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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT CALIFORNIA
CLERK, U.S. DISTRICT COURT

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

Plaintiff Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria and plaintiff Guidiville Band of Pomo Indians of the Guidiville Rancheria and federal defendants, by and through their respective counsel, enter into the following stipulation for the purpose of reaching a compromise and final settlement of the claims 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 Scotts Valley and Guidiville Rancherias were 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, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390 ("the Rancheria Act"). Federal defendants further agree that the Indian status of the persons named as distributees in the distribution plans of the Scotts Valley and Guidiville Rancherias was not terminated in accordance with the Rancheria Act. The status of distributees who have been parties to a

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prior judicial determination as to the Federal government's compliance with the Rancheria Act shall, however, be consistent with such prior judicial determination.

2. Federal defendants agree that, except as otherwise provided in this stipulation and prior judicial determinations, the distributees and dependent members of the Scotts Valley and Guidiville Rancherias 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. 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 Scotts Valley and Guidiville Rancherias were not lawfully terminated and their 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, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390;

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b. that the distributees of the Scotts Valley and Guidiville Rancherias are eligible for all rights and benefits extended to Indians under the Constitution and laws of the United States; and

c. that the Scotts Valley and Guidiville Rancherias and their members shall be eligible for all rights and benefits extended to other federally recognized Indian tribes, including Indian tribes defined and organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and their members; provided, the rights and benefits, if any, extended to those members who have been parties to a prior final judgment determining their rights under the Rancheria Act shall be consistent with such prior judgment.

4. Effective as of the date of entry of this stipulation by the Court, both the Scotts Valley and Guidiville Bands shall, consistent with Federal law, have the right to determine their own membership and otherwise to govern their internal and external affairs as tribal entities consistent with their status prior to termination. When and if either of the groups reorganize 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

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them on any list of tribal entities published in the Federal Register. Because the Scotts Valley Band rejected the Indian Reorganization Act, 25 U.S.C. § 461 et seq., it is not eligible to reorganize pursuant to that statute. However, the Federal government had dealings with the Scotts Valley Band as a distinct Indian entity prior to its purported termination and the purpose of this stipulation is to reestablish the status quo prior to termination. Based on these unique considerations, the federal defendants do not object to the Scotts Valley Band reorganizing to exercise powers consistent with its status prior to termination. Further, the federal defendants agree to add Scotts Valley 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 reorganized rancheria in its governing document. The Federal defendants further agree to advise the Commissioner of the Internal Revenue Service promptly that the rancherias have reorganized to exercise governmental functions and have been added to the list of tribal entities.

5. Lands Within Former Boundaries and Currently In Indian Ownership

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Federal defendants agree to accept in trust status any land within the boundaries of the former Scotts Valley and Guidiville Rancherias that:

(a) is currently in Indian ownership and

(b) was deeded or passed as a direct consequence of termination to:

(1) the Sugar Bowl Association, the Guideville Village Association or any other Indian community organizations formed for the purpose of accepting distribution of rancheria assets, or

(2) any distributee who received land under a rancheria distribution plan, or

(3) any dependent or Indian heir, or successor in interest to such distributee, provided any successor in interest is an Indian from the rancheria. (As used herein, "Indian of the rancheria" shall include distributees and their dependent members, and their Indian spouses and lineal descendants.)

Federal defendants further agree to discharge any tax liens against the property and to discharge those specific liens, deeds of trust, or mortgages listed in Exhibit A, attached hereto, which were incurred by the Indian owner after the purported termination for the purpose of improving the habitability of the subject property; provided that the

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Federal defendants shall not be required to accept in trust any land for a distributee who has been a party to a prior judicial decree settling claims by owners or occupants of the land arising out of the purported termination, nor shall the Federal defendants be required to discharge any liens on such lands.

6. Lands Outside the Boundaries of the Former Rancherias and Currently Owned by Certain Indians

Since persons listed in the plans for distribution of assets of the Scotts Valley and Guidiville Rancherias may have acquired interests in trust lands outside those rancherias and 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; provided further that the Federal defendant shall not be obligated to accept in trust any land held in the name of a distributee who has been a party to a prior judicial decree finally determining the claims of such distributee under the Rancheria Act.

