



INTERIOR BOARD OF INDIAN APPEALS

City of Yreka, California, and City Council of the City of Yreka, California v.
Pacific Regional Director, Bureau of Indian Affairs

51 IBIA 287 (06/07/2010)

Judicial review of this case:

Affirmed, *City of Yreka v. Salazar*, 2011 WL 2433660,
No. 2:10-CV-01734-WBS-EFB (E.D. Cal. June 14, 2011),
appeal docketed, No. 11-16820 (9th Cir. July 28, 2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

CITY OF YREKA, CALIFORNIA,)	Order Affirming Decision
AND CITY COUNCIL OF THE)	
CITY OF YREKA, CALIFORNIA,)	
)	
Appellants)	
)	Docket No. IBIA 08-110-A
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	June 7, 2010

The City of Yreka, California (City), and the City Council of the City of Yreka, California (collectively Appellants), have appealed the May 14, 2008, notice of decision (Decision) issued by the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to accept into trust a 0.90-acre parcel of off-reservation land — commonly referred to as the “Yreka Clinic” — on behalf of the Karuk Tribe of California (Tribe).¹ The Regional Director determined that the trust acquisition satisfied the requirements of 25 C.F.R. §§ 151.10 and 151.11 and that Appellants’ challenges to the acquisition were meritless.

On appeal, Appellants contend (1) that there is no statutory authority for the acquisition because the land is not within or adjacent to the exterior boundaries of the Tribe’s reservation or within a tribal consolidation area nor does the Tribe have sufficient interest in the land to support the acquisition, (2) that the Regional Director’s discussion of the proposed use of the land is based on erroneous facts, and (3) that removal of the property from the City’s jurisdiction opens the possibility that the land will be put to uses

¹ The property, which embraces land in the City of Yreka, is situated within sec. 27, T. 45 N., R. 7 W., Mount Diablo Meridian, Siskiyou County, California, and is described as: “Parcel 3-A-1, as shown on Boundary Line Adjustment & Parcel Map Survey Recorded July 14, 1979 in Book 7, Page 3 of Parcel Map in the office of the County Recorder of Siskiyou County. Assessor’s Parcel No.: 061-341-070, 0.90 acres.” See Decision at 1.

which do not conform to the City's codes and general plan, including gaming, and will increase conflicts between the Tribe and Appellants. Alternatively, Appellants request that any approval of the trust acquisition be limited to non-gaming uses. Because we find that Appellants have not shown that the Regional Director's Decision was erroneous, was based on material factual inaccuracies, or reflected an improper exercise of his discretion, and because the administrative record demonstrates that he considered each of the criteria in 25 C.F.R. §§ 151.10 and 151.11 and reasonably exercised his discretion, we affirm the Regional Director's Decision.

Statutory and Regulatory Background

Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, authorizes the Secretary of the Interior (Secretary) to acquire land for Indians in his discretion. The regulations governing acquisitions of trust land permit such action

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

25 C.F.R. § 151.3(a)(3).

In evaluating requests to acquire land located outside an Indian reservation, BIA must consider the criteria set forth in 25 C.F.R. § 151.11, which include consideration of the factors set out in § 151.10(a)-(c) and (e)-(h).² See 25 C.F.R. § 151.11(a). The relevant section 151.10 criteria are:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;

² Subsection 151.10(d) applies only to trust acquisitions for individuals.

.....

- (e) 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 the tax rolls;
- (f) Jurisdictional problems and potential conflicts of land use which may arise; and
- (g) 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.
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act [(NEPA)] Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

The remaining factors for off-reservation trust acquisitions delineated in section 151.11 provide:

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised by the parties pursuant to paragraph (d) of this section.

(c) Where land is being provided for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to § 151.10(e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken into trust, the Secretary shall notify state and local governments having regulatory jurisdiction over the land to be acquired. The

notice shall inform the state and local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

Factual and Procedural Background

On April 8, 2003, in accordance with Tribal Resolution No. 03-R-06, approved on March 31, 2003, the Tribe submitted an application pursuant to 25 C.F.R. Part 151, requesting that BIA accept the Yreka Clinic into trust on behalf of the Tribe. Administrative Record (AR) 1. The Tribe explained that it had originally intended to build a new clinic on existing tribal trust land but that a cease and desist order issued by the State of California on September 24, 1998 (Tribe's Answer Brief, Ex. 6), which had prohibited all new construction in the City at that time because of the inadequacy of the City's sanitary sewer system, had necessitated the Tribe's 1999 purchase and subsequent redesign and remodeling of the existing Yreka Clinic located on land approximately 1.4 miles from tribal trust land. AR 1 at 2, 4.

In its application, the Tribe addressed the relevant regulatory criteria. As to its need for additional land (Factor 1), the Tribe stated that it operated the clinic on a minimal budget and that the acquisition of the parcel was crucial for it to freely exercise and preserve cultural management over quality health care and for tribal self-determination. The Tribe noted that the proposed use of the land (Factor 2) for the continued operation of a health and dental clinic, which would not change the current use of the property, and the then nearly completed remodeling of the clinic would enhance the Tribe's self-sufficiency and its ability to provide quality medical, dental, and behavioral health services. The Tribe further opined that, as far as the acquisition's impact on state and local taxes was concerned (Factor 3), the loss of \$5,610 annual property tax assessed at that time would have minimal impact on the local tax base, adding that the services it provides are available to non-tribal members for a fee, and that the clinic was the only clinic in the City accepting new MediCal patients. The Tribe foresaw no jurisdictional problems or potential conflicts from the acquisition (Factor 4) and indicated that BIA would be equipped to discharge any additional responsibilities occasioned by the acquisition (Factor 5) because the Tribe had already assumed a major portion of BIA's responsibilities for the land. As to the location of the land (Factor 6), the Tribe acknowledged that the land was not connected to existing trust land but pointed out that the land was only 1.4 miles from a large parcel of the Tribe's trust land. The Tribe also requested that BIA perform the necessary hazardous substance and NEPA assessments (Factor 7).

As directed by 25 C.F.R. § 151.11(d), on June 18, 2004, BIA issued a Notice of Off Reservation Land Acquisition Application (Non-Gaming), seeking comments and information from state and local governments concerning the current annual property taxes levied on the property, any special assessments against the land, governmental services provided to the parcel, and whether the intended use of the property was consistent or inconsistent with current zoning. AR 10. The City provided its comments on August 31, 2004. AR 18.

In its comments, the City denied that any benefit would flow to the Tribe from taking the land into trust, asserting that the parcel is approximately 100 miles from the Tribe's traditional lands and that, even though the property is only about a mile from the Tribe's housing project on trust land, it is located within the heart of the City and is surrounded by developments controlled by the City that would be directly affected by the use of the parcel. The City acknowledged that the current use of the parcel was an appropriate use for the location and conformed to the area's zoning as residential professional office, but expressed its concern that the use remain constant and its fear that, absent zoning controls, an inappropriate use could be implemented or encroachments on set-back limitations could be allowed. The City also identified assorted economic concerns, citing its negotiation of various memoranda of understanding with the Tribe (including its then ongoing negotiations regarding the establishment of a casino in the City) and its 1999 cooperative agreement with the Tribe pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. § 4111(d)(2), for the payment of an in-lieu yearly contribution to replace lost real property tax revenues. The City admitted that it could absorb the loss of its share of property tax revenue without curtailing necessary services but considered that situation to be unfair. It therefore requested that BIA impose two conditions on the trust acquisition: (1) that the Tribe pay an in-lieu contribution equivalent to the lost property tax revenue consistent with the NAHASDA cooperative agreement; and (2) that the current use of the parcel remain unchanged.

The Tribe responded to the City's comments on June 23, 2005. AR 24. The Tribe asserted that, contrary to the City's unsupported claim that the Tribe would derive little benefit from taking the land into trust, not only would the 350 tribal members living in and around the City benefit from the acquisition of the clinic, but the entire City would benefit through the continued provision of medical services to both tribal and non-tribal low-income residents and through the money spent in the City by clinic employees. The Tribe also considered the City's zoning position to be suspect, especially since, according to the Tribe, the clinic was the only remaining facility in the City accepting new Medicare and MediCal patients. Finally, the Tribe objected to the City's suggested conditions as impractical and/or legally impermissible.

