



## INTERIOR BOARD OF INDIAN APPEALS

Trenton Indian Service Area v. Great Plains Regional Director, Bureau of Indian Affairs

54 IBIA 298 (04/03/2012)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

TRENTON INDIAN SERVICE	)	Order Reversing Decision and
AREA,	)	Remanding
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 10-069
GREAT PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	April 3, 2012

The Trenton Indian Service Area (TISA), through its Board of Directors (Directors), appeals to the Board of Indian Appeals (Board) from a January 29, 2010, decision (Decision) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). TISA had appealed to the Regional Director from a June 10, 2009, decision by BIA’s Turtle Mountain Agency Superintendent (Superintendent) that approved, over TISA’s objections, a business lease granted by the Turtle Mountain Band of Chippewa Indians (Tribe) on Turtle Mountain Public Domain Allotment T939-A (Allotment).<sup>1</sup> TISA asserts that it is the owner of the Allotment with authority to grant leases on the Allotment, and the Superintendent approved the lease over TISA’s objections. The Regional Director concluded that TISA lacked standing to appeal the Superintendent’s decision, and dismissed TISA’s appeal without reaching the merits. We reverse and remand.

The deed to the Allotment transferred title to “the Turtle Mountain Band of Chippewa Indians for the use of the Trenton Indian Service Area in Trust Status.” The Regional Director interprets this language to mean that the Tribe, not TISA, is the owner of the Allotment, and because all of the power vested in the Directors was created and

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<sup>1</sup> The Allotment is more particularly described as the surface interest in “[t]hat part of Lot 7 located north of North Dakota Highway number 1804, sec. 19, Twp. 153 N., Rge. 102 W., 5th Principle [sic] meridian, Williams County, North Dakota, containing 16.14 acres, more or less.” Deed No. 256-1004, approved by BIA on August 19, 1992 (Administrative Record (AR) Tab 5 at 6). All references to page numbers in the AR refer to batestamped page numbers.

granted by the Tribe and because the Tribe has plenary power over all of its tribal lands, the Regional Director concluded that TISA lacks standing to participate in the decision to approve the lease, and dismissed TISA's appeal.<sup>2</sup>

We reverse, and order the reinstatement of TISA's appeal because, regardless of how title is held, the deed created a legally protected interest in TISA. The face of the deed recites that the Allotment is "for the use of the Trenton Indian Service Area." It is undisputed that TISA is governed by its Directors, who are empowered by the Tribe to manage TISA's assets. The fact that TISA may be a subdivision of the Tribe does not mean that it cannot and does not separately have an interest in the use and disposition of the Allotment sufficient to entitle TISA to be heard on the issue of the business lease. These facts suffice to confer standing in this matter on TISA and on the Directors to appeal the Superintendent's lease approval to the Regional Director.

### **Background**

In 1884, the size of the Tribe's Turtle Mountain Reservation was reduced from 22 to 2 townships, resulting in insufficient reservation land to grant allotments to all of the Tribe's eligible members upon the passage of the General Allotment Act in 1887. *See* TISA's Opening Br., Ex. 22. Twenty years later, Congress enacted a law that permitted the unallotted members of the Tribe to take allotments from the public domain. Pub. L. 58-125, 33 Stat. 195 (Apr. 21, 1904) (excerpt attached to TISA's Opening Brief at Ex. XXIII). The geographical area comprising some or all of these lands eventually became designated as a Federal "service area" so that the Indian residents could receive Federal Indian program services, and the area is now known as the Trenton Indian Service Area. Letter Opinion 94-L-174 from Attorney General Heidi Heitkamp to Henry C. "Bud" Wessman, July 1, 1994 (AR Tab 49 at 185).<sup>3</sup> The Service Area, located approximately 200-250 miles from the Turtle Mountain Reservation in North Dakota, is spread over six counties on both sides of the Montana-North Dakota border.<sup>4</sup>

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<sup>2</sup> The Regional Director also noted that because this dispute is between a tribe and one of its political subdivisions, the dispute is an intra-tribal matter that must be resolved in a tribal forum.

<sup>3</sup> The entity TISA, who is the Appellant here, and the geographical area are both referred to — sometimes confusingly — as the "Trenton Indian Service Area." To avoid confusion in our decision, we use "TISA" to refer solely to Appellant and "Service Area" to refer to the geographical area.

<sup>4</sup> The six counties that comprise TISA are Williams, Divide, and McKenzie counties in North Dakota and Roosevelt, Richland, and Sheridan counties in Montana.

The Tribe's Council (Tribal Council) authorized the formation of TISA in 1975 as a tribal corporation for the purpose of advancing socio-economic development within the Service Area. Ordinance 28, Mar. 25, 1975, at 2-3 (unnumbered) (attached to Regional Director's Answer Brief).<sup>5</sup> The tribal corporation, acting through its Directors, was variously referred to in Ordinance 28 as the "Trenton Indian Service Area" or simply "Trenton Service Area." *See id.* (definitions of "Corporation" and "Board"). The original Directors were appointed by the Tribal Council, and thereafter vacancies were filled in accordance with by-laws adopted by the Directors.

It appears that Ordinance 28 was re-enacted in 1981 as Ordinance 28-A, and amended at least once in 1987. Thereafter, in 1990, the Tribe repealed and replaced Ordinance 28-A with Ordinance 28-B.<sup>6</sup> Ordinance 28-B created TISA as a "tribal organization" and "political subdivision" within the Tribe to provide and extend services to the Tribe's enrolled members residing within the Service Area.<sup>7</sup> TISA continued to be

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<sup>5</sup> Prior to the formation of the tribal corporation, a non-profit entity had been organized under the laws of North Dakota, which apparently was known as the "Trenton Service Area" and as the "Fort Buford Indian Development Corporation." This entity also was organized for the purpose of bringing Federal services and economic development to the Indian residents of the Service Area. *See* TISA's Opening Brief at Exhs. XXVI, XXX).

<sup>6</sup> There is some confusion about the timing of the tribal resolutions related to Ordinance 28-A and Ordinance 28-B. The Decision states that Ordinance 28-A was repealed and replaced by Ordinance 28-B on October 14, 1999, *see* Decision (AR Tab 46 at 171), but this is incorrect. The record shows that Ordinance 28-B was enacted on or before November 1, 1990, and subsequently amended several times. *See* Tribal Resolution No. 4345-01-91, Jan. 11, 1991 (AR Tab 50 at 202) (referring to Tribal Resolution No. 4299-11-90, Nov. 1, 1990, which had inadvertently omitted two provisions of Ordinance 28-B). The first page of Ordinance 28-B in the administrative record, AR Tab 50 at 197, does contain the notation, "Approved by the [Tribe] October 14, 1999," but that approval appears to refer to an amended version of Ordinance 28-B rather than to the original enactment of Ordinance 28-B.

<sup>7</sup> As early as 1976, BIA had advised that "[t]he Trenton Indian Service Area Corporation can qualify to contract BIA programs by having the Turtle Mountain Tribe pass a resolution designating them as a 'tribal organization' as defined under Public Law 93-638." Letter from Comm'r of Indian Affairs to Sen. Milton R. Young, June 4, 1976 (TISA's Opening Br., Ex. XXXIII). At the time, BIA proposed that TISA prepare a "band analysis" for the  
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managed by the Directors, who were elected by Tribal members residing in the Service Area. TISA's powers include the right to sue and be sued, to enter into agreements and contracts, to purchase land or interests in land or personal property, to lease its lands, to invest funds, and to maintain bank accounts as necessary. Ordinance 28-B (AR Tab 50 at 199-200).

In 1992, TISA purchased the Allotment, a tract of restricted trust land consisting of 16.14 acres and located in the Service Area. The deed conveyed the Allotment to "the Turtle Mountain Band of Chippewa Indians for the use of the Trenton Indian Service Area in Trust Status." Deed No. 256-1004 (AR Tab 5 at 6). A BIA realty officer subsequently described the transaction as "conveying trust property . . . from [the grantor] Violet Robinson . . . to Trenton Indian Service Area." Letter from Realty Officer to TISA Chairman, Aug. 26, 1992 (AR Tab 5 at 5).

In 1997, TISA entered into a 10-year business lease with Carl Renville (Renville) for a "smoke shop" on 1.5 acres of the Allotment at a rental rate of \$300 per year. Lease No. 2442 (AR Tab 8).<sup>8</sup> Around this time, the Tribal Council tried to lease an adjacent portion of the Allotment to another business without TISA's consent. *See* Tribal Resolution No. TMBC1081-09-98, Sept. 15, 1998 (AR Tab 6 at 10) (authorizing a business lease on the Allotment for Craig Wilkie and Marlene Collier). The Superintendent rejected the Tribal Council's efforts to lease part of the Allotment, holding that "any leases on land purchased by TISA must first be approved under Ordinance 28-B before getting final approval by the Tribal Council and [BIA]." *Id.* at 9. In 2001, the Tribe's Chairman took the position that TISA had "the authority to make a *final* determination on land issues," including leases. Letter from Tribe to TISA, Mar. 1, 2001 (AR Tab 9) (emphasis added).

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<sup>7</sup>(...continued)

Service Area, which would enable program funds to be set aside specifically for TISA. *See id.* The term "band analysis" is a budget term that refers to columns or "bands" in which funding level priorities are arranged. *See Tribal Participation in the Bureau of Indian Affairs Budget System Should be Increased* at 2, Rpt. of the Comp. Gen., Feb. 15, 1978 (found at [www.gao.gov/assets/130/121533.pdf](http://www.gao.gov/assets/130/121533.pdf)) (excerpt added to the record). We take official notice of this document pursuant to 43 C.F.R. § 4.24(b).

<sup>8</sup> The lease provided for the rent to be reviewed and adjusted in or after the fifth year of the lease. The record does not contain any information concerning any adjustments that may have been made to Renville's lease prior to the contested renewal.

In January 2008, the Directors took action to trigger a termination provision in the lease with Renville and gave him 90 days' notice to vacate. Two weeks after the Directors' action, in an apparently unrelated context, the Tribal Council suspended TISA's duly elected Directors, pending a forensic audit of TISA's finances. Tribal Resolution No. TMBC0522-01-08, Jan. 22, 2008 (AR Tab 44 at 164); TISA's Opening Brief at Ex. XLII (same). Thereafter, the Tribe apparently notified BIA that it was "going to handle" the Renville lease. *See* undated, unsigned, handwritten note (AR Tab 13); *see also* Decision (AR Tab 46 at 172).

Meanwhile, Renville continued to occupy the Allotment. On March 5, 2009, the Tribal Council reinstated the Directors, and TISA continued its efforts to evict Renville. Before further eviction proceedings occurred, the Tribal Council passed a resolution on April 24, 2009, to renew Renville's lease for 10 years with an automatic 5-year renewal thereafter. Resolution No. TMBC 189-04-09, Apr. 24, 2009 (AR Tab 29 at 84). On June 5, 2009, a new lease was drafted, and it was signed by Renville, by the Tribe's Chairman, and by the Tribe's Secretary/Treasurer; the lease was approved by the Superintendent 5 days later. Lease No. 50 3993 0817 (AR Tab 33 at 96). The lease was not executed or otherwise approved by the Directors. The new lease, like the old lease, required Renville to pay rent directly to TISA. *Id.* at 95. The new rental amount was set at \$100 per month, and BIA reserved the right to review and adjust the rental amount "at not less than 5-year intervals." *Id.* at 96.

TISA appealed the Superintendent's approval of the new lease to the Regional Director.

In its appeal to the Regional Director, TISA argued that the deed guaranteed it the exclusive "use" of the land. TISA explained that it now wished to use the land for economic development purposes, and claimed that the rental under the new lease, \$100 per month, was so low as to be "unconscionable." Statement of Reasons to Regional Director (AR Tab 35 at 102, 106).<sup>9</sup> It also argued that, in the past, the Tribe and BIA had recognized TISA's right to veto a proposed lease on the Allotment before final approval by BIA.

The Regional Director dismissed TISA's appeal for lack of standing. He discussed the elements of standing outlined in *Dubray v. Great Plains Regional Director*, 48 IBIA 1, 19 (2008) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)), and held that while TISA could arguably show the first element, injury, it could not fulfill the remaining two

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<sup>9</sup> TISA's Statement of Reasons refers to 15 exhibits, Exhibits A through O, none of which appear in the administrative record at Tab 35 with TISA's Statement of Reasons.

elements, causation and redressability. He opined that adjudicating the merits of the appeal would require an interpretation of tribal law, and that such inquiries are properly left to tribal forums. He stated that BIA would “defer to the landowner’s [(i.e., the Tribe’s)] determination that [the] negotiated lease is in their best interest.” Decision (AR Tab 46 at 176) (citing 25 C.F.R. § 162.107).

TISA timely appealed the Decision to the Board. TISA filed an opening brief, the Regional Director filed an answer brief, and TISA filed a reply brief. The Tribe did not submit a brief in this appeal, but the administrative record contains an amicus brief the Tribe filed with the Board in an earlier appeal by TISA concerning the same underlying dispute. See AR Tab 44 at 151-53; see also *Trenton Indian Service Area v. Great Plains Regional Director*, 51 IBIA 130, 131 n.3 (2010) (*TISA I*).<sup>10</sup>

### Discussion

We agree with TISA that it has standing to object to the approval of the lease. The deed to the Allotment explicitly names TISA and the language undoubtedly creates some interest for TISA that we conclude is sufficient to constitute a legally protected interest. As such, the deed reposes an interest in the Allotment in TISA, be it a beneficial interest or some other interest, which is sufficient to give TISA standing to object to BIA’s approval of the lease with Renville.

TISA bears the burden of proving error in the Decision. See *Northern Cheyenne Livestock Assoc. v. Acting Rocky Mountain Regional Director*, 48 IBIA 131, 135 (2008). Where the material facts supporting standing are not in dispute, standing then is a legal question that we review *de novo*. See *id.* at 135-36.

The scope of the Board’s review ordinarily is limited to the issues addressed in the decision under review. See 43 C.F.R. § 4.318. We therefore determine only whether TISA has standing to appeal the Superintendent’s decision to the Regional Director, and we will not consider the merits of TISA’s objections to the lease.

Standing is established when the legally protected interests of an interested party could be adversely affected by BIA’s decision. See 25 C.F.R. §§ 2.2 (definitions of

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<sup>10</sup> In *TISA I*, TISA sought an order from the Board compelling the Regional Director to respond to the appeal it had filed from the Superintendent’s approval of Renville’s lease. That appeal resolved with the issuance of the Decision.

“Appeal,” “Appellant,” and “Interested Party”), 2.3(a) (applicability of appellate procedures). As we explained in *Reeves v. Great Plains Regional Director*, 54 IBIA 207, 212 (2012),

an appellant must show that she is ‘adversely affected’ or ‘injured’ by the BIA decision that is being appealed. . . . To be ‘adversely affected,’ within the meaning of the regulations, the injury must be caused by the challenged decision and the injury must be to a legally protected interest held by the appellant.

Citations omitted. The Board also requires that the alleged injury be redressable by a favorable decision from the appellate forum. *See, e.g., Reeves*, 54 IBIA at 212.

TISA asserts that its purchase of the Allotment and the language in the deed created in TISA a legally protected interest in the Allotment. It further asserts that the fact that the rental revenue from the challenged lease is paid directly to TISA also underscores its legally protected interest in the Allotment. It argues that the Regional Director, not the Tribe, caused the exclusion of TISA from the approval process and that this injury can be redressed by the Regional Director. We agree with TISA that it satisfies the elements of standing.

The deed for the Allotment transferred ownership from the seller to “the Turtle Mountain Band of Chippewa Indians for the use of the Trenton Indian Service Area in Trust Status.” Deed No. 256-1004 (AR Tab 5 at 6). The bare inclusion of TISA in the designation of grantee — regardless of the nature of the title interest — is sufficient to confer on TISA a legally protected interest in the Allotment and, with it, the right to be heard on matters involving or affecting the Allotment.<sup>11</sup> And, the Tribe has clearly authorized the elected Directors of TISA to act on behalf of TISA, and has vested in TISA the power to sue and be sued and to hold land or interests in land. *See Ordinance 28-B* (AR Tab 50). The parties may disagree concerning the Tribe’s relative authority over TISA, but no party has disputed that Ordinance 28-B vested the powers enumerated in that ordinance in the elected Directors.

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<sup>11</sup> We do not agree with TISA that its designation as the entity to receive the rental payments, standing alone, gives it a legally protected right to challenge the approval of the lease: But for the lease, there are no rental payments. Therefore, TISA cannot rely exclusively on the payment of rental income to establish its standing, but we do agree that, to the extent it suggests an acknowledgment of TISA’s legal entitlement *under the deed* to receive the rental payments, the argument carries some weight.

The Regional Director asserts that the Tribe is the owner of the Allotment and because, as a matter of Federal law, the United States cannot hold property in trust for TISA *qua* TISA, TISA has no ownership interest in the Allotment. According to the Regional Director, it follows that TISA can have no independent right or legally protected interest in the Allotment, and therefore lacks standing. The Regional Director errs. As already discussed, the language in the deed created some interest in the Allotment in TISA. The Regional Director attempts to draw a distinction between the original tribal corporate entity, “Trenton Service Area,” and the definition of “Trenton Indian Service Area” in original Ordinance 28 as the enrolled members of the Tribe who reside in the area. Answer Brief at 6. The Regional Director argues that the reference to “Trenton Indian Service Area” in the deed thus necessarily refers to a collective group of tribal members, and not to TISA as an entity. We are not convinced.

First, the “Be it Resolved” clause in Ordinance 28 expressly refers to “Trenton Indian Service Area (hereinafter refer[red] to as the corporation),” and “Board” is defined to mean the Board of Directors “of the Trenton Indian Service Area,” undoubtedly referring to TISA as an entity. *See* Ordinance 28 (attached to Regional Director’s Answer Brief). Thus, the definition of “Corporation” as “the five member Trenton Service Area,” a reference to the Directors, appears to be a distinction without a difference. And second, before TISA, the entity, purchased the Allotment — as it was authorized to do — the Tribe had replaced Ordinance 28 with Ordinance 28-A, and ultimately with Ordinance 28-B; the latter ordinance refers to TISA as a tribal organization — i.e., an entity. Thus, we reject the Regional Director’s interpretation of the deed language as not intending to refer to TISA, the entity.<sup>12</sup> We need not and do not attempt to define that interest, concluding only that TISA has *an* interest in the Allotment and that it is a legally protected interest because TISA is named in the deed. Thus, as a threshold matter of standing, TISA has a legally protected interest in the Allotment and a legally established governing body empowered to represent that interest.<sup>13</sup>

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<sup>12</sup> It is not clear where the Regional Director’s interpretation would lead, even if accepted. If the deed intended to create a beneficial interest in the resident tribal members of the Service Area, collectively, it is unclear why they would not have standing as a collective group. And TISA, as the entity created specifically to represent the residents, arguably would have standing to represent its members.

<sup>13</sup> TISA presents several theories on how the language on the face of the deed (“for the use of the Trenton Indian Service Area”) creates a legally protected interest: a trust relationship, a restrictive covenant, or third-party beneficiary contract rights. The Regional Director  
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With TISA's legally protected interest established, we turn to the remaining elements of standing — injury, causation and redressability — and find that they also are satisfied. In denying TISA an opportunity to be heard on the merits of its objections (e.g., that TISA, not the Tribe, has authority to lease the Allotment, that TISA has other plans for the use of the land occupied by Renville, and that the rent set forth in the lease is inadequate), the Regional Director denied TISA due process, which itself constitutes “injury” for purposes of standing. And this denial of process was not caused by the Tribe but by the Regional Director: The Regional Director chose to eliminate any opportunity for TISA to weigh in on the merits of the lease with Renville. Finally, the asserted injuries are potentially redressable by the Regional Director in a decision that considers each of the objections raised by TISA and addresses them in a formal decision.

The Regional Director takes the position that BIA did not cause any injury to TISA because the Superintendent's decision to approve the lease was predicated on a tribal decision, not an agency decision. The Regional Director misses the point. TISA has a much more fundamental argument: It was denied the right *by the Regional Director* to be heard on *any* argument relating to the Allotment and Renville's lease, including, e.g., whether the rental amount is “unconscionable.” If a deed provides that land is for the use of TISA, then a decision by BIA to approve a lease for less than fair market rental value, as TISA argues, *is* a cause of injury to TISA. That the Tribe may have plenary authority over tribal land matters simply does not *ipso facto* eradicate TISA's standing to object to or comment upon BIA's approval of the lease negotiated by the Tribal Council.<sup>14</sup>

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<sup>13</sup>(...continued)

argues that questions of title to trust property are beyond the authority of the Board. We do not reach these issues and need not do so in the context of determining whether TISA has standing in this matter. Moreover and regardless of the underlying legal theory, TISA has, until now, apparently exercised significant control over the Allotment. The new lease, like the old lease, requires payment of rent directly to TISA, and both the Tribe and BIA previously took the position that TISA had veto power over proposed leases for the Allotment. If nothing else, the Tribe's and BIA's former position is probative of the parties' understanding that TISA had some type of legally protected interest in the Allotment.

<sup>14</sup> *If* the Tribe had not reinstated the Directors or *if* the Tribe had taken action to remove the Directors' authority over lands in which TISA has an interest, an issue might be raised about whether the individuals who brought this appeal in TISA's name were authorized to do so. The tribal resolution that authorized the renewal of Renville's lease establishes the consent and support of the Tribe for the lease renewal but it did not purport to strip the

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Finally, the Regional Director argues that he could not redress TISA's injury because to do so would amount to adjudicating an intra-tribal dispute, which is contrary to BIA policy. *See, e.g., Wasson v. Western Regional Director*, 42 IBIA 141, 157 (2006) ("the Board has ruled that neither BIA nor the Board should generally decide disputes that are intra-tribal in nature"), and cases cited therein. At a minimum, we fail to see how BIA's consideration of TISA's substantive objections, including its objection to the rental rate, requires any adjudication of a tribal dispute. The redress is providing TISA, at a minimum, a procedural right to be heard and to have its arguments considered and addressed by the Regional Director. That the Regional Director's consideration of the merits *may* require the Regional Director to determine matters of tribal law does not provide a basis for denying TISA the right to present its arguments and have them considered.

Thus, we conclude that TISA has standing to assert its appeal to the Regional Director. The Regional Director erred in denying TISA an opportunity to state its objections to the lease and dismissing TISA's appeal. This injury was caused by BIA, not by the Tribe, and BIA will redress this injury by considering and addressing TISA's arguments on remand.

### Conclusion

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 reverses the Regional Director's January 29, 2010, Decision, and remands the matter for further proceedings consistent with the Board's decision.

I concur:

          // original signed            
Debra G. Luther  
Administrative Judge

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

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<sup>14</sup>(...continued)

Directors of any authority that they have under Ordinance 28-B concerning TISA's assets, which include the interest that TISA has in the Allotment. *See* Resolution No. TMBC-189-04-09, Apr. 24, 2009 (AR Tab 29 at 84-85).