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7. Process for Restoring Trust Status

Federal defendants agree that restoration of lands to trust status under the provisions of Paragraphs 5 and 6 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 Counties in which Scotts Valley and Guidiville Rancherias are located. Additionally, a copy of this judgment shall be mailed to:

(1) each individual Indian person listed in the Termination Proclamations for the Scotts Valley and Guidiville Rancherias, and

(2) such other persons, based on all available information in the possession of the Federal defendants and any other information supplied by plaintiffs Scotts Valley and Guidiville Bands, 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:

(1) General Rule: Each Indian or Indian organization of either the Scotts Valley or Guidiville Rancherias who has retained any

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interest in or to the lands or assets of any of said rancherias (however acquired), shall be entitled to elect to convey his, her, or its interest to the United States, to be held in trust for the benefit of such Indian member(s) of either the Scotts Valley or Guidiville Bands (as defined under the constitution or bylaws thereof), or for the benefit of the Indians of either the Scotts Valley or Guidiville Bands or an entity which may be formed to govern any of the said rancherias, as may be specified in the instrument of conveyance.

(2) Direct Result of Termination: Each Indian of either the Scotts Valley or Guidiville Bands 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 either the Scotts Valley or Guidiville Rancherias, may make a similar election, except that any such individual may specify the person for whom the land is to be held in trust by the United States without regard to membership in or affiliation with either the Scotts Valley or Guidiville Bands, so long as the person so named is related by blood or, at the time of

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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: Before accepting any instrument of conveyance which has the effect of restoring trust status to and within either the Scotts Valley or Guidiville Rancherias, the Secretary of the Interior shall be entitled to approve or reject said instrument as to form; however, the existence of such liens as are identified in Paragraph 5 above, shall not constitute a basis for declining to accept any such conveyance. Conveyance of title to the United States made pursuant to this stipulation and the judgment entered thereon may, at the election of the grantor, provide that the United States will hold title in trust for an Indian, Indians, or tribal entity of either the Scotts Valley or Guidiville Rancherias, 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;

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(d) Recording Conveyance: Upon acceptance of any instrument or instruments conveying to the United States title to lands within or without either the Scotts Valley or Guidiville Rancherias 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.

8. Future Land Acquisitions Within Former Boundaries by Certain Indians

Federal defendants agree to accept in trust any land within the former boundaries of the Scotts Valley and Guidiville Rancherias which is subsequently acquired by any distributee, their dependent or lineal descendant, or by either the Scotts Valley or Guidiville Bands; provided that the Federal defendant shall not be obligated to accept in trust any land held in the name of a distributee who has been a party to a prior judicial decree finally determining the claims of such distributee under the Rancheria Act.

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

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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 as Exhibits B and C, respectively.

10. Should lands be acquired in the future on behalf of the Guidiville Band, if organized under the IRA, the Secretary shall within 180 days 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 comprehensive needs assessments for the Scotts Valley and Guidiville Bands, including the projected needs of the bands 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 Scotts Valley and Guidiville Bands. The scheduling and content of the workshops will be developed by the Federal defendants in consultation with representatives from the

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Scotts Valley and Guidiville Bands 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 each from the Scotts Valley and Guidiville Bands.

12. The plaintiff Scotts Valley and Guidiville Bands 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. Plaintiff Scotts Valley and Guidiville Bands 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.

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13. The plaintiff Scotts Valley and Guidiville Bands, in consideration of the above agreements by the federal defendants, 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. It is agreed that plaintiff Scotts Valley and Guidiville Bands will not seek, and federal defendants will not agree, to reestablish the former boundaries of the Scotts Valley and Guidiville Rancherias, and that no action taken in connection with this settlement shall be construed as reestablishing the former rancheria boundaries. As to those lands within the former rancherias that remain in Indian ownership, the authority of the respective tribal governing body shall extend to such lands only if the individual Indian landowner(s) shall consent to the tribe's authority.

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15. 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 the plaintiff Scotts Valley and Guidiville Bands for the failure of the Federal defendants 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 theron.

Dated: March 15, 1991

CALIFORNIA INDIAN LEGAL SERVICES

Stephen V. Quesenberry

STEPHEN V. QUESENBERRY

CALIFORNIA INDIAN LEGAL SERVICES

Attorneys for Plaintiffs

Dated: March 14, 1991

Glen R. Goodsell

GLEN R. GOODSELL, Attorney

United States Department of Justice

Environment & Natural Resources Division

EXHIBIT A

Scotts Valley Rancheria:

(1) Assessor's Parcel No. 005-040-05 (Boggs, Theresa Pearl - deceased)

(a) Delinquent taxes, including penalties, for 1983-1990 totalling $1,880,60.

(b) Estimated taxes for 1990-1991 in the amount of $127.00.

(2) Assessor's Parcel No. 005-040-06 (Elliott, Bennett)

(a) North Lakeport Water District assessment of $4,108.30, payable over a 25 year period at an annual assessment in the amount of $285.00.

(b) Current taxes are minimal because of homeowner's exemption. Taxes, combined with Fire District assessment of $22.50, totalled $23.20 in 1989-1990.

Guidiville Rancheria:

(1) Assessor's Parcel No. 182-270-03 (Cooper, Nora - deceased)

(a) No tax delinquencies; estimated taxes for 1990-1991 in the amount of $90.00.

(2) Assessor's Parcel No. 182-270-09 (Elliott, Jesse - deceased)

(a) No tax delinquencies; estimated taxes for 1990-1991 in the amount of $230.00.

(3) Assessor's Parcel No. 182-270-19 (Young, Irene)

(a) Deed of trust in the amount of $12,323.00, dated 08-24-84, to secure indebtedness incurred for housing rehabilitation.

(b) No tax delinquencies; estimated taxes for 1990-1991 in the amount of $350.00.

(4) Assessor's Parcel No 182-270-20 (Whiterock, Paul)

(a) No tax delinquencies; estimated taxes for 1990-1991 in the amount of $320.00.

Exhibit A

Natural 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 B

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 09 1990

54 BIAM BULLETIN 1

Memorandum

To: Holders of 54 BIAM

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

Walter R Mills

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 C

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.

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

BULLETIN EXPIRES: September 8, 1990

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.

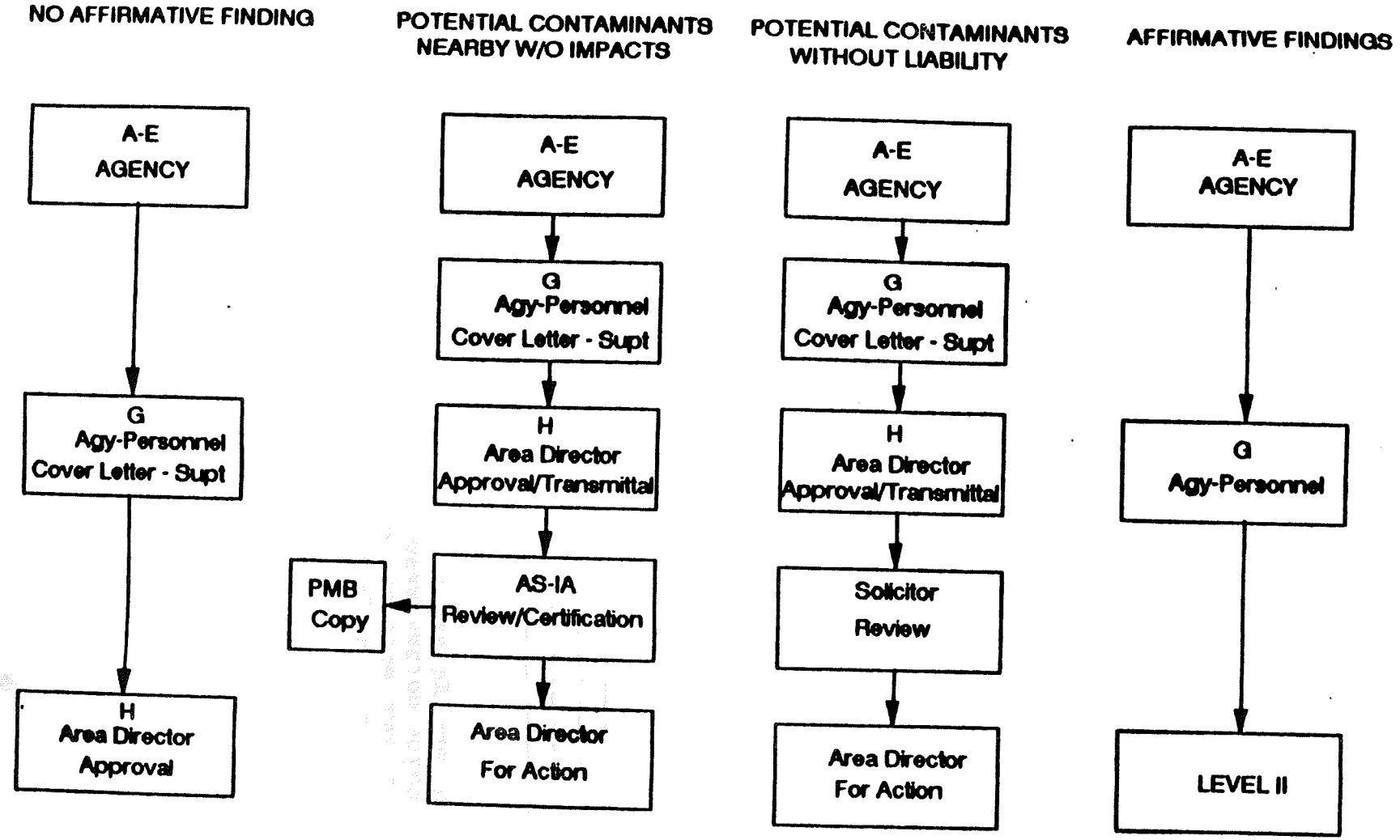
Signed _____ Print Name _____

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

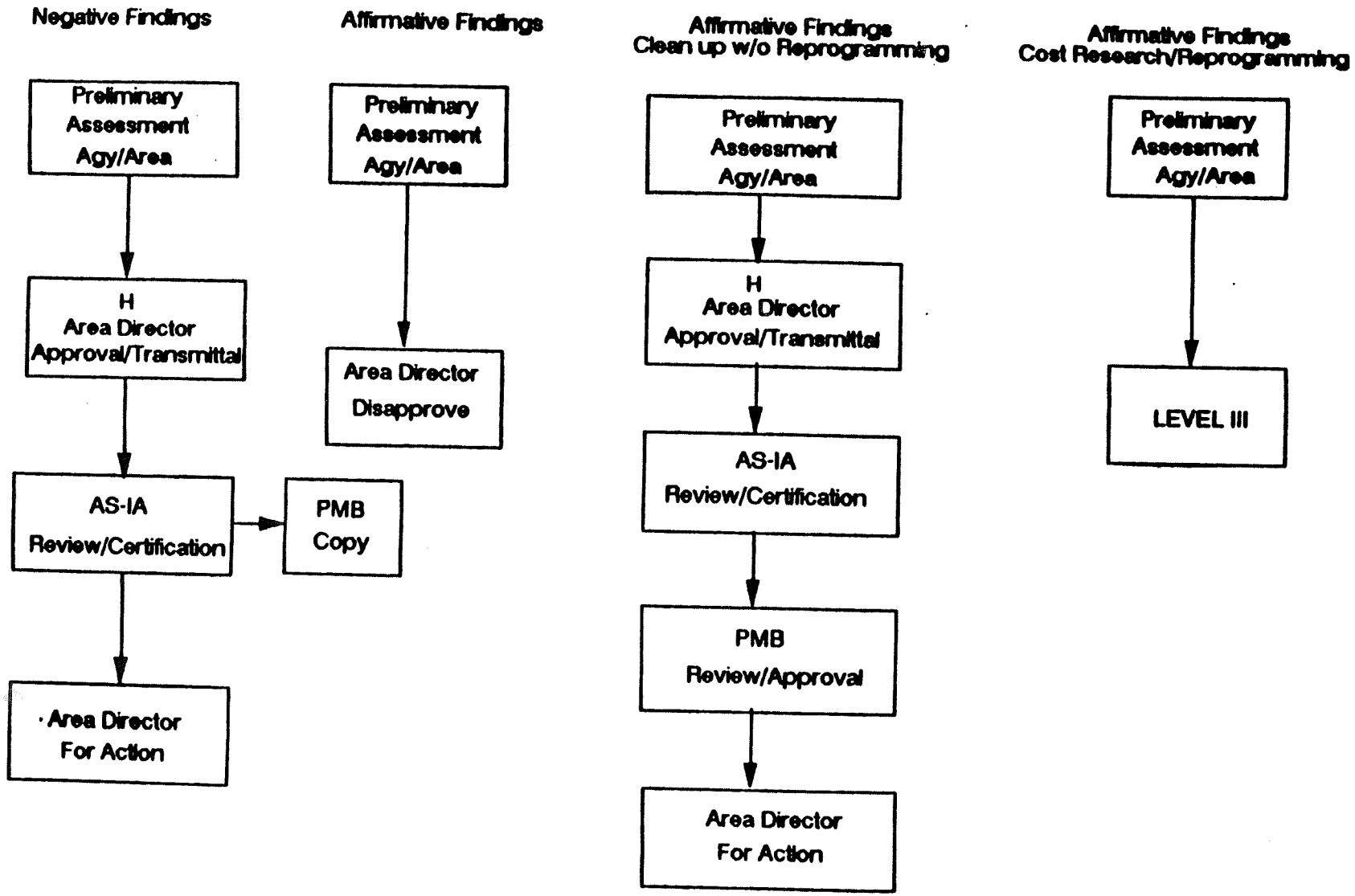
1. Another federal agency has certified that contaminants are not present on the site and/or agreed to assume full liability for any contamination which does exist. (Attach copies of documents for review by the office of the Solicitor.)

   Identify: _____

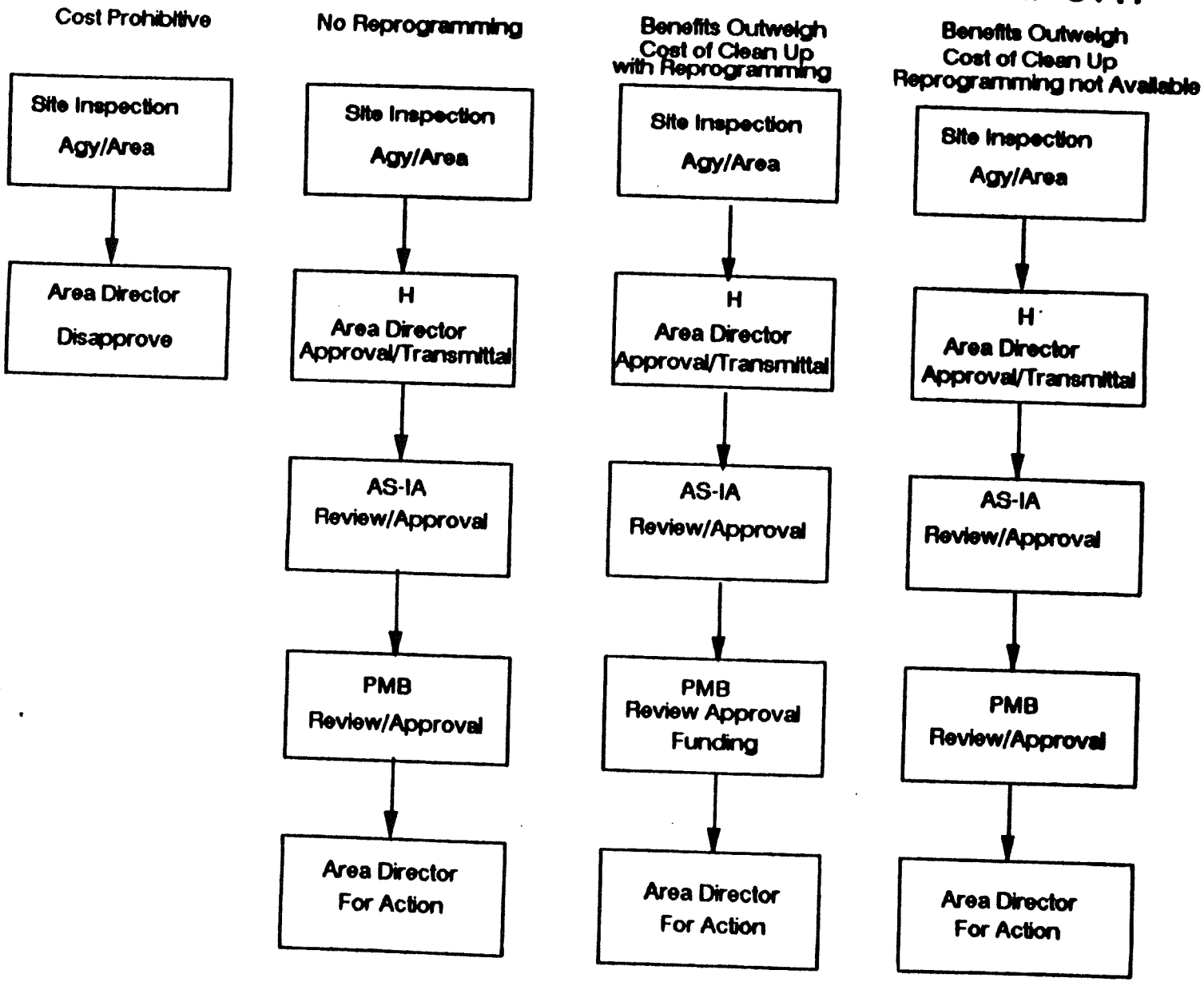
2. An individual or non-federal entity has certified that contaminants are not present on the site and/or agreed to assume full liability for any contamination which does exist. (Attach copies of documents for review by the Office of the Solicitor.)

   Identify: _____

FLOW CHART FOR LEVEL II SURVEY REPORT



FLOW CHART FOR LEVEL III SURVEY REPORT



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BULLETIN EXPIRES: September 8, 1990

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   Identify: _____ None ___

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   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 ___

Supplemental Information

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

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 15th day of March, 1991, I served the within:

STIPULATION FOR ENTRY OF JUDGMENT
(Scotts Valley Band and Guidiville 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 (delivered to office)
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 15, 1991, at Oakland, California.

Nancy L. Swanson