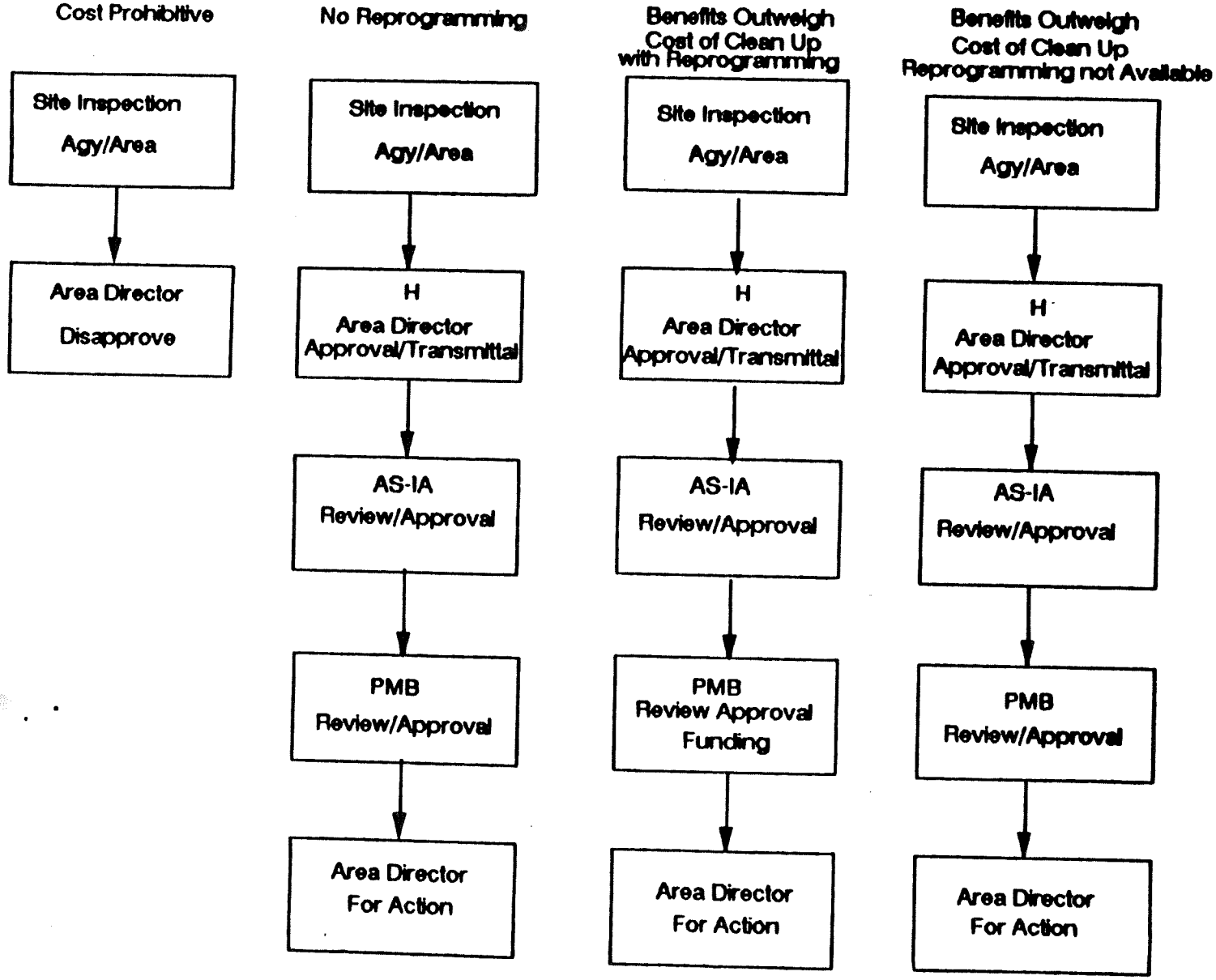
2. An individual or non-federal entity has certified that contaminants are not present on the site and/or agreed to assume full liability for any contamination which does exist. (Attach copies of documents for review by the Office of the Solicitor.)

   Identify: _____

FLOW CHART FOR LEVEL II SURVEY REPORT



FLOW CHART FOR LEVEL III SURVEY REPORT



DECLARATION OF SERVICE BY MAIL

Re: Scotts Valley Band of Pomo Indians, et al., v. U.S.A., et al.,
No. Civ. No. C-86-3660 WWS

I, the undersigned declare:

I am a citizen of the United States, over the age of eighteen years, with my place of business at 510 - 16th Street, Suite 301, Oakland, California 94612, employed in the County of Alameda and am not a party to the within action.

On the 22nd day of March, 1991, I served the within:

STIPULATION FOR ENTRY OF JUDGMENT
(Lytton Indian Community)

in said action, by placing a copy thereof enclosed in a sealed envelope with the correct postage thereon fully prepaid, in the United States mail at Oakland, County of Alameda, California, addressed as follows:

Glen Goodsell, Esq.
General Litigation Section, Room 857
Environment & Natural Resources Division
Department of Justice
Benjamin Franklin Station
Washington, D.C. 20044-0663

Francis B. Boone,
Assistant United States Attorney
Office of the United States Attorney
450 Golden Gate Avenue
San Francisco, CA 94102

Tara Harvey, Deputy County Counsel
County of Sonoma
575 Administration Drive, #116 A
Santa Rosa, CA 95403-2881

Mark D. Peters, Esq.
Senneff, Bernheim, Kelly & Kimelman
50 Old Court House Square
Santa Rosa, CA 95402

Claudia Wilken
U.S. Magistrate
United States District Court
450 Golden Gate Avenue
19th Floor, Room 19426
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 22, 1991, at Oakland, California.

Nancy L. Swanson

s:\svq\scotts\0032191.pss