After requesting and receiving additional information from the Tribe, including an updated tribal resolution, Resolution No. 07-R-160 dated December 19, 2007, declaring that the proposed use of the Yreka Clinic was for non-gaming purposes and requesting that BIA accept the property into trust for both surface and subsurface rights, and copies of the 2007-2008 bill assessing \$13,500.06 in taxes for the property (AR 37), the Regional Director issued his Decision to accept the parcel into trust on May 14, 2008. AR 43. As required by 25 C.F.R. § 151.10(a), the Regional Director identified 25 U.S.C. § 465 as the statutory authority for the acquisition and determined that the acquisition fell within the policy set forth in 25 C.F.R. Part 151. He then responded to the City's comments, first citing the Tribe's recitation of the benefit to the 350 tribal members residing in and around the City and to non-tribal members due to the clinic's status as the only clinic within a 100-mile radius currently accepting new MediCal and Medicare patients. The Regional Director next rejected the City's proposed condition requiring the use of the property to remain unchanged because, not only had the Tribe indicated that it had no intention of changing the current use, but BIA had no authority under 25 C.F.R. Part 151 to impose land use restrictions as a condition to accepting a parcel into trust. Finally, as to the City's request that he condition the acquisition on the payment of a yearly in-lieu contribution, the Regional Director noted that, in addition to not having the authority to impose such a condition, the City had admitted that it would be able to absorb the de minimis loss of tax revenue. The Regional Director also pointed out that the in-lieu payment negotiated in the cooperative agreement was precipitated by the Tribe's application for a housing development grant under the NAHASDA, and not in response to a trust acquisition application. *See* 25 U.S.C. § 4111(d)(2) (requiring in-lieu payments where a grant is utilized to construct affordable housing on land exempt from local taxation).

The Regional Director next addressed the remaining factors delineated in 25 C.F.R. § 151.11, including those set out in § 151.10(b)-(c) and (e)-(h). As to Factor 1, the need for additional land (§ 151.10(b)), the Regional Director noted that, although the Tribe had 620 acres of scattered trust land, each of those trust parcels had different objectives. Citing the Tribe's objective of having a sufficient land base to meet its goals of cultural and social preservation, self-determination, self-sufficiency, and economic growth, the Regional Director determined that the proposed acquisition would allow the Tribe to consolidate its land holdings and exercise tribal sovereign powers over the property. Turning to Factor 2, the proposed land use (§ 151.10(c)), the Regional Director stated that the Tribe had completely remodeled the clinic and planned to continue to use it as a health and dental clinic, as it had been doing for the past 9 years, reiterating that the clinic was the only clinic within a 100-mile radius accepting new Medicare and MediCal patients.

Addressing Factor 3, the impact on the state and its political subdivisions resulting from the removal of the land from the tax rolls (§ 151.10(e)), the Regional Director

concluded that the removal of the County property taxes assessed against the parcel would not result in any major impact on the County's financial situation because that reduction would be offset by a reduction in County-sponsored welfare programs due to the Tribe's provision of healthcare and dental services to both tribal members and non-member Medicare and MediCal patients. The Regional Director anticipated no jurisdictional problems or potential conflicts arising from the acquisition (Factor 4, § 151.10(f)) because there would be no significant structural changes to or major construction on the parcel nor would there be any change in criminal jurisdiction.

The Regional Director determined that BIA was equipped to discharge any additional responsibilities occasioned by the transfer (Factor 5, § 151.10(g)), citing BIA's and the Tribe's established working relationship, the Tribe's operation and maintenance of the clinic, and the continuity of the use of the land, all of which established that any additional responsibilities would be minimal. Turning to Factor 6, compliance with the revised NEPA implementation procedures and hazardous substances determination requirements (§ 151.10(h)), the Regional Director noted that a Phase I Contaminant Survey Checklist prepared for the acquisition had uncovered no hazardous materials or contaminants on the parcel and that all required NEPA analyses had been completed.

Addressing Factor 7, the location of the land relative to state boundaries and its distance from the boundaries of the Tribe's reservation (§ 151.11(b)), the Regional Director stated that the parcel was situated 20 miles from the Oregon border and halfway between the Pacific Ocean and the Nevada border and was approximately 1.4 miles from existing tribal trust land within the ancestral territory of the Tribe as defined by the Tribe's constitution. Finally, turning to Factor 8, the anticipated economic benefit associated with the proposed use (§ 151.11(c)), the Regional Director determined that clinic operated on a minimal budget and that, therefore, the acquisition of the parcel was crucial to the Tribe's ability to freely exercise and preserve cultural management over quality health care and to foster tribal self-determination. Based on his consideration of the City's comments and the relevant factors, the Regional Director stated his intent to accept the Yreka Clinic parcel into trust for the Tribe.

Appellants filed a timely appeal and submitted a statement of reasons and an opening brief. Although the Regional Director did not submit an answer brief, the Tribe filed an answer brief, to which Appellants submitted a reply brief. Briefing is now complete and the appeal is ready for review.

Discussion

Standard of Review

The standard of review in trust acquisition cases is well established. Decisions of BIA officials on requests to take land into trust are discretionary, and the Board does not substitute its judgment in place of BIA's judgment in discretionary decisions. *State of South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 84, 98 (2009); *Arizona State Land Department v. Western Regional Director*, 43 IBIA 158, 159-60 (2006); *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). Instead, the Board reviews discretionary decisions to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of BIA's discretionary authority, including any limitations on its discretion established in regulations. *Arizona State Land Department*, 43 IBIA at 160. Thus, proof that the Regional Director considered the factors set forth in 25 C.F.R. § 151.10 and § 151.11, if relevant, must appear in the record, but there is no requirement that BIA reach a particular conclusion with respect to each factor. *See id.*; *Eades v. Muskogee Area Director*, 17 IBIA 198, 202 (1989). Nor must the factors be weighed or balanced in a particular way or exhaustively analyzed. *Jackson County v. Southern Plains Regional Director*, 47 IBIA 222, 231 (2008); *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008); *County of Sauk v. Midwest Regional Director*, 45 IBIA 201, 206-07 (2007), *aff'd sub nom. Sauk County v. U.S. Department of the Interior*, No. 07 C 0543 S (W.D. Wis. May 29, 2008). Moreover, an appellant bears the burden of proving that BIA did not properly exercise its discretion. *Aitkin County*, 47 IBIA at 104; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246; *South Dakota v. Acting Great Plains Regional Director*, 39 IBIA 283, 291 (2004), *aff'd sub nom. South Dakota v. U.S. Dep't. of the Interior*, 401 F. Supp.2d 1000 (D.S.D. 2005), *aff'd*, 487 F.3d 548 (8th Cir. 2007). Simple disagreement with or bare assertions concerning BIA's decision are insufficient to carry this burden of proof. *Aitkin County*, 47 IBIA at 104; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246-47.

In contrast to the Board's limited review of BIA discretionary decisions, the Board has full authority to review any legal issues raised in a trust acquisition case, except those challenging the constitutionality of laws or regulations which the Board lacks authority to adjudicate. *State of South Dakota*, 49 IBIA at 99; *Jackson County*, 47 IBIA at 227-28; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 247. An appellant bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *State of South Dakota*, 49 IBIA at 99; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 247.

Analysis

Appellants contend (1) that there is no statutory authority for the acquisition because the land is not within or adjacent to the exterior boundaries of the Tribe's reservation or within a tribal consolidation area nor does the Tribe have sufficient interest in the land to support the acquisition, (2) that the Regional Director's discussion of the proposed use of the land is based on erroneous facts, and (3) that removal of the property from the City's jurisdiction creates the possibility that the land will be put to uses which do not conform to the City's codes and general plan, including gaming, and will increase conflicts between the Tribe and Appellants. Alternatively, Appellants request that any approval of the trust acquisition be limited to non-gaming uses. We find that Appellants have not shown that the Regional Director's Decision was erroneous, was based on material factual inaccuracies, or reflected an improper exercise of his discretion, and that the administrative record demonstrates that he considered each of the criteria in 25 C.F.R. §§ 151.10 and 151.11 and reasonably exercised his discretion. We therefore affirm the Regional Director's Decision.

Appellants' claim that there is no statutory authority for the acquisition fails. As noted above, 25 U.S.C. § 465 grants the Secretary broad discretion to acquire land for Indians. The implementing regulations augment the statute by identifying three circumstances under which land may be acquired in trust for a tribe: (1) when the land is located within or adjacent to the exterior boundaries of the tribe's reservation or within a tribal consolidation area; (2) when the tribe already owns an interest in the land; and (3) when BIA determines that acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. 25 C.F.R. § 151.3(a). While the parcel admittedly is not within nor adjacent to the exterior boundaries of the Tribe's reservation or within a tribal consolidation area, the Tribe's ownership of the parcel in fee clearly qualifies as an ownership interest in the land under 25 C.F.R. § 151.3(a)(2). Such an ownership interest in and of itself is not enough to automatically entitle the land to trust status, but it does allow the land to be considered for acquisition in trust. *See, e.g., City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 220-21 (2005).

Additionally, the Regional Director's determination that the acquisition fosters tribal self-determination squarely places the acquisition within the parameters of 25 C.F.R. § 151.3(a)(3). Although Appellants contend that BIA has not shown why or how the acquisition of the land would assist the Tribe in cultural and social preservation or tribal self-determination and self-sufficiency, they offer nothing contradicting that finding and their unsupported opinion does not undermine the Tribe's assertion — and BIA's acceptance of that assertion — that acquisition of the land is crucial to the Tribe's ability to continue to deliver culturally appropriate medical services to its members. As to Appellants'

additional contention that moving the clinic to existing trust land would increase the Tribe's economic growth, the record establishes that the Tribe originally intended to build a new clinic on its existing tribal trust land and decided to buy the Yreka Clinic only after its original plan was thwarted by the 1998 cease and desist order prohibiting any new construction in the City. Given the extensive renovations to the clinic costing over \$1.2 million, relocating the clinic to existing trust land at this point would be neither economical nor practical.

Appellants also challenge the Regional Director's consideration of the proposed land use on the ground that it was based on the incorrect factual conclusion that the clinic was the only medical facility in the area accepting Medicare and MediCal patients. The Tribe acknowledges that the situation has changed since the Regional Director's Decision was issued, but maintains that it is still only one of two facilities in the City that accepts new patients who only have Medicare/MediCal coverage. Answer Brief at 5. Appellants have not shown how any factual error about the number of facilities accepting such patients undermines the Regional Director's determination that the land will continue to be used as a medical and dental clinic, and we find no merit in that argument.

Appellants further object to the Regional Director's consideration of the jurisdictional problems and potential conflicts arising from the removal of the parcel from the City's jurisdiction.³ They contend that removing the parcel from the City's jurisdiction creates the possibility that the property will be put to uses that do not conform to City codes and that resolution of such situations will be difficult and will lead to unnecessary friction between the Tribe and the City. In support of their supposition, Appellants cite past conflicts that arose where the Tribe's trust land abutted fee lands. These conflicts apparently have been resolved satisfactorily and amicably, and the City characterizes its relationship with the Tribe as "generally good." Reply Brief at 2. Appellants have not shown that the Regional Director failed to consider jurisdictional problems and potential conflicts in deciding to accept the land into trust.

Appellants' real fear is that the parcel will be used for gaming. This fear, however, is entirely speculative. Nothing in the record suggests that the Tribe contemplates the use of the parcel for gaming. To the contrary, not only does the Tribe admit that the land does not qualify for gaming use under the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(a),

³ Although Appellants characterize their arguments as objections to the analysis of the impact to the state and its political subdivisions resulting from the removal of the land from the tax rolls, they actually raise jurisdictional problems and land use conflicts unrelated to the loss of tax revenue.

but the Tribe contends that the renovated site is completely developed and could not feasibly or fiscally-responsibly be used for gaming even if the Tribe wanted it to be so used. *See Answer Brief at 2, 3-4.* Additionally Tribal Resolution No. 07-R-160, approved on December 19, 2007, explicitly eschewed the use of the parcel for gaming. *See id.*, Ex. 1; *see also id.*, Ex. 2 (Letter to City from Tribe, Sept. 2, 2008) (expressly stating that Tribe has no intention of operating anything other than a clinic on the property). Appellants' mere speculation that the land might, at some point in the future, be used for gaming does not require BIA to consider gaming as a possible use of the property in deciding whether to accept the property into trust. *See Town of Charlestown, Rhode Island v. Eastern Area Director*, 35 IBIA 93, 103 (2000); *Lake Montezuma Property Owners Ass'n v. Phoenix Area Director*, 34 IBIA 235, 238 (2000); *Town of Ignacio, Colorado v. Albuquerque Area Director*, 34 IBIA 37, 41 (1999).⁴

We conclude that Appellants have not shown that the Regional Director's Decision was erroneous, was based on material factual inaccuracies, or reflected an improper exercise of his discretion, and that the administrative record demonstrates that he considered each of the criteria in 25 C.F.R. §§ 151.10 and 151.11 and reasonably exercised his discretion. Accordingly, we affirm the Regional Director's Decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's Decision.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

⁴ Although Appellants request that any approved trust acquisition limit the use of the parcel to non-gaming uses, the Board's role is limited to reviewing the decision of the Regional Director. The Board does not have authority to impose conditions on trust acquisitions. We therefore deny their request.