INTERIOR BOARD OF INDIAN APPEALS

State of Kansas v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

61 IBIA 18 (06/16/2015)

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

STATE OF KANSAS,	)	Order Affirming Decision
Appellant,	)	
	)	
v.	)	Docket No. IBIA 13-058
	)	13-059
ACTING SOUTHERN PLAINS	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	June 16, 2015

The State of Kansas (Appellant or State) appealed to the Board of Indian Appeals (Board) from two decisions, dated January 17, 2013, of the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which affirmed decisions of the BIA Horton Agency Superintendent to take into trust two properties located in Jackson County, Kansas, on behalf of the Prairie Band Potawatomi Nation (Nation). The properties are referred to as the Green Consolidated Tract and the Prairie Land Consolidated Tract. By order dated February 22, 2013, the Board consolidated the appeals.

Appellant contends that the Regional Director erred in failing to apply the criteria in 25 C.F.R. § 151.11, which govern trust acquisitions of off-reservation parcels, and in failing to consider adequately the criteria found in 25 C.F.R. § 151.10(b), (c), (e), and (f). Appellant also raises various constitutional arguments.[1] Because the State has failed to show any error in the Regional Director's consideration of the regulatory criteria applicable to the acquisition of either of the tracts, we reject Appellant's arguments and affirm the Regional Director's decisions to accept the Green Consolidated Tract and the Prairie Land Consolidated Tract into trust for the Nation. Appellant does not dispute that the tracts to be acquired are contiguous to lands currently held in trust for the Nation, but maintains that the Regional Director erred in not applying the greater scrutiny required of off-reservation acquisitions. Appellant's mere disagreement with the regulations does not

[1] Many of Appellant's arguments are a reprisal of its earlier arguments in *State of Kansas v. Acting Southern Plains Regional Director*, 53 IBIA 32 (2011) (*Kansas I*), and *State of Kansas v. Acting Southern Plains Regional Director*, 56 IBIA 220 (2013) (*Kansas II*).

satisfy its burden of showing error in the application of those regulations in the decisions being appealed. Appellant has also failed to meet its burden of demonstrating error in the Regional Director's consideration of the 25 C.F.R. § 151.10 criteria. Finally, we lack authority to review Appellant's constitutional arguments. We therefore affirm the Regional Director's decisions.

Statutory and Regulatory Framework

Congress granted the Secretary of the Interior (Secretary) the authority, "in [her] discretion, to acquire . . . any interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians." 25 U.S.C. § 465. Fee-to-trust acquisitions are governed by BIA's regulations, codified at 25 C.F.R. Part 151. These regulations provide that land may be acquired in trust for a tribe when: (1) "the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto," (2) "the tribe already owns an interest in the land," or (3) "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). When BIA receives an application for a discretionary trust acquisition, that is, one that is not mandated by legislation, it must notify 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. The applicant will also be given a reasonable amount of time to respond to any comments received. *Id.*

In evaluating a tribe's request to place land into trust, BIA must also consider the following criteria, if the acquisition is not mandated:

> (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.[2]

The regulations distinguish between "on-reservation" and "off-reservation" trust acquisitions, and subject off-reservation trust acquisitions to additional scrutiny. *Compare* 25 C.F.R. § 151.10 *with id.* § 151.11. On-reservation acquisitions concern land "located within or contiguous to an Indian reservation," 25 C.F.R. § 151.10, while lands proposed for trust acquisition "located outside and noncontiguous to the tribe's reservation," *id.* § 151.11, constitute off-reservation acquisitions. As relevant here, "Indian reservation" means that "area of land over which the tribe is recognized by the United States as having governmental jurisdiction." *Id.* § 151.2(f).

If the land requested by the tribe to be placed in trust is off-reservation and the acquisition is not mandated, BIA must consider the criteria set forth in § 151.10 and additional criteria found in § 151.11, including 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. As the distance between the tribe's reservation and the land to be acquired in trust increases, BIA must give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition and greater weight to the concerns raised by the State and local governments. *Id.* § 151.11(b).

Background

This case concerns two tracts of land in Jackson County, Kansas, both of which were purchased by the Nation more than a decade ago and have been used for agricultural purposes since that time. Letter from Nation to Superintendent, Nov. 28, 2011, at 2 (Nation's Green Consolidated Tract (GCT) Response) (GCT Administrative Record (AR) Tab 11); Letter from Nation to Superintendent, Nov. 8, 2011, at 1-2 (Nation's Prairie Land Consolidated Tract (PLCT) Response) (PLCT AR Tab 15). Both tracts are contiguous to lands already held in trust for the Nation. Letter from Regional Director to State of Kansas and Jackson County, Jan. 17, 2013, concerning GCT at 2 (GCT Decision) (GCT AR Tab 27); Letter from Regional Director to State of Kansas and Jackson County, Jan. 17, 2013, concerning PLCT at 2 (PLCT Decision) (PLCT AR Tab 33). The property known as the Green Consolidated Tract is comprised of 143.665 acres, located in Section

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[2] Section 151.10(d) only applies to acquisitions for individual Indians.

35, Township 8 South, Range 15 East, 6th Principal Meridian (P.M.), and adjoins the ABC Exteriors property, identified as tribal trust tract 862-T1018, which is held in trust for the Nation. GCT Decision at 2, 5. The ABC Exteriors property is contiguous to the eastern boundary of the Nation's reservation. *Id.* at 5. The property known as the Prairie Land Consolidated Tract contains 208.663 acres, is located in Section 26, Township 8 South, Range 15 East, 6th P.M., and adjoins tribal tract 862-T1017, which is already held in trust for the Nation. PLCT Decision at 2.[3] Both tracts are located in Jackson County, Kansas.

On October 7, 2011, the Nation submitted two fee-to-trust applications to the Superintendent, one for the Green Consolidated Tract, and the other for the Prairie Land Consolidated Tract. *See* GCT Application (GCT AR Tab 5); PLCT Application (PLCT AR Tab 10). BIA solicited comments from the State and Jackson County (County) for both applications, and the State and County responded, raising various objections to the Nation's applications.[4] The Nation responded to the objections raised by the State and County. Nation's GCT Response; Nation's PLCT Response.

On July 9, 2012, the Superintendent issued her decision approving the Nation's application to have the GCT taken into trust as an on-reservation acquisition. Superintendent's GCT Decision (GCT AR Tab 22). In her decision, the Superintendent addressed each of the factors in § 151.10 *ad seriatim*, and concluded, *inter alia*, that the GCT was needed to expand the Nation's land base for agriculture and Indian housing, thereby contributing to economic growth and self-determination. *Id.* at 3 (addressing § 151.10(b), need of the tribe for additional land). The Superintendent determined that acquiring the land in trust, where it would continue to be used mainly for agricultural operations, would strengthen tribal self-government and "facilitate self-determination by having tribal lands in uniform title," for both management and jurisdictional purposes. *Id.* (addressing § 151.10(c), purposes for which the land will be used).

The Superintendent also considered the impact on the State and County resulting from removal of the land from the tax rolls, *see* § 151.10(e). She restated the concerns advanced by the County over the incremental loss of its tax base through trust acquisitions, the effect this would have on its ability to provide services to County residents, and the County's contention that increased road maintenance and law enforcement burdens on the

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[3] The specific metes and bounds description of each tract is included in the respective Regional Director's decision.

[4] While the County filed responses to both the GCT and PLCT Notifications, the State only filed a response to the PLCT Notification. *See* County's GCT Response, Oct. 17, 2011 (GCT AR Tab 6); County's PLCT Response, Oct. 17, 2011 (PLCT AR Tab 12); State's PLCT Response, Oct. 6, 2011 (PLCT AR Tab 8).

County were partially attributable to Indian-owned businesses, including the Nation's and other tribes' casinos. Superintendent's GCT Decision at 3. The Superintendent also noted that, according to the County, taxes for 2010 on the GCT property totaled $4,978.96. *Id.*; *see* County's GCT Response at 4 (unnumbered). She explained that the regulations do not require BIA to conduct a cumulative impact analysis of the loss of tax revenue resulting from a series of acquisitions, but direct BIA "to consider the impact of the removal of 'the land' from the tax rolls . . . ." Superintendent's GCT Decision at 4 (referencing § 151.10(e)). She concluded that taxes on the GCT property constituted a small percentage of total County tax receipts and that "transfer to trust status of this land will not cause a material loss of revenue . . . ." *Id.* at 4. She considered that the Nation also provides economic benefits to the County, including that the Nation's casino employs 763 workers, of which 317 were residents of Jackson County, and that three-quarters of casino employees were non-Indian. *Id.* After listing government services provided by the Nation on and near the reservation, she noted that many of the services benefit both reservation residents and nearby communities, may aid or supplement County services and, taken together, "contribute[] to offset revenue loss to the County." *Id.* She noted that the Nation spends on average $1.8 million annually on road maintenance. *Id.* In addition, the Superintendent recognized that the Nation and its casino provided nearly $200,000 in charitable contributions the previous year alone, which benefited community organizations including Royal Valley Schools and the Holton Community Hospital. *Id.*

Regarding jurisdictional problems and potential conflicts of land use related to the acquisition, *see* §151.10(f), the Superintendent underscored that the land would continue to be used for agricultural and housing purposes and that the Nation's zoning regulations were "similar to county zoning on nearby fee lands." Superintendent's GCT Decision at 4. She also observed that the Nation's law enforcement program and tribal court system relieved the County of costs for these services on the reservation. *Id.* at 5. The Superintendent concluded that bringing the GCT under the same Federal and tribal jurisdiction as the Nation's other trust lands, "may resolve potential jurisdictional problems . . . ." *Id.*

After addressing each of the pertinent factors related to on-reservation trust acquisition under § 151.10, the Superintendent explained that "because the State of Kansas and Jackson County have, in the past, objected to land located off-reservation being taken into trust, and have appealed applications to the [Board], additional information is provided" with regard to the criteria for off-reservation acquisitions, 25 C.F.R. § 151.11. *Id.* The Superintendent discussed the distance of the lands proposed for acquisition from state boundaries and from the Nation's reservation, *see* § 151.11(b), and gave additional scrutiny of the concerns raised by the County regarding potential impacts on regulatory jurisdiction and real property taxes, *see* § 151.11(d). Superintendent's GCT Decision at 5-7. The Superintendent determined, based on the information before her, to issue a notice of intent to take the GCT into trust for the Nation. *Id.* at 7.

Shortly thereafter, on July 13, 2012, the Superintendent issued her decision to accept the PLCT into trust. Superintendent's PLCT Decision (PLCT AR Tab 28). In her decision, the Superintendent systematically reviewed the elements required for on-reservation acquisitions. *Id.* at 2-5. She explained that although she was processing the application as "On Reservation/Contiguous," she would also provide an analysis of the off-reservation factors, as she had done for the GCT fee-to-trust decision. *Id.* at 5. The Superintendent's substantive analysis is virtually the same in each decision, except as pertaining to differences in the proposed land use (the PLCT is proposed only for agricultural use) and tax assessments (the County reported the 2010 tax assessment for the PLCT as $297.54). *See id.* at 2-3; County's PLCT Response at 4 (unnumbered). Based on the information before her, including the comments from the County, State, and the Nation, the Superintendent determined that she would issue a notice of intent to take the land into trust, as requested by the Nation. *Id.* at 7.

Both the State and the County timely filed appeals of the Superintendent's decisions regarding the Green and Prairie Land Consolidated Tracts. *See* State Notice of Appeal (NOA) GCT, Aug. 10, 2012 (GCT AR Tab 24); County NOA GCT, Aug. 8, 2012 (GCT AR Tab 23); State NOA PLCT, Aug. 10, 2012 (PLCT AR Tab 29); County NOA PLCT, Aug. 20, 2012 (PLCT AR Tab 30). For each decision, the State raised identical objections, which reiterated several of its comments on the PLCT application and raised other issues. It argued first, that the tracts should not have been analyzed as on-reservation, pursuant to § 151.10, because they are more than a mile away from the boundaries of the Nation's reservation. State NOA GCT at 1-2; State NOA PLCT at 1-2. Specifically, the State contended that analyzing tracts of land contiguous to a trust parcel under the on-reservation criteria leads to the "irrational result[]" that "any tribe can buy tracts of land contiguous to its reservation and then extend trust parcels, repeatedly and progressively expanding its trust base *ad infinitum*." State NOA GCT at 2; State NOA PLCT at 1. The State also argued that the Nation's proposed use of the land for agricultural purposes does not justify placing the land in trust, rather than continuing simply to hold the tracts of land in fee simple. State NOA GCT at 2; State NOA PLCT at 2. The State also contended that taking the tracts into trust would create "a patchwork of zoning" and that, "in evaluating each parcel individually, the cumulative effect of land-into-trust applications on a county is never considered." State NOA GCT at 2-3; State NOA PLCT at 2. Finally, the State sought to preserve various constitutional objections, while acknowledging that these were not within the jurisdiction of the BIA to consider. State NOA GCT at 3; State NOA PLCT at 2-3.

The County presented another set of identical objections to the Superintendent's decision regarding each tract. In addition to objections similar to those raised by the State, the County argued that BIA's decisions were not authorized by statute, that there was no comprehensive analysis of the balance of losses and gains for the Nation, the State, and

County as a result of the decisions, and that, if the tracts are taken into trust, the County would be deprived of jurisdiction over those lands and, in particular, "zoning jurisdiction" over land along U.S. Highway 75 and in close proximity to the City of Mayetta, Kansas. County NOA GCT at 3-4; County NOA PLCT at 3.

The Regional Director consolidated the State and County appeals of the Superintendent's decision on each tract, and issued his decisions on January 17, 2013. GCT Decision; PLCT Decision. In both cases, the Regional Director determined that the trust acquisition was authorized by 25 U.S.C. § 465 and was necessary to facilitate tribal self-determination under 25 C.F.R. § 151.3. GCT Decision at 3-4; PLCT Decision at 2-4. The Regional Director considered only the criteria for on-reservation acquisitions in § 151.10, based on his finding that the consolidated tracts were each contiguous to other tracts already held in trust for the Nation. GCT Decision at 4-5; PLCT Decision at 4. In affirming the Superintendent's decisions, the Regional Director also explained that he had considered the concerns expressed by the State and County, as well as the contributions made by the Nation in support of the local economy, and concluded that there was "no evidence of . . . severe negative impact [to the State and County] in this case." GCT Decision at 5; PLCT Decision at 5.

The State timely filed notices of appeal of the Regional Director's two decisions. We consolidated the appeals by order of February 22, 2013. Order Consolidating Appeals. The State filed an opening brief and the Regional Director filed a response. The State did not file a reply brief.

Discussion

I. Standard of Review

BIA's decision to take land into trust is discretionary, and we do not substitute our judgment for that of BIA. *City of Moses Lake, Washington v. Northwest Regional Director*, 60 IBIA 111, 116 (2015). We review these discretionary decisions to determine whether BIA gave proper consideration to all of the legal prerequisites to BIA's exercise of its discretionary authority, including any limitations imposed by regulation. *Id.* "[P]roof that the Regional Director considered the factors set forth in 25 C.F.R. § 151.10 must appear in the record, but there is no requirement that BIA reach a particular conclusion with respect to each factor. Nor must the factors be weighed or balanced in a particular way or exhaustively analyzed." *Kansas II*, 56 IBIA at 224 (quoting *State of South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 84, 98 (2009)). The appellant bears the burden of proving that BIA did not properly exercise its discretion and this burden is not met by simple disagreement or bare assertions. *Jefferson County, Oregon, Board of Commissioners v. Northwest Regional Director*, 47 IBIA 187, 200 (2008). In contrast to our limited review of

discretionary decisions, we have full authority to review legal issues raised in trust acquisition cases. *Kansas II*, 56 IBIA at 224. However, we lack the authority to review challenges to the constitutionality of laws or regulations. *Id.*

II. Applicability of 25 C.F.R. § 151.11

Appellant contends that both the Green and the Prairie Land Consolidated Tracts should be analyzed as off-reservation acquisitions pursuant to 25 C.F.R. § 151.11, because they are not within the boundaries of the Nation's reservation. Opening Brief (Br.), Apr. 12, 2013, at 1-2. It reasons that by including tracts "adjacent to a trust-tract" within the definition of "on-reservation," BIA "ignores the clear meaning of words," which "results [in] an arbitrary and capricious standard." *Id.* at 2. Appellant also argues that the Regional Director erred in not applying § 151.11(b)[5] to give greater scrutiny to the Nation's justification of anticipated benefits and more weight to the concerns of the State and County. *Id.*

We remain unconvinced by the State's arguments, especially where, as here, the State does not dispute the key facts upon which the Regional Director's decisions are based, but simply disagrees with the outcome. Appellant concedes that the land proposed for trust status is contiguous to the Nation's existing trust land, which in turn is adjacent to the reservation boundary. Opening Br. at 1 ("Both tracts are apparently more than a mile exterior to the boundaries of the reservation and contiguous to another trust parcel, which is apparently itself, outside the boundaries of but contiguous with, the reservation boundaries."). The State recognizes that the regulations define "Indian reservation" as "that area of land over which the tribe is recognized by the United States as having governmental jurisdiction." *Id.* (quoting 25 C.F.R. § 151.2(f)). The State also acknowledges, if indirectly, that the Nation exercises jurisdiction over lands which are in trust status, including, as relevant here, other trust lands contiguous to the reservation boundary. *Id.* at

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[5] Section 151.11(b) provides that:

> The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised [by the state and local governments regarding the impact resulting from the removal of the land from the tax rolls and regarding jurisdictional problems and potential conflicts of land use which may arise.]

3 (acknowledging that "if [the tracts are] taken into trust, there will be a peninsula of trust land[] subject to the [Nation's] zoning regulations").

As we explained in *Kansas II*, § 151.10 applies to fee-to-trust applications "when the land is located *within or contiguous to* an Indian reservation," while § 151.11 applies only "when the land is located *outside of and noncontiguous* to the tribe's reservation." 56 IBIA at 230 (emphases added) (quoting 25 C.F.R. §§ 151.10-151.11). We also clarified that "[a] fee parcel owned by a tribe that is contiguous to a parcel that is held in trust for the tribe is considered to be 'contiguous to the tribe's reservation' under Part 151." *Id.* (quoting *Aitkin County, Minnesota v. Acting Midwest Regional Director*, 47 IBIA 99, 104-07 (2008)). As we have consistently held, a tribe is presumed to have jurisdiction over its trust properties. *Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director*, 58 IBIA 278, 313 (2014); *County of San Diego, California v. Pacific Regional Director*, 58 IBIA 11, 29 (2013). The State does not dispute that the tracts proposed for acquisition are contiguous to other trust land, Opening Br. at 1, nor that the Nation exercises jurisdiction over its trust lands, *id.* at 3. Therefore, the Regional Director's consideration of the proposed acquisitions as "on-reservation" under the regulations does not establish an "arbitrary and capricious standard" for trust acquisition, as the State argues, *id.* at 1-2, but represents a proper application of the regulations as written.

III. 25 C.F.R. § 151.10 Criteria

Appellant contests the Regional Director's analysis of the criteria in 25 C.F.R. § 151.10(b), (c), (e), and (f). Opening Br. at 2-4. In regard to subsections (b) and (c), which concern the need for and purpose served by the lands to be acquired, Appellant contends that the Regional Director did not adequately explain the Nation's need for additional land or the need to have the land taken into trust. *Id.* at 2-3. The State also alleges that "[t]he only advantage to the [Nation] in taking this [land] into trust is avoidance of property taxes." *Id.* at 3. We disagree.

The Regional Director explained in each decision that the parcel in question "satisfies a specific need of the tribe[,] which is to expand its tribal farming and ranching land base." GCT Decision at 3; PLCT Decision at 3. The Regional Director also explained that the land would be used to maintain the Nation's livestock, including its bison herd, and to provide employment opportunities for tribal members. GCT Decision at 3; PLCT Decision at 3. Moreover, in both the Green and Prairie Land Consolidated Tract decisions, the Regional Director specifically found that, pursuant to § 151.10(c), placing the land under the Nation's land management program would "strengthen tribal self-government" and that "[t]rust status will facilitate self-determination and self-sufficiency by having tribal lands in uniform title and jurisdiction for management purposes." GCT Decision at 3-4; PLCT Decision at 3. As we observed in *Kansas II*, "§ 151.10(b) only requires

consideration of the tribe's need for the land—*not* its need for the land to be in trust status." 56 IBIA at 225. Further, BIA generally has "broad leeway" when considering a tribe's need for additional land. *City of Moses Lake*, 60 IBIA at 117. Therefore, we reject Appellant's contention that the Regional Director's decision did not satisfy the § 151.10(b) and (c) criteria. The Regional Director adequately considered the Nation's need for additional land and the purposes for which the Green and Prairie Land Consolidated Tracts would be used.

Appellant has also failed to demonstrate error in the Regional Director's consideration of § 151.10(e)—the impact on the State and local government from the loss of tax revenue resulting from taking the tracts into trust. Appellant contends that the Regional Director failed to satisfy § 151.10(e) because he did not state the exact annual loss in tax revenue from the tracts at issue, and that he denied the State and County due process by failing to consider the cumulative effect on the County of what the State perceives as "a much larger ongoing land acquisition program by the [Nation]." Opening Br. at 3. In his decisions, the Regional Director stated that BIA requested comments from the State and the County and received information from the County regarding the amount of taxes levied against each property. GCT Decision at 4; PLCT Decision at 3-4. Neither the regulations governing the appeal of the Superintendent's decisions to the Regional Director, *see* 25 C.F.R. Part 2, nor § 151.10(e), requires that the Regional Director state in the decision the amount of annual tax revenue derived from the property proposed for acquisition, *see* 25 C.F.R. § 151.10(e). Moreover, Appellant admits that the annual loss in tax revenue resulting from taking each of the tracts into trust would be "*de minimis,*" and does not argue that, combined, the loss would be more than *de minimis*.[6] *See* Opening Br. at 3.

Regarding Appellant's argument that the Regional Director failed to address the impact of an alleged ongoing land acquisition program by the Nation, "we have consistently rejected arguments that BIA must undertake a separate 'cumulative impacts' analysis, while acknowledging the possibility that BIA's proper exercise of discretion may, under certain circumstances, require consideration of the collective impact of multiple simultaneous fee-to-trust applications." *Kansas II*, 56 IBIA at 226 (quoting *Kansas I*, 53 IBIA at 37) (some internal quotation marks omitted). We have also held that "[d]ue process is met by

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[6] In its comments to BIA, the County provided data indicating that the taxes levied in 2010 for the parcels in the Green Consolidated Tract totaled $4,978.96, while taxes levied that year on parcels in the Prairie Land Consolidated Tract came to $297.54. County's GCT Response at 4 (unnumbered); County's PLCT Response at 4 (unnumbered). In its appeal to the Regional Director, the County provided additional tax data for the Prairie Land Consolidated Tract indicating that the total tax levy for 2010 was $6,374.77. County Notice of Appeal to Superintendent's PLCT decision, Aug. 21, 2012, at 4 (PLCT AR Tab 30). No explanation for the discrepancy was provided.

affording interested parties the opportunity to present their views and objections" and that no further cumulative analysis is required to meet this requirement. *Id.* Although Appellant alleges a due process violation, neither the State nor the County offers any analysis or evidence of injury due to the loss of tax revenue from the cumulative effect of taking lands into trust on behalf of the Nation. Therefore, Appellant does not meet its burden to show error by the Regional Director.

Finally, we conclude that Appellant also fails to show error in the Regional Director's analysis of jurisdictional problems and potential conflicts of land use. The Regional Director concluded that there are no known jurisdictional problems or potential conflicts of land use. GCT Decision at 4; PLCT Decision at 4. The Nation's intended use of the tracts—and the use to which the tracts have been placed since they were purchased by the Nation over a decade ago—is agricultural, which is consistent with the County's current zoning of the tracts.[7] Appellant states that taking the tracts into trust will create a "peninsula of trust land" and that there are no assurances that, once taken into trust, the tracts will not be used in a way that is incompatible with the land use on surrounding non-trust property. Opening Br. at 3-4. Such broad-based and speculative contentions regarding a potential future conflict do not satisfy the State's burden in challenging the Regional Director's discretionary trust acquisition decisions. *See Preservation of Los Olivos*, 58 IBIA at 316; *Shawano County, Wisconsin v. Acting Midwest Regional Director*, 53 IBIA 62, 82 (2011) ("The Regional Director is simply not required to speculate as to events that may or may not occur at some unknown point in the future."). Appellant has not demonstrated that the Regional Director failed to satisfy the requirements of § 151.10(f).

IV. Constitutional Arguments

Appellant raises several arguments challenging the constitutionality of a provision of the Indian Reorganization Act, 25 U.S.C. § 465, on which the Regional Director relied as the source of his authority to take the land into trust for the Nation. "The Board consistently has held that it lacks authority to declare an act of Congress to be unconstitutional," and therefore we do not address the various constitutional challenges raised by the State. *Thurston County, Nebraska v. Acting Great Plains Regional Director*, 56 IBIA 62, 66 (2012).

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[7] All of the property in the Green and Prairie Land Consolidated Tracts are zoned by the County for agricultural use except for a single tract in the Prairie Land Consolidated Tract that is zoned for commercial use. *See* PLCT AR Tab 30 at 5. Appellant has not argued that the use of this tract for agricultural, rather than commercial, purposes will present any particular conflict.

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 January 17, 2013 decisions.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge