



## INTERIOR BOARD OF INDIAN APPEALS

City of Moses Lake, Washington v. Northwest Regional Director, Bureau of Indian Affairs

60 IBIA 111 (03/17/2015)



# 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

|                            |   |                          |
|----------------------------|---|--------------------------|
| CITY OF MOSES LAKE,        | ) | Order Affirming Decision |
| WASHINGTON,                | ) |                          |
| Appellant,                 | ) |                          |
|                            | ) |                          |
| v.                         | ) |                          |
|                            | ) | Docket No. IBIA 12-133   |
| NORTHWEST REGIONAL         | ) |                          |
| DIRECTOR, BUREAU OF INDIAN | ) |                          |
| AFFAIRS,                   | ) |                          |
| Appellee.                  | ) | March 17, 2015           |

The City of Moses Lake, Washington (City or Appellant) appealed to the Board of Indian Appeals (Board) from a decision (Decision) of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In the Decision, the Regional Director approved the acceptance into trust of 7 acres of land (the Property) located within the City, by the United States for the Confederated Tribes of the Colville Reservation (the Tribe).

We affirm the Decision because Appellant has not shown that the Regional Director abused his discretion in deciding to accept the land in trust. Appellant does not demonstrate that the Regional Director failed to consider the applicable regulatory factors, that he failed to give greater scrutiny to the Tribe’s anticipated benefits from this off-reservation acquisition, or that he failed to give greater weight to the concerns raised by the City as a local government, as required pursuant to 25 C.F.R. § 151.11(b).

### Statutory and Regulatory Framework

The Secretary of the Interior (Secretary) is authorized “to acquire . . . any interest in lands . . . within or without existing reservations . . . for the purpose of providing lands for Indians.” 25 U.S.C. § 465. As relevant here, BIA’s regulations provide that land may be acquired in trust for a tribe when the tribe already owns an interest in the land, or 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)(2)-(3).

When BIA receives an application for a discretionary trust acquisition, it must provide notice to the state and local governments having regulatory jurisdiction over the

land to be acquired, and give them an opportunity to submit written comments regarding the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. 25 C.F.R. § 151.10 (on-reservation); *id.* § 151.11(d) (off-reservation). If an off-reservation acquisition is for business purposes, the tribe must provide a plan that specifies the anticipated economic benefits associated with the proposed use. *Id.* § 151.11(c).

In evaluating a tribe's application to take land into trust, BIA must consider:

- (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;
- • • • •
- (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 Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

25 C.F.R. § 151.10 (on-reservation acquisitions); *see id.* § 151.11(a) (incorporating § 151.10 factors for off-reservation acquisitions). In addition, for off-reservation trust acquisitions, the regulations require that

[t]he 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 pursuant to [§ 151.11(d), providing for state and local government comments on the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments].

*Id.* § 151.11(b); *see also Jefferson County, Oregon, Board of Commissioners v. Northwest Regional Director*, 47 IBIA 187, 187-90 (2008) (describing the application of 25 C.F.R.

§§ 151.10-151.11). In accordance with these regulations, “the farther from a reservation the land is, the greater the scrutiny the Secretary gives to the justification of anticipated benefits from the acquisition.” *Carcieri v. Kempthorne*, 497 F.3d 15, 24 (1st Cir. 2007).

## Background

In September 2011, the Colville Business Council made it a priority to seek BIA’s trust acquisition of the 7-acre Property, which the Tribe owned in fee. Resolution 2011-654, Sept. 15, 2011 (Administrative Record (AR) Tab 3, Exhibit (Ex.) A). The Property, described as Tracts 64 and 65 of Battery Orchard Tracts, is located outside the boundaries of the Tribe’s reservation, in the City, near an interchange of Interstate 90. *Id.*; Retail Site Analysis, Colville Tribal Federal Corporation, June 8, 2011, at 3 (Site Analysis) (AR Tab 3, Ex. D). The Tribe’s development plan for the Property includes a twelve-pump gas station, a 3,500 square foot convenience store open 24 hours a day, and a 1,000 square foot smoke shop. *Id.* at 5.

The Regional Director notified the State of Washington, Grant County, and the City that BIA had under consideration the Tribe’s application for the acquisition of the Property into trust. Letter from Regional Director to Governor of Washington, Jan. 27, 2012 (AR Tab 3, Ex. E); Letter from Regional Director to Commissioner of Grant County, Jan. 27, 2012 (AR Tab 3, Ex. F); Letter from Regional Director to Mayor of the City, Jan. 27, 2012 (AR Tab 3, Ex. G). Appellant responded, stating that while the Property currently carried a low tax assessment, if the Property’s assessed value were adjusted to its purported sale price it would provide approximately \$3,000 in property tax receipts to the City. Letter from City to Regional Director, Feb. 14, 2012, at 1 (unnumbered) (AR Tab 3, Ex. I). Appellant also noted that there were \$82,840 in special assessments for water, sewer, and street improvements against the Property. *Id.* at 2 (unnumbered). In addition, Appellant stated that the streets adjacent to the Property, and “the ingress and egress from I-90 were not designed for voluminous heavy semi-tractor and trailer truck traffic.” *Id.* Appellant contended that the Tribe’s development of what Appellant characterized as a “truck stop” may negatively impact the value of the surrounding properties. *Id.*

The Tribe provided BIA with its responses to Appellant’s comments. Letter from Tribe to Regional Director, Apr. 9, 2012 (AR Tab 3, Ex. J). The Tribe stated that the development of the Property would benefit the City in the form of employment opportunities, increased sales of goods and services at local businesses, and the “multiplier effect.” *Id.* at 1 (unnumbered). The Tribe also indicated that it would work with the City to assure that any concerns regarding the conditions of the surrounding roads were addressed and that the development of the Property was safe and attractive. *Id.* at 1-2 (unnumbered).

The Tribe also submitted an economic analysis and an environmental assessment of its proposed development of the Property to the Regional Director. *See* Site Analysis; Travel Plaza Environmental Assessment, Apr. 4, 2012 (EA) (AR Tab 3, Ex. K). The Regional Director signed a Finding of No Significant Impact (FONSI) for the project. FONSI, Apr. 17, 2012, at 1 (AR Tab 3, Ex. L). In the FONSI, the Regional Director stated that, due to the Property's location, "[l]arge truck fueling is not included in the site design." *Id.* at 1.

The City submitted comments to BIA on the FONSI, taking issue with the Regional Director's assertion that large truck fueling was not included in the site design. The City stated that the conceptual site plan in the EA "illustrates truck gas and parking," and asked "is large truck fueling excluded as indicated by the narrative or is truck fueling and parking a part of the plan?" Letter from City to BIA, May 8, 2012, at 1 (unnumbered) (AR Tab 3, Ex. M). The City also commented that several statements in the EA about the potential employment to be created by the project seemed contradictory. *Id.* at 1-2 (unnumbered).

The Regional Director responded to the City's comments on the EA. With respect to the issue of truck fueling, the Regional Director stated that the project envisioned a "mid-sized convenience store/gas station similar to several others in [the City] at this time." Letter from Regional Director to City, May 23, 2012, at 1 (AR Tab 3, Ex. N). As explained by the Regional Director, the project "will not be a full-service truck stop, with showers, overnight parking, etc.," although the project "may service large trucks from time to time, as do other similar currently-operating businesses." *Id.* Responding to the City's employment-related comments, the Regional Director stated that the project likely would employ workers from the local labor pool, but would also employ as many tribal members as possible. *Id.*

On May 29, 2012, the Regional Director approved the Tribe's fee-to-trust application. Decision (AR Tab 3). The Regional Director first reasoned that the Tribe's September 15, 2011, resolution satisfied the requirements of 25 C.F.R. § 151.9 governing applications for approval of acquisitions.<sup>1</sup> *Id.* at 2. The Regional Director then concluded that because the Property was located outside of the Tribe's reservation, 25 C.F.R. § 151.11, governing "off-reservation acquisitions," applied. *Id.* at 3. The Regional

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<sup>1</sup> 25 C.F.R. § 151.9, "Requests for approval of acquisitions" provides:

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

Director evaluated the statutory authority for the acquisition; the Tribe's need for additional land based on the history, population, and economic status of the Tribe; the purpose for which the Property was to be used; the impact on the State and local government; possible jurisdictional conflicts; BIA's ability to discharge any additional responsibilities; whether the Tribe's plans to develop the Property complied with applicable environmental laws; and the Tribe's business plan. *Id.* at 2-8.

The Regional Director also noted the distance between the Property, the State borders, and the Tribe's reservation.<sup>2</sup> *Id.* at 3, 6. The Regional Director stated that, as required by the regulations, he was giving greater scrutiny to the Tribe's justification of anticipated economic benefits, specifically the jobs that the Tribe anticipated will be generated and the projected income to the Tribe. *Id.* at 6. The Regional Director also stated that he was giving greater weight to the concerns expressed by the City about the impact of the development. *Id.* The Regional Director then addressed the City's comments on the EA, reiterating the substance of his previous response to the City regarding its comments on the EA. *Id.* at 7-8.

On appeal to the Board, the City argues that the Regional Director failed to properly consider the criteria in 25 C.F.R. §§ 151.10 and 151.11 and therefore his Decision approving the Tribe's application was arbitrary and capricious and constituted an abuse of discretion. Opening Br. at 1-2. The Regional Director and the Tribe filed answer briefs, and Appellant filed a reply brief.<sup>3</sup>

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<sup>2</sup> The Decision initially states that the Property is approximately "38" miles from the Tribe's reservation. *See* Decision at 3. However, later in the Decision, when analyzing the impact of the distance between the reservation and the Property, the Regional Director states that the Property is approximately 68 miles from the Tribe's reservation. *Id.* at 6. In their opening and answer briefs, both the City and the Regional Director state that the distance is 68 miles. Notice of Appeal, June 29, 2012, at 2; Opening Brief (Br.), Sept. 18, 2012, at 7; Regional Director's Answer Br., Oct. 22, 2012, at 6. As Appellant notes in its reply brief, there is some discrepancy between the 68-mile figure and the Tribe's use of "approximately 78 miles" in its answer brief, but we are not convinced that Appellant has articulated how the difference between the figures is material in the context of the specific arguments raised in this case. *See* Reply Br. to Tribe, Feb. 28, 2013, at 2; *see also* Tribe's Intervener (Answer) Br., Oct. 22, 2012, at 1.

<sup>3</sup> The Tribe also filed a motion for a bond, pursuant to 43 C.F.R. § 4.332(d). We denied the Tribe's motion by order of March 12, 2014.

## Discussion

### I. Standard of Review

Where, as here, BIA's decision to take land into trust is discretionary, we do not substitute our judgment for that of BIA. *Cass County, Minnesota v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). "Rather, the Board reviews such discretionary decisions to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations." *Id.* (internal quotation marks omitted) (quoting *Shawano County, Wisconsin, Board of Supervisors v. Midwest Regional Director*, 40 IBIA 241, 244 (2005)). While the Regional Director must consider the relevant factors under 25 C.F.R. Part 151, "there is no requirement that BIA reach a particular conclusion with respect to each factor[,] . . . nor must each factor be exhaustively analyzed." *Aitkin County, Minnesota v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008). Appellant bears the burden of proving that BIA "did not properly exercise its discretion." *Jefferson County*, 47 IBIA at 200. The Board reviews legal issues raised in a trust acquisition case *de novo*. *State of Kansas v. Acting Southern Plains Regional Director*, 56 IBIA 220, 224 (2013).

### II. The Secretary's Authority under the Indian Reorganization Act (IRA) and the Tribe's Need for Additional Land Outside the Reservation under 25 C.F.R. § 151.10(b)

Appellant contends that the Tribe's application to take into trust the off-reservation Property—what it terms an "isolated island of trust property" with "no relation to the reservation or the location of its members"—is beyond the original intent of the IRA "to expand *existing* Indian lands." Opening Br. at 5 (emphasis added). Appellant emphasizes the "great distance" between the Property and the Tribe's reservation and the fact that the Property was never within the Tribe's reservation. *Id.* at 5-6. Furthermore, Appellant argues that the Regional Director failed to properly consider the Tribe's need for additional land, as required by 25 C.F.R. § 151.10(b). *Id.* at 6. Appellant states that while the Tribe claimed that taking the Property into trust would produce jobs and income, the distance between the Tribe's reservation and the Property makes it unlikely that the Tribe will realize these goals. *Id.*

Appellant's contentions regarding the IRA are unsupported. The IRA expressly authorizes the Secretary to acquire land in trust within or outside of a reservation. 25 U.S.C. § 465. As we have repeatedly noted, "25 U.S.C. § 465 grants the Secretary broad discretion to acquire land for Indians." *City of Yreka, California v. Pacific Regional Director*, 51 IBIA 287, 295 (2010). BIA's trust land acquisition policy allows BIA to acquire land in trust outside of a tribe's reservation "when the tribe already owns an interest

in the land” or “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)(2)-(3). Here, the Regional Director determined that the Property could be considered for trust acquisition both because the Tribe already owned the Property and, in particular, because the acquisition of the land was “necessary to facilitate tribal economic development” as the Tribe intended to use the Property for a travel plaza. Decision at 2. BIA’s authority to acquire the Property in trust falls squarely within both the language of the IRA and the implementing regulations.

Appellant’s second argument, concerning the Regional Director’s evaluation of the Tribe’s need for additional land under 25 C.F.R. § 151.10(b), also fails. We have stated that “BIA has broad leeway in its interpretation or construction of tribal ‘need’ for the land.” *County of Sauk, Wisconsin v. Midwest Regional Director*, 45 IBIA 201, 209 (2007). In his analysis, the Regional Director stated that, since the Tribe’s reservation was created in 1872, the Tribe lost approximately 70% of its land base. Decision at 5. Meanwhile, the Tribe’s membership increased and, at the time of the Regional Director’s Decision, it measured approximately 10,000 individuals. *Id.* The Regional Director stated that the loss of land had an adverse impact on the Tribe, as seen in the 50% unemployment rate on the reservation. *Id.* He reasoned that the Tribe’s goals of developing jobs for its young population and generating income for the Tribe could be served by development of the Property. *Id.* Therefore, he concluded that the Tribe had “demonstrated a need” for the Property. *Id.*

We have recognized that a tribe’s financial condition is a permissible consideration when evaluating a tribe’s need for additional land. *See County of Sauk*, 45 IBIA at 210 (stating that Regional Director erred in concluding that he could not consider a tribe’s financial condition in assessing its need for additional land). And the fact that the Property is some distance from the Tribe’s reservation does not negate the need articulated by the Tribe or the land’s utility. Appellant fails to demonstrate that the Regional Director did not properly exercise his discretion in reasoning that the Tribe had articulated a need for the Property—to foster economic development that would be of benefit to the Tribe and its members—that weighed in favor of the acquisition.

### III. Consideration of the Tribe’s Justification of Anticipated Benefits under 25 C.F.R. § 151.11(b)

Appellant argues that BIA failed to give greater scrutiny to the Tribe’s justification of anticipated benefits as 25 C.F.R. § 151.11(b) mandates. Appellant notes that, while the Regional Director stated that the Tribe’s proposed development of the Property would create approximately 16 jobs and additional income for the Tribe, the Regional Director failed to consider that the distance between the Property and Tribe’s reservation made it unlikely that any of the new positions would be filled by Tribe members. Opening Br. at 8.

The Regional Director stated that, due to the Property's distance from the Tribe's reservation, he was giving greater scrutiny to the Tribe's anticipated benefits associated with the project. Decision at 6; *see also* 25 C.F.R. § 151.11(b). Specifically, the Regional Director stated that he had given greater scrutiny to the Tribe's projections for income generation and the creation of construction and retail jobs. Decision at 3, 6. And the record shows that in considering the Tribe's justification of the economic benefits, the Regional Director was well aware of the fact that providing employment opportunities did not guarantee that positions would be filled by tribal members. *See* AR Tab 3, Ex. N at 1 ("The [p]roject will likely employ workers from the local labor pool."). Appellant has not demonstrated that the Regional Director's scrutiny of the Tribe's anticipated benefits was based on unrealistic assumptions or did not comply with the regulations.

IV. Concerns Raised by Appellant under 25 C.F.R § 151.10(e) and Deference under 25 C.F.R. § 151.11(b) and (d)

Appellant contends that BIA did not give greater weight to Appellant's concerns as mandated by 25 C.F.R. § 151.11(b) and (d). Appellant summarizes the concerns it raised to the trust acquisition as: (1) the loss of \$82,840 in special assessments for water, sewer, and street improvements and \$3,499.66 in annual property taxes for the city; (2) the possible damage to the streets surrounding the Property which are designed for residential use rather than heavy commercial traffic; and (3) the provision of governmental services to the Property including emergency, street construction, water, sewer, and refuse collection services. Opening Br. at 9. Appellant argues that the City's loss of tax revenues and special assessments if BIA takes the Property into trust is substantial and will create an unfair subsidy for the Tribe. *Id.* at 10-11. Appellant also suggests that it remains "uncertain" who will provide the necessary public services to the Property. *Id.* at 11. Appellant concludes that the Tribe has made no attempt to mitigate any of these impacts, and the Regional Director erred in not giving proper weight to the public safety concerns raised by Appellant. *Id.* at 12.

As noted earlier, 25 C.F.R. § 151.11(b) provides that for off-reservation acquisitions, BIA shall give greater weight to the concerns raised under 25 C.F.R. § 151.11(d) by state and local governments commenting on a proposed acquisition's potential impacts on regulatory jurisdiction,<sup>4</sup> real property taxes and special assessments.

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<sup>4</sup> Appellant contends that the Regional Director failed to fully consider the "jurisdictional problems and potential conflicts of land use which may arise" as required by 25 C.F.R. § 151.10(f). Opening Br. at 11 (quoting 25 C.F.R. § 151.10(f)). Appellant failed to raise this issue in its Comments to the Regional Director, and thus it is not properly before the  
(continued...)

The related provision, 25 C.F.R. § 151.10(e), requires that BIA consider “the impact on the State and its political subdivisions *resulting from the removal of the land from the Tax rolls.*” (Emphasis added.) Thus, BIA must consider the views of state and local governments on how the reduction in taxes and special assessments resulting from the trust acquisition would affect the state or local government. *See City of Eagle Butte, South Dakota v. Aberdeen Area Director*, 33 IBIA 246, 248 (1999) (“BIA must, at a minimum, discuss . . . what, if any, taxes were assessed by Appellant in regard to these properties, or what, if any, taxes were received by Appellant in regard to each property; and the impact, if any, on Appellant of the removal of the tracts from the tax rolls.”). In reviewing the Regional Director’s decision, we determine whether he considered and reasonably addressed the issues as presented to him, and not as expanded on appeal. *See* 43 C.F.R. § 4.318 (scope of review).

Here, Appellant’s letter to the Regional Director stated only that the Property “currently carr[ies] low property [tax] assessments,”<sup>5</sup> and that there are special assessments against the Property.<sup>6</sup> AR Tab 3, Ex. I at 1-2 (unnumbered). We have definitively stated

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(...continued)

Board on appeal. *See* 43 C.F.R. § 4.318; *Dessert Water Agency v. Acting Pacific Regional Director*, 59 IBIA 119, 127 (2014) (stating that the Board will not consider issues that could have been, but were not, raised before BIA). We note that the Regional Director did address and consider possible jurisdictional conflicts in the Decision. *See id.* at 128 (“BIA is only required to consider potential conflicts, and is not obligated to prevent or resolve them.”).

<sup>5</sup> While Appellant commented that the assessed value of the Property “should be adjusted” and that it “anticipated” up to \$3,000 in tax receipts from the Property in the future, Appellant failed to articulate any adverse impacts from the projected loss in tax receipts. *See* AR Tab 3, Ex. I at 1 (unnumbered). Furthermore, we have long held that “section 151.10(e) requires only an analysis of taxes actually assessed and paid.” *Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 81 (2006).

<sup>6</sup> In its answer brief, BIA notes that its acceptance of the Property into trust is conditional on the receipt of satisfactory title in accordance with 25 C.F.R. § 151.13. Regional Director’s Answer Br. at 8. The preliminary opinion of title from the Regional Solicitor’s Office stated that the local assessments must be “eliminated or otherwise met” before there can be “a satisfactory conveyance from the owners to the United States.” Regional Solicitor Preliminary Opinion of Title, Feb. 22, 2012, at 2 (AR Tab 3, Ex. C). Therefore, BIA recognized that it cannot acquire the Property in trust until the \$82,840 in special assessments is satisfied and the Regional Director was justified in not considering this issue further, i.e., as a factor weighing against the acquisition.

that the mere reduction in the tax base is not inherently a significant impact. *See Desert Water Agency*, 59 IBIA at 129 (“The Board has rejected the notion that any reduction in the tax base is inherently a significant impact.”). In its comments to the Regional Director, Appellant did not contend that the alleged loss of the, admittedly “low,” tax revenue from the Property would in any way impact its ability to provide public services. Rather, Appellant stated only that it currently provided “the usual array of municipal services” to the Property, AR Tab 3, Ex. I at 1-2 (unnumbered), and that the Appellant had made no formal agreement regarding the continued provision of public services if the Property were taken into trust, AR Tab 3, Ex. M at 2-3 (unnumbered). Similarly, while Appellant stated that the streets surrounding the Property were not designed for “voluminous, heavy semi-tractor and trailer truck traffic,” Appellant did not argue that (or how) the reduced tax revenue would impede its ability to maintain the streets. *See* AR Tab 3, Ex. I at 2 (unnumbered).

The Regional Director recognized his obligation under the regulations and expressly stated that he was giving greater weight to Appellant’s concerns, including concerns about possible damage to surrounding streets,<sup>7</sup> and the provision of public services to the Property. *See* Decision at 6. To the extent the Regional Director only briefly addressed, in the Decision itself, the various concerns raised by Appellant, we think it was sufficient—and not an abuse of discretion—considering Appellant’s own cursory discussion of its concerns in its communications with the Regional Director and Appellant’s failure to link its concerns in any concrete way to the reduction in tax revenues resulting from the acquisition. Thus, we are not convinced that the Regional Director failed to comply with the requirements of the regulations or otherwise abused his discretion in considering Appellant’s concerns in deciding to approve the trust acquisition.

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<sup>7</sup> It may have been ill-advised for the Regional Director, in the Decision, to repeat the statement in the FONSI that “[l]arge truck fueling is not included” in the project. Decision at 6. Appellant commented on the statement in the FONSI, and continues to argue on appeal, that the statement is inconsistent with design drawings showing that the project is capable of fueling large trucks. But, it is clear from the record, and in particular the Regional Director’s response to the City’s comments on the FONSI, that the Regional Director understood and considered the scale of the project, which includes the ability to fuel trucks, but is not designed as a large, full-service truck stop. Other than pointing out the alleged inconsistency, and implying that the Regional Director misunderstood the scale of the project, the City does not further articulate grounds for us to remand on this issue, and thus we find no basis to do so.

## 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 affirms the Regional Director's Decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Robert E. Hall  
Administrative Judge