INTERIOR BOARD OF INDIAN APPEALS

Aitkin County, Minnesota v. Acting Midwest Regional Director, Bureau of Indian Affairs

47 IBIA 99 (06/12/2008)

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

AITKIN COUNTY, MINNESOTA, Appellant,	)	Order Affirming Decision
v.	)	Docket No. IBIA 06-39-A
ACTING MIDWEST REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	June 12, 2008

Aitkin County, Minnesota (County), appealed to the Board of Indian Appeals (Board) from a December 30, 2005, decision of the Acting Midwest Regional Director, Bureau of Indian Affairs (Regional Director, BIA). The Regional Director affirmed a July 6, 2004, decision of the Minnesota Agency Superintendent, BIA (Agency, Superintendent), that approved the acceptance into trust of approximately 40 acres, known as Tract No. 410 TF 130 (Kareen property), located in the County, for the Mille Lacs Band of Ojibwe Indians of the Minnesota Chippewa Tribe (Band).[1]

We conclude that the County has shown no error in the Regional Director's decision to treat the acquisition as an on-reservation acquisition. We also conclude that the County has failed its burden of showing that the Regional Director did not consider the necessary criteria under 25 C.F.R. § 151.10 in her determination to take the Kareen property in trust and therefore we affirm.

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 describe BIA's land acquisition policy, in

[1] The tract is also known as Parcel No. 30-0-032600 and is described as the N¼N¼ of Section 20, Township 47 North, Range 23 West, 4th P. M., Spalding Township, in the State of Minnesota.

part, as allowing land to be taken into trust "[w]hen the Secretary determines that the acquisition . . . is necessary to facilitate tribal self-determination, economic development, or Indian housing." 25 C.F.R. § 151.3(a)(3).

The regulations distinguish between "on-reservation" and "off-reservation" trust acquisitions, and subject "off-reservation" trust acquisitions to additional scrutiny. *Comp.* 25 C.F.R. § 151.10 *with id.* § 151.11. As relevant to this appeal, "Indian reservation" means that "area of land over which the tribe is recognized by the United States as having governmental jurisdiction." 25 C.F.R. § 151.2(f). In evaluating requests to acquire land located "within or contiguous to an Indian reservation," BIA must consider the criteria set forth in 25 C.F.R. § 151.10(a)-(h). These 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;
> (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
> (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;
> (g) If the land to be acquired is in fee status, whether the [BIA] is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
> (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.

25 C.F.R. § 151.10.

In evaluating tribal requests to accept land in trust that is located outside of and noncontiguous to the tribe's reservation, BIA must consider the criteria set forth in section 151.10, with the exception of subsection (d), as well as, among other things, the location of the land relative to state boundaries and its distance from the requesting tribe's reservation boundaries. 25 C.F.R. § 151.11.

Factual and Procedural Background

The Band has a land base consisting of approximately 4,384.71 acres of tribal trust land located in five counties in Minnesota, including Aitkin County. Included within that land base is a parcel of land that was reserved for the Band by the Treaty of 1855, 10 Stat. 1165 (Feb. 22, 1855) (treaty reservation), which is located in Mille Lacs County. The 40-acre parcel at issue in this appeal, the Kareen property, is not adjacent to the treaty reservation. The Kareen property is located in Aitkin County where it abuts the western half of Tract No. 410 T 1031. Tract No. 410 T 1031 is held in trust by the United States for the Band and houses the Band's District II Government Center and District II Community Center. The Kareen property was purchased by the Band in fee simple status on July 31, 1997, and currently houses an Assisted Living Unit (ALU) for the Band's elder population.

On December 23, 2003, the Band submitted an application to the Superintendent to have the Kareen property taken into trust. Attached to the application was a copy of Mille Lacs Band Resolution No. 09-04-114-01, which formally authorized and requested the United States to take the property in trust. The Band stated that the reason for its application was to provide adequate housing for its growing elder population, which it identified as one of its highest priorities. The Band noted that the Kareen property was selected to house the ALU because it is adjacent to tribal trust land where a tribal community center is located and is within a one-mile radius of the majority of the Band's housing for District II. The Band asserted that trust status would enable the Band to exert its own regulatory authority on the property. The Band also asserted that the long-term cultural, economic viability, and continuance of the ALU depends on the land being taken into trust. The Band further explained that it was necessary to acquire additional trust land for the ALU because the Band's trust land base was limited and, to the extent feasible, was fully developed. The Band finished construction of the 10-unit ALU in 2002 and, at the time of its 2003 fee-to-trust application to BIA, employed 14 personnel at the facility.

The Band prepared a categorical exclusion for compliance with NEPA, which was approved by the Superintendent on January 6, 2004.

By letter dated February 3, 2004, the Superintendent advised the County, the State, and the Town of Spalding (Town) of the Band's trust acquisition application and solicited comments. The County responded that it had always been the County's policy to oppose the changing of property status from fee to trust. The County asserted that the erosion of its tax base without any reduction in the demand for services placed an unfair burden on the County's taxpayers. The County attached a memorandum, prepared by the County Auditor, which showed that taxes assessed by the County for 2003 on the Kareen property

were $25,826 and anticipated taxes for 2004 would be $20,168; the memorandum does not provide the total tax base for the County in 2003, but indicates that the expected "tax capacity" for the County in 2004 is $13,902,893.[2]

On July 6, 2004, the Superintendent approved an environmental site assessment that was completed for the Kareen parcel. Also on July 6, 2004, the Superintendent sent a letter to interested parties notifying them of his intent to acquire the Kareen property in trust for the benefit of the Band. The Superintendent reached his decision after examining the factors set forth for trust acquisitions in 25 C.F.R. § 151.10.

The County appealed the Superintendent's decision to the Regional Director, and submitted a statement of reasons. The County argued that the Kareen property was not located within the exterior boundaries of nor contiguous to the Band's reservation, and therefore, the Superintendent erred in not applying the additional criteria set forth in 25 C.F.R. § 151.11. The County also challenged the Superintendent's determinations with respect to the existence of statutory authority for the acquisition (subsection 151.10(a)), the Band's need for additional land (subsection 151.10(b)), the purposes for which the land will be used (subsection 151.10(c)), and the impact on the County resulting from the removal of the land from the tax rolls (subsection 151.10(e)). The Band submitted an answer brief to the Regional Director in response to the County's statement of reasons.

On December 30, 2005, the Regional Director issued the decision that is the subject of the present appeal. In her decision, the Regional Director affirmed the Superintendent's decision to take the Kareen property into trust. The Regional Director first rejected the County's argument that the Superintendent should have treated the application as an off-reservation acquisition. The Regional Director stated that the Kareen parcel is adjacent to property held in trust by the United States for the Band, and concluded that this adjacent property satisfies the definition of "Indian reservation" contained in 25 C.F.R. § 151.2.

The Regional Director then reviewed the Superintendent's analysis of the seven applicable criteria set forth in 25 C.F.R. § 151.10, subsections (a) through (h), and reached the following conclusions with respect to each factor: (a) Section 465 of 25 U.S.C. provides the authority for the trust acquisition; (b) the Band has demonstrated a need for more trust land to provide an ALU for its aging elder population; trust status would allow the Band to regulate the activities that occur on the land; trust status would ensure

---

[2] The State and Town also submitted objections to the Superintendent concerning the fee-to-trust transfer of the Kareen property, but did not appeal the Superintendent's decision to the Regional Director.

permanency of the Band's land base, bringing stability to the Band; and most of the Band's existing land base suitable for development is already developed; (c) the purpose of the acquisition is to provide an ALU for the Band's elder community, which falls within the purview of tribal self-determination; (e) although the acquisition would impact the County's tax base, the ALU actually relieves the County of a demand for assisted living and healthcare services because the Band has committed to taking care of its elderly population without the County's assistance; (f) the County's assertion that there will be an increased need for services from the County as a result of the proposed trust acquisition is unsupported by the record, given the Superintendent's determination that there is no change to the County's criminal jurisdiction over the property and that the Band has been actively enforcing tribal law and has been providing services such as road maintenance, sewer, and garbage services to the Kareen property; (g) BIA is equipped to discharge any additional responsibilities arising from the acquisition of the Kareen property and those responsibilities would be minimal; and (h) information was provided that allows the Secretary to comply with 516 DM 6, appendix 4, NEPA Implementing Procedures, and 602 DM Land Acquisitions: Hazardous Substances Determinations.[3]

The County appealed to the Board and submitted an opening brief. The County challenges BIA's decision to apply only the on-reservation acquisition criteria of 25 C.F.R. § 151.10, rather than the additional off-reservation acquisition criteria of section 151.11. With respect to the criteria under section 151.10, the County challenges BIA's consideration of the Tribe's need and purpose for the Kareen property as well as the revenue loss to the County (criteria (b), (c), and (e)); the County does not dispute BIA's consideration of the remaining criteria. BIA and the Band submitted answering briefs. The County did not submit a reply brief.

Discussion

I. Standard of Review

The standard of review in trust acquisition appeals is well established. Decisions by BIA officials to take land into trust are discretionary, and the Board does not substitute its judgment in place of BIA's judgment in such decisions. *Arizona State Land Dep't. v. Western Regional Director*, 43 IBIA 158, 159-60 (2006). Instead, the Board reviews discretionary decisions to determine whether BIA considered the legal prerequisites to the

[3] Subsection (d) applies only to land acquisitions on behalf of individual Indians and, therefore, is inapplicable to acquisitions on behalf of tribes.

exercise of its discretionary authority, including any established limitations on its discretion. *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). Thus, the decision must reflect that the Regional Director considered the appropriate factors set forth in 25 C.F.R. Part 151, but there is no requirement that BIA reach a particular conclusion with respect to each factor. *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 63 (2006). The factors are not weighted or balanced in any particular way, nor must each factor be exhaustively analyzed. *County of Sauk v. Midwest Regional Director*, 45 IBIA 201, 206-07 (2007).

Appellants bear the burden of establishing that BIA did not properly exercise its discretion. *Cass County*, 42 IBIA at 246; *Shawano County v. Midwest Regional Director*, 40 IBIA 241, 244 (2005); *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. *County of Sauk*, 45 IBIA at 207.

In contrast to the Board's limited review of BIA discretionary decisions, the Board has full authority to review legal issues raised in a trust acquisition case other than issues raising the constitutionality of laws or regulations. *See Skagit County*, 43 IBIA at 64; *Cass County*, 42 IBIA at 247. Thus, we review de novo the Regional Director's determination that this trust acquisition is governed by 25 C.F.R. § 151.10 as an on-reservation acquisition and not by 25 C.F.R. § 151.11 as an off-reservation acquisition.

II. BIA Correctly Treated the Trust Acquisition as an On-Reservation Acquisition

The County contends that the Regional Director erred in treating the proposed acquisition as an on-reservation acquisition and argues that BIA should have applied the additional off-reservation criteria of 25 C.F.R. § 151.11. According to the County, the Kareen property is neither within the exterior boundaries of nor contiguous to the Band's Indian reservation because the Band's only "reservation" is its treaty reservation in Mille Lacs County.[4] The County thus suggests that the acquisition should have been treated as an off-reservation acquisition because no formal proclamation added Tract No. 410 T 1031 to the Band's reservation, because tribes somehow are limited to a single "reservation" rather than a multi-parcel reservation, and because the record does not reflect that the United

[4] The County does not dispute that the Kareen property is contiguous to Tract No. 410 T 1031.

States recognizes the Band's jurisdiction over Tract No. 410 T 1031. We disagree with the County's arguments and conclude that, because the Band is presumed to exercise jurisdiction over its trust properties and because Tract No. 410 T 1031 is held in trust for the Band, the Regional Director properly considered the acquisition of the Kareen property pursuant to the on-reservation acquisition criteria set forth in 25 C.F.R. § 151.10. We turn now to a discussion of these arguments.

The County construes "reservation," as used in section 151.11, to be limited to a formally-proclaimed Indian "reservation." *See* County's Opening Brief at 3 & n.3 ("use of the term 'tribe's reservation' as opposed to 'Indian reservation'"), n.2 (distinguishing trust acquisition authority under 25 U.S.C. § 465 from reservation proclamation authority under 25 U.S.C. § 467). We reject the County's cribbed interpretation of the phrase, "tribe's reservation."

First, we note that there is no indication in Part 151 or in the history of the regulations to suggest that "tribe's reservation" (or "reservation") is intended to have any different meaning than "Indian reservation," as defined in section 151.2(f), except to refer to the reservation of a *specific* tribe, i.e., the tribe submitting the land acquisition application. In fact, in section 151.3, "tribe's reservation" and "Indian reservation" are both used to refer to on-reservation land acquisitions. *Comp.* 25 C.F.R. § 151.3(a)(1) *with id.* § 151.3(b)(1). Second, the phrase "tribe's reservation" must be considered in the context of the entire sentence and regulations of which it is part: "The Secretary shall consider the following requirements in evaluating *tribal requests* for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to *the tribe's reservation*." 25 C.F.R. § 151.11 (emphasis added). Section 151.11 uses the phrase, "the tribe's reservation," twice further in subsection (b), which requires the Secretary to consider the distance of the proposed acquisition from "the tribe's reservation." Thus, the drafters were consistent and clear in their use of "the tribe's reservation" in section 151.11 to refer to the reservation of a specific tribe. Finally, while the drafters could have said "the *tribe's Indian* reservation" instead of "the tribe's reservation," use of both "tribe's" and "Indian" in the phrase would be redundant — tribes' reservations *are* Indian reservations. Conversely, use of "an Indian reservation" instead of "the tribe's reservation" in section 151.11 would have suggested that a land acquisition by one tribe that lies within the boundaries of a second tribe's reservation would not be treated as an off-reservation acquisition. *Cf.* 25 C.F.R. § 151.8 (for tribal land acquisitions on another tribe's reservation, the latter tribe's consent is required). Consequently, we conclude that the phrase, "tribe's reservation," was used by the drafters for ease, clarity, and consistency in 25 C.F.R. § 151.11 and is intended to refer to the Indian reservation of the tribe submitting the fee-to-trust acquisition application.

To the extent that the County suggests that Tract No. 410 T 1031 is not part of the Band's reservation because there is no evidence of a "proclamation" formally adding this parcel to the Band's reservation within the meaning of 25 U.S.C. § 467, the County errs. The regulation itself defines "Indian reservation" to mean in relevant part "that area of land over which the tribe is recognized by the United States as having governmental jurisdiction." 25 C.F.R. § 151.2(f). There is no requirement in section 151.2(f) that there be a formal proclamation before a parcel may be considered an Indian reservation or part of an Indian reservation for purposes of a land acquisition under Part 151.

Additionally, there is no evidence in section 151.2(f) that the drafters intended that a tribe may not have a multi-parcel reservation or have more than one "reservation." Because it is undisputed that Tract No. 410 T 1031, which is the property adjacent to the Kareen property, is held in trust, we examine whether the law recognizes a distinction between "trust land" and "reservation land" and conclude that it does not. *See, e.g., Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991); *United States v. John*, 437 U.S. 634, 648-49 (1978). In *Oklahoma Tax Commission*, the Supreme Court rejected such a distinction, reiterating that "the test for determining whether land is Indian country does not turn upon whether that land is denominated 'trust land' or 'reservation.' Rather, we ask whether the area has been 'validly set apart for the use of the Indians as such, under the superintendence of the Government.'" *Id*. at 511 (quoting *John*, 437 U.S. at 648-49). We find nothing in the record — and the County directs us to no law or evidence — that shows that Tract No. 410 T 1031 was not "validly set apart" for the Band when it was taken into trust.

Finally, we turn to the issue of whether the record reflects that the United States recognizes the Band as exercising governmental jurisdiction over Tract No. 410 T 1031.[5] We conclude that the Band's jurisdiction may reasonably be presumed for purposes of Part 151 because the principle is well-established in the law. The Supreme Court has noted that, "[g]enerally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and *the Indian tribe inhabiting it*. . . ." *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1 (1998) (emphasis added); Cohen's

---

[5] For the first time on appeal to the Board, the County argues — without any support — that BIA is required to make an express finding concerning the United States's recognition of the Band's governmental jurisdiction over Tract No. 410 T 1031. The Board ordinarily does not consider arguments raised for the first time on appeal, *Edwards v. Pacific Regional Director*, 45 IBIA 42, 54 n.18 (2007), and we see no reason to depart from this rule in this case.

Handbook of Federal Indian Law (2005) (Cohen's Handbook) at 224-25 ("Indian tribes retain their original inherent sovereign authority over all . . . property . . . within Indian country unless Congress clearly and unambiguously acts to limit the exercise of that power.").[6] Based on this precedent and the absence of any evidence to the contrary from the County, the Band's jurisdiction over Tract No. 410 T 1031 properly is presumed.

Therefore, we conclude that the Regional Director properly determined that Tract No. 410 T 1031 is an "Indian reservation" within the meaning of 25 C.F.R. § 151.10, and, because the Kareen property is contiguous to Tract No. 410 T 1031, BIA properly evaluated the acquisition of the Kareen property under the "on reservation" criteria of section 151.10.

III. Review of the Regional Director's Trust Acquisition Analysis under Section 151.10

On appeal, the County challenges the Regional Director's analysis for the proposed trust acquisition under three of the criteria listed in 25 C.F.R. Part 151 — subsections 151.10(b) (Band's need for additional land), 151.10(c) (purpose for which the property will be used), and 151.10(e) (impacts resulting from removal of land from tax rolls). We conclude that the County has not met its burden of proving that the Regional Director failed to consider the necessary factors or improperly exercised his discretion to take the Kareen property into trust. Therefore, we affirm.

A. 25 C.F.R. § 151.10(b) - The Band's Need for Additional Land, and
25 C.F.R. § 151.10(c) - The Purpose for Which the Land Will Be Used

The Regional Director determined that the Band requires additional trust land to provide for its aging population and needs to be able to assert tribal authority over such land. The Regional Director determined that the Band would continue to use the Kareen Property for "[t]he purpose of providing an [ALU] for the aging elder population in [the

---

[6] The term "Indian country," as used in *Oklahoma Tax Commission, John,* and *Native Village of Venetie*, derives from 18 U.S.C. § 1151, where the term is defined in part as "all land within the limits of any Indian reservation under the jurisdiction of the United States." However, Cohen's Handbook refers to the historical use of the phrase to describe lands set aside for the Indians. Cohen's Handbook, § 3.04. We rely on these precedents to demonstrate that the courts have made little if any distinction between tribal trust lands and tribal reservations as well as to demonstrate that it is accepted, indeed, expected that the tribes will exercise governmental jurisdiction over their trust lands, regardless of whether they consist of original treaty lands or subsequent trust land acquisitions.

Band's] District II East Lake Community." Decision at 4. The County makes two arguments against the Regional Director's determinations. First, the County argues that 25 U.S.C. § 465 primarily authorizes the purchase of additional lands by the United States on behalf of Indians in need of land. According to the County's argument, the Band already owns the Kareen property and, therefore, it has no need to acquire the land. Moreover, because the Band has been operating the ALU on the property, the Band does not need the land held in trust to use it for its intended purpose. Second, the County argues that the Regional Director made no express finding that the Band requires additional land but "only restate[d] conclusory remarks" that reflect the Band's belief that it needs more land. County's Opening Brief at 4. We conclude that the Regional Director properly considered the Band's need for additional land.

For nearly 75 years, Congress has authorized the acquisition of lands on behalf of Indians: "The Secretary of the Interior is hereby authorized in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians." 25 U.S.C. § 465. Thus, BIA has broad discretion in its interpretation or construction of tribal "need" for the land at issue, and it is not the role of the County to determine how that need is defined. *County of Sauk*, 45 IBIA at 209; *see also South Dakota v. Dep't. of the Interior*, 423 F.3d 790, 801 (8th Cir. 2005) (it was sufficient for the Department's analysis to express the Band's needs and conclude generally that IRA purposes were served).

We reject the County's arguments that the Regional Director did not consider the Band's need for additional land. First, nothing in 25 U.S.C. § 465 restricts the acquisition of land to purchases of land by the United States. The statute identifies a range of means by which lands may be obtained by the United States on behalf of Indians, including gift and assignment, both of which arguably apply to the Band's transfer of title to the United States. Moreover, as the County concedes, the trust acquisition regulations specifically address and permit the acquisition in trust by the United States of fee lands owned by Indian tribes. 25 C.F.R. § 151.4; *see South Dakota v. Acting Great Plains Regional Director*, 39 IBIA at 294; *see also* County's Opening Brief at 3 n.3. Indeed, it is not uncommon for tribes to own the subject land in fee at the time of applying for trust status. *See South Dakota v. Acting Great Plains Regional Director*, 39 IBIA at 293.

Second, apart from characterizing the Regional Director's findings as conclusory, the County offers no argument, let alone evidence, to suggest that the Regional Director did not consider the Band's need for this parcel nor does the County offer any argument that undermines the Regional Director's findings. The Regional Director expressly determined that the Band had demonstrated a need for additional land to provide an ALU for its aging

elder population. Decision at 3-4. The Regional Director's finding was supported by the Band's application for the trust acquisition, in which the Band explained that (1) its current trust land base was inadequate to meet its needs because the land suitable for development was fully developed, and (2) locating the ALU on the Kareen property would allow the elders who are housed in the ALU to stay in close proximity to family members, to the tribal community, and to tribal government services available on the Band's adjoining trust land. The Regional Director found that the trust acquisition would provide the Band with the ability to exercise its governmental authority over the Kareen property, consistent with the Band's right to make its own laws and be governed by them, and would ensure the permanency of the Band's land base.

The Board has held that BIA is permitted, but not required, to consider a tribe's demonstrated need to have land held in trust as opposed to being retained in fee, where the tribe already owns the subject land in fee. *South Dakota v. Acting Great Plains Regional Director*, 39 IBIA at 294; *see also South Dakota v. U.S. Dep't. of the Interior*, 487 F.3d at 552-53 n.3 (it would be an unreasonable interpretation of 25 C.F.R. § 151.10(b) to require the Secretary to detail specifically why trust status is more beneficial than fee status in the particular circumstance, and rejecting argument that a tribe does not "need" land for self-support because it already owns the land). In the present case, the Regional Director acted within her discretion in determining the Band's need to have the land taken into trust.

Therefore, we conclude that the County has not shown that the Regional Director failed to consider the Band's need for this land, the Band's purpose for the use of the land, or failed to reach a reasonable conclusion based on the record. Thus, the Regional Director did not abuse her discretion in assessing the Band's need for additional land and the purpose for which the land would be used.

B. 25 C.F.R. § 151.10(e) - Impact on the County's Tax Base

The Regional Director found that property taxes on the Kareen property in 2003 were $25,826. She determined that the loss of tax revenue would be offset by the Band's care for its elders in the ALU, which the Band intended to finance without contribution from the State or County. Decision at 5. Therefore, the Regional Director found that the County would experience a savings in its expenditures for the care of the Indian elderly population. In addition, the Regional Director found that the property would be tax exempt if the Band were to file as a not-for-profit business or corporation. *Id*.

The County argues that the removal of the land in question from the tax rolls will have a substantial impact on local political subdivisions in lost property tax revenue while at

the same time cause an increased need for services. The County states that property taxes were assessed at $25,826 in 2003. The County contends that the Superintendent's decision[7] did not consider the loss of taxes actually assessed and paid on the property nor did it address the issue of how the County is relieved of a demand for services based on the placement of an assisted living center in the County.[8] The County also asserts that whether the Band could apply for tax exempt status as a nonprofit corporation is speculative and is not an appropriate criterion to consider in a trust acquisition.

We disagree with the County. First, the Regional Director specifically acknowledged the amount of taxes payable in 2003 and rejected the County's unsupported argument that the erosion of the tax base without any reductions in the demand for services placed an unfair burden on the remaining taxpayers. The Regional Director found that the Band had committed to taking care of its elderly population without the County's assistance, and the record reflects that the Band paid for the construction and operation of the ALU without County funds. *See* Letter from Band to Superintendent, Dec. 23, 2003, at 3. The County does not dispute these findings nor did the County offer any evidence to support its assertion that it would not experience a reduction in the demand for County services. *See County of Sauk*, 45 IBIA at 207 (simple disagreement with or bare assertions concerning the Regional Director's decision are insufficient to carry an appellant's burden of proof).[9]

The Regional Director also considered, albeit as part of her consideration of potential jurisdictional issues under factor (f) of section 151.10, that the Band has

---

[7] To the extent that the County argues that the *Superintendent* did not consider the impact of the loss of taxes on the County, his is not the decision presently before the Board. It is the Regional Director's decision from which the County appeals, and the Regional Director specifically considered the property taxes assessed by the County. We assume that the County intended to refer to the Regional Director's consideration of the revenue impact from the proposed acquisition.

[8] The County argues that in addition to itself, both the State and the Town will lose revenue as a result of the Kareen property being accepted into trust status. However, the County lacks standing to assert the interests of the State and the Town. *Doney v. Rocky Mountain Regional Director*, 43 IBIA 231, 234 (2006).

[9] Of course, to the extent that the Tribe has been providing services to the Kareen property while it is held in fee — services that would otherwise be provided by the County — the Tribe's actions have already benefitted the County.

maintained and repaired the road used to access the ALU, has contributed to a local fire department to provide fire protection services, and has tribal police and conservation officers to assist any necessary law enforcement efforts. The County has not rebutted these findings and is incorrect in its assertion that the Regional Director failed to address how the ALU would relieve the County of a demand for services. Therefore, we conclude that the County has not met its burden of providing evidence to show that the Regional Director's determination is not supported by the record, or that the information supplied by the Band, on which she relied, was erroneous. *See Cass County*, 42 IBIA at 246-47 (Regional Director's consideration of services provided by the band, which reduced the financial burden on local governments, was proper under 25 C.F.R. § 151.10(e)).[10]

Finally, we address the County's argument that the Regional Director erred in considering that the ALU is eligible for tax-exempt status, because the regulations require consideration of the tax impact only in relation to the manner in which the land was being used at the time of the application. The County is correct that the regulations require BIA to consider the loss of taxes actually assessed and paid on the property. *Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director*, 38 IBIA 18, 22 (2002). However, Appellant points to no authority for the proposition that it was impermissible for the Regional Director to consider also that the ALU would be eligible for tax-exempt status, nor does the County dispute the ALU's eligibility for tax-exempt status.

We determine that the County has not met its burden of showing that the Regional Director did not consider the financial impact on the County that could result from accepting the Kareen Property into trust.

Conclusion

We conclude that the Regional Director properly analyzed the acquisition as an on-reservation acquisition under 25 C.F.R. § 151.10. We also conclude that the County has not met its burden of establishing that the Regional Director failed to give due consideration to the Band's need for additional land, the purpose for which the land will be used, and the financial impact on the County.

---

[10] We note that the County does not identify *any* specific increased demand for services nor does it proffer any evidence of the cost of such increased demand.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we affirm the Regional Director's December 30, 2005, decision to accept the Kareen property into trust.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge