



MARICOPA EXPRESS YOUTH RAILWAY, INC.

173 IBLA 380

Decided February 28, 2008



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

MARICOPA EXPRESS YOUTH RAILWAY, INC.

IBLA 2007-143

Decided February 28, 2008

Appeal of a decision by the Field Manager, Hassayampa Field Office, Phoenix District, Bureau of Land Management, rejecting a Recreation and Public Purposes Act application to obtain land to develop a historic railroad park. AZA-33134.

Affirmed; petition for stay denied as moot.

1. Recreation and Public Purposes Act

An applicant for land under the Recreation and Public Purposes Act must show that the land will be used for an established or definitively proposed project for which there is a reasonable schedule of development and satisfactory development and management plans, including the availability of financing for the proposed project. In the absence of that showing, rejection of an application serves the public interest and is a proper exercise of the Bureau of Land Management's discretion.

APPEARANCES: Bruce L. Keech, President, Maricopa Express Youth Railway, Inc., Mayer, Arizona; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEATH

Maricopa Express Youth Railway, Inc. (Maricopa), has appealed a decision of the Field Manager, Hassayampa Field Office (HFO), Phoenix District, Bureau of Land Management (BLM), dated February 27, 2007 (Decision), rejecting Maricopa's application under the Recreation and Public Purposes Act (R&PP Act), 43 U.S.C. §§ 869 through 869-4 (2000), to obtain land for the purpose of developing a historic railroad park and associated facilities. Maricopa also requested a stay of BLM's decision. For reasons discussed below, we affirm the Decision and deny the petition for stay as moot.

## BACKGROUND

Maricopa is a nonprofit organization whose primary purpose appears to be to provide programs and education related to model railroading and to assist young people in activities related to model railroading. Maricopa filed an application on May 20, 2005, for 217 acres of public land it described as parcel # 800-05-004C adjacent to State Highway 69 about 4 miles north of Mayer, Arizona, and approximately 60 miles north of Phoenix.<sup>1</sup> The application states that development of the site will include a railroad museum (featuring the local history of mining and agriculture as well as railroads), areas for picnicking and volleyball, playgrounds, and facilities for train rides. A hand-drawn map of the proposed park received by BLM on June 2, 2005, portrays a more ambitious proposal to develop a railroad park with a line of standard railroad track running through the property, an internal 15" gauge track for a functioning steam railroad, six buildings for a railroad museum and model railroad displays, a series of buildings in the style of an old western town, and areas for model airplanes and boats. The map also identifies areas for parking, picnic shelters, and maintenance facilities.

The February 27, 2007, Decision refers to a meeting between BLM and Bruce L. Keech, Maricopa's president, on February 23, 2007, at which the Field Manager had explained the "issues that made the processing of the pending application problematic." The Decision summarized BLM's view of the problems that were the basis for denial of the application:

1. Because of the existing workload, the Hassayampa Field Office (HFO) policy regarding R&PP [Recreation and Public Purposes] applications, at this point in time, is to only consider applications that are truly "public purpose" in nature (i.e., schools, fire stations, municipal complexes, etc.) and that your application did not fall into that category.
2. During the scoping process for the Bradshaw-Harquahala Resource Management Plan, the public was very adamant that the Plan not identify any lands in the Mayer/Humbolt/Dewey area for any form

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<sup>1</sup> Documents accompanying the application indicate that the parcel number was taken from a Yavapai County map. The Department identifies land according to the public land survey system first set forth in the Land Ordinance of 1785 (*see* 43 U.S.C. § 751 (2000)), rather than using numbers assigned by local jurisdictions. The decision on appeal describes the land applied for as lots 7, 10-15, W $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , sec. 9, T. 12 N., R. 1 E., Gila and Salt River Meridian, in Yavapai County, Arizona.

of disposal. Processing/approving such a use would be contrary to the decisions being brought forward in the Plan.

3. There are 14 active mining claims on the subject lands.

4. When asked about funding sources for this project, you responded that the funding of this project “was a problem.”

Decision at 1-2. The Decision concluded that as a result, the proposal “does not meet the R&PP criteria as a definitive, well planned project with a reasonable timetable for development with adequate funding resources . . . .” *Id.* at 2.

On appeal, Maricopa contends that BLM erred because several local residents, businesses, organizations, and governmental entities either have expressed approval for, or are favorably disposed towards, the proposed project.<sup>2</sup> Maricopa has also provided pictures of the McCormick Stillman Railroad Park, apparently operated by the Scottsdale, Arizona, Parks and Recreation Department, and pictures of the Rawhide at Wild Horse Pass, an “old west” town south of Phoenix. Maricopa’s application provided additional material about similar developments. Maricopa argues that the railroad park would benefit people living in the corridor formed by the towns of Mayer and Dewey/Humboldt and would bring tourist dollars into the area. SOR at 2; Notice of Appeal at 4.

#### ANALYSIS

[1] The R&PP Act authorizes the Secretary of the Interior to sell or lease tracts of public lands to states, counties, municipalities, and other political subdivisions and to nonprofit corporations and associations for public purposes, including recreation. 43 U.S.C. §§ 869, 869-1 (2000). Section 869 provides that, before the land may be disposed of, an applicant must show, *inter alia*, that the land will be used for “an established or definitively proposed project.” With respect to applications under the R&PP Act, BLM regulations at 43 C.F.R. § 2741.4(b) provide in relevant part:

Each application shall be accompanied by three copies of a statement describing the proposed use of the land. The statement shall show that there is an established or definitely proposed project for such use of the

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<sup>2</sup> See Mar. 8, 2007, Letter from Maricopa to BLM officials Jim Anderson and Clay Templin, expressing Maricopa’s intention to appeal, at 1-2; Notice of Appeal dated Mar. 15, 2007, at 1-2, 4, 6; “Statement of Reason for Appeal” (SOR) dated Mar. 15, 2007, at 1-2; “List of individuals who have expressed interest and approval of my proposed plan for a railroad park in the Mayer–Dewey/Humbolt [*sic*] area,” dated Mar. 15, 2007, at 1-9.

land, present [a] detailed plan and schedule for development of the project and a management plan which includes a description of how any revenues will be used.

The regulations further provide, at 43 C.F.R. § 2741.5(a): “Public lands shall be conveyed or leased under the [R&PP] act only for an established or definitely proposed project for which there is a reasonable timetable of development and satisfactory development and management plans.”<sup>3</sup>

BLM, as the Secretary’s delegate, has discretion to reject an application when it determines that the public interest is best served by such rejection and the record developed during review of the application provides a rational basis for the decision. *See, e.g., Lamina Animal Association Club*, 153 IBLA 126, 129 (2000); *Mary Coles*, 132 IBLA 398, 399 (1995); *Clark County, Nevada*, 123 IBLA 150, 152 (1992); *The City of Chico*, 119 IBLA 136, 138 (1991), and cases cited.

In the instant case, it is apparent from the record that Maricopa has not provided a detailed plan and schedule or timetable for development. The record includes several documents that show that Keech has specific ideas about how he would like to develop the site, but the application and other submissions to BLM provide no real information as to how Maricopa might achieve its goals. The hand-drawn sketch it has submitted proposes the construction of perhaps a dozen buildings, a parking lot, cement walkways, and other amenities as well as a considerable amount of railroad track. The sketch, however, is not to scale and neither it nor Maricopa’s other documents provide any detail about the size of the proposed buildings, a schedule for development, or how the buildings and facilities would be managed and maintained.

Beyond issues of satisfactory documentation, it is evident from the record that Maricopa’s foremost problem is a lack of financing. The Decision noted that Keech, in the February 23 meeting, acknowledged that funding “was a problem.” Maricopa’s proposal to the Yavapai County Parks and Recreation Department, dated July 1, 2004, that is included in the record stated (at 2) that “[f]unding must be obtained” for construction of buildings, tracks, and railroad facilities. Maricopa suggested that it would obtain funding from “donations of money and in kind” and through an

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<sup>3</sup> The instructions on the application form that Maricopa submitted on May 20, 2005 (“Application for Land for Recreation or Public Purposes,” Form 2740-1), as part of the detailed plan and schedule for development, specifically instruct an applicant to submit “[a]n estimate of the construction costs, how the proposed project will be financed, including a list of financial sources, and an estimated timetable for actual construction of all improvements and facilities,” as well as a “plan of management” and “[a] specific maintenance plan.” Application at 2.

application to the United States Department of Transportation under the “Transportation Act of the 21st Century.” *Id.* No further specifics were given. In a letter from Keech/Maricopa addressed generally to “Those Interested in the Proposed Santa Fe Pacific, Prescott & Eastern Railroad Park on BLM Land in the Poland Junction area” dated March 5, 2007 (at 2), Maricopa stated:

Funding will come as a Board of Directors of the “Santa Fe Pacific, Prescott and Eastern Railroad Park Commission[”] are [*sic*] formed, a grant writer commissioned to develop means of finance procurement, and the communities of Mayer and Dewey/Humbolt [*sic*] towns come together to support my plan.<sup>[4]</sup>

In short, Maricopa apparently does not have a source of funds, and it has not explained how the proposed project would be financed. Moreover, nothing in the record before us suggests that Maricopa has a reasonable prospect of obtaining funds. Nor has Maricopa attempted to estimate the amount of money that would be needed for construction of buildings and other facilities and to provide water, sewage, and other utilities.

Further, approval of the application would impose certain costs on Maricopa. Maricopa would have to pay either the value of the land based upon an appraisal or a reasonable annual rental. 43 U.S.C. § 869-1 (2000); 43 C.F.R. §§ 2741.8(b), 2912.1-1(d). Payment of the purchase price or the first year’s rental is due prior to issuance of the patent or lease. 43 C.F.R. §§ 2741.8(c), 2912.1-1(d). Maricopa also would be responsible for conducting, or paying the costs of, any studies BLM needed to review its application (potentially including an environmental assessment under 40 C.F.R. §§ 1501.3 and 1508.9). *See* 43 C.F.R. § 2741.3(c).

Without knowledge or a reasonable estimate of costs and available sources of funds, it is not possible for Maricopa to submit a detailed development plan, a schedule for development, or a management plan as the regulations require. It is also difficult to view the proposal as a “definitively proposed project” under the statute and the regulations — even though Keech’s ideas are quite detailed — without any explanation of how it would be financed.

In addition, the Decision noted the presence of 14 active mining claims on the land that Maricopa seeks, which presents an unresolved potential conflict with

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<sup>4</sup> The record also contains a one-page letter to Keech dated Feb. 5, 2007, from Thomas Thurman, a member of the Yavapai County Board of Supervisors, explaining that the County could not provide financial help and stating that “the only assistance Yavapai County can offer you is our verbal support of your project.”

Maricopa's application.<sup>5</sup> Maricopa implicitly acknowledges this conflict in stating that it sent a letter to the mining claimant to obtain permission to build on the claims,<sup>6</sup> but it has not provided a copy of any response or additional information. Construction of buildings, railroad tracks, a parking lot, and other permanent improvements such as those Maricopa envisions could preclude exploration and development of the mining claims.

In view of both the lack of any development plan and development schedule — particularly in light of the lack of available financing — and the presence of several active mining claims, the record amply supports BLM's denial of Maricopa's application.<sup>7</sup> Maricopa's arguments regarding individuals or entities that allegedly favor its proposed project and the various economic and other benefits that allegedly would flow from it do not overcome the requirements of the rules and do not establish error in the Decision. In our view, rejecting the application serves the public interest and is a proper exercise of BLM's discretion.

#### *CONCLUSION*

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the February 27, 2007, Decision is affirmed, and the petition for stay is denied as moot.

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Geoffrey Heath  
Administrative Judge

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<sup>5</sup> A printout in the record from a computer run of BLM records conducted on June 7, 2005, lists 14 mining claims in the northwest and southwest quarters of section 9, where the land Maricopa applied for is located. Fourteen mining claims could cover most, if not all, of the public land within those two quarters, and thus would cover much, if not all, of the land sought by Maricopa.

<sup>6</sup> See Notice of Appeal at 4; SOR at 1; Mar. 8, 2007, Letter at 2; Mar. 5, 2007, Letter to interested parties at 2.

<sup>7</sup> As a consequence, we need not address the other two reasons BLM cited for rejecting the application, namely, the asserted "policy" of the HFO to consider only applications to use land for public purposes such as schools, fire stations, and municipal complexes, and public opposition to disposal of any public lands in the Mayer/Humboldt/Dewey area allegedly expressed during the "scoping process for the Bradshaw-Harquahala Resource Management Plan."

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
R. Bryan McDaniel  
Administrative Judge