



INTERIOR BOARD OF INDIAN APPEALS

Shawano County, Wisconsin v. Acting Midwest Regional Director,
Bureau of Indian Affairs

53 IBIA 62 (02/28/2011)



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

SHAWANO COUNTY, WISCONSIN,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 09-36-A
ACTING MIDWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	February 28, 2011

Shawano County, Wisconsin (County), challenges a December 1, 2008, decision of the Acting Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA) to take approximately 404 acres into trust, pursuant to the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465, for the Stockbridge-Munsee Community, Wisconsin (Tribe).¹ The County, citing *Carcieri v. Salazar*, ___ U.S. ___, 129 S.Ct. 1058 (2009), argues that because the Tribe did not have a reservation or trust land in 1934, it was not under Federal jurisdiction at that time and is thus ineligible to have land taken into trust under § 465. Assuming that BIA does have authority to take land into trust for the Tribe,

¹ The trust acquisition consists of five properties, each of which is located within the Town of Bartelme. The legal descriptions for each parcel appears as Exhibit A to the Regional Director's December 1 Decision. *See also* letter from Tribe to BIA, Aug. 1, 2000, at 1-2; letter from Tribe to BIA, Apr. 12, 2002. We describe them cursorily as (1) the Camp 14 Road parcel, consisting of 20 acres, tax parcel no. 008-16430-0010 (Collins property); (2) the Cty A Road/Elm Road parcel, tax parcel no. 008-34110-0010, the Cty A Road parcel, tax parcel nos. 008-34120-0000 and 008-34130-0000, and the SE¹/₄NE¹/₄ Sec. 34 parcel, tax parcel no. 008-34140-0000, collectively consisting of 145 acres (Herrmann property); (3) the School House Road parcel, tax parcel nos. 008-35330-0000 and 008-35340-0000, and the NW¹/₄ Sec. 34 property, tax parcel no. 008-34230-0010, collectively consisting of 99.06 acres (Stemlar property); (4) the SE¹/₄SW¹/₄ Sec. 25 parcel, tax parcel no. 008-25340-0000; and the NE¹/₄SW¹/₄ Sec. 25 parcel, tax parcel no. 008-25310-0000, collectively consisting of 59.97 acres (Gara 2 property); and (5) the W¹/₂SE¹/₄ Sec. 27 parcel, consisting of 80 acres, tax parcel nos. 008-27420-0000 and 008-27430-0000 (Dumke property).

the County argues that BIA should have addressed the factors set out in 25 C.F.R. § 151.11 for off-reservation fee-to-trust acquisitions because the Tribe's former reservation was extinguished and the parcels that are the subject of this appeal are not within or contiguous to the Tribe's present-day trust lands. Finally, and to the extent BIA did address some of the factors required by § 151.11, the County argues that BIA failed to do so adequately.

We conclude that the Tribe was not required to have a reservation or trust land in 1934 in order to be under Federal jurisdiction at that time, and therefore BIA has authority under § 465 to take land into trust for the Tribe. In implementing one provision of the IRA, the Secretary of the Interior (Secretary) held an election in 1934 to allow the Tribe's members to decide whether to accept or reject other provisions of the IRA. *See* 25 U.S.C. § 478. By including the Tribe among those tribes for which such elections were conducted, the Secretary necessarily determined that the Tribe was under Federal jurisdiction at that time, notwithstanding the lack of a reservation or tribal trust land. Therefore, BIA properly relied on § 465 to take land into trust for the Tribe.

With respect to the applicable regulatory criteria for BIA's decision, BIA properly considered the proposed acquisitions as "on-reservation" acquisitions pursuant to 25 C.F.R. § 151.10. There is no dispute that the subject parcels are within the exterior boundaries of the Tribe's original reservation, which encompassed *inter alia* the entire Town of Bartelme where the parcels are located. And, because there has been a judicial determination that the Tribe's reservation was disestablished, *Wisconsin v. Stockbridge-Munsee Community*, 366 F. Supp. 2d 698, 778 (E.D. Wis. 2004), *aff'd*, 554 F.3d 657, 665 (7th Cir. 2009), we further conclude that BIA properly considered the application as an "on-reservation" acquisition within the meaning of the regulations and thus only the criteria of § 151.10 apply. *See* 25 C.F.R. § 151.2(f) (definition of "Indian reservation"). Finally, we disagree with the County that BIA inadequately considered the factors set forth at § 151.10. Therefore, we affirm the Regional Director's decision.

Background

As recounted in *Stockbridge-Munsee Community*, 366 F. Supp. 2d at 703-07, the Tribe has had several land bases in the past 300 years, beginning in western Massachusetts and moving westward from there to the Hudson River Valley of New York to Lake Winnebago in Calumet County, Wisconsin, and ultimately to Shawano County, Wisconsin. The latter move occurred in 1856 after the United States entered into a treaty with the Stockbridge and Munsee Indians pursuant to which the Tribe ceded its lands at Lake Winnebago in exchange for a new reservation in Shawano County. *See* 11 Stat. 663

(Feb. 5, 1856) (Treaty with the Stockbridges and Munsees). This land consisted of two townships that were formerly part of the Menominee Reservation and now known as the Towns of Bartelme and Red Springs, located on Ranges 13 and 14 East, Township 28 North, Shawano County, Wisconsin, 4th Prime Meridian.

This new reservation, however, was subject to a plethora of issues that culminated in the public auction of 75% of the Tribe's reservation, and the allotment to individual tribal members of the remaining 25% of the reservation. Act of February 6, 1871, ch. 38, 16 Stat. 404; *Stockbridge-Munsee Community*, 554 F.3d at 660.² The individual trust allotments were placed in restricted status. *Id.* When there was insufficient land to issue allotments to all tribal members, Congress authorized the purchase of additional land (at the Tribe's expense) for allotments or, alternatively, tribal members could accept cash in lieu of land. Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 382 (1906 Act). Allotments under the 1906 Act were freely alienable. *Stockbridge-Munsee Community*, 366 F. Supp. 2d at 724. By 1910, all of the remaining "unsold land within the boundaries of the 1856 reservation was allotted to tribal members [and] the Tribe's reservation was, for the most part, treated as if it had faded out of existence." 554 F.3d at 661. Ultimately, the Court concluded that the reservation consistently was treated "as disestablished." *Id.* at 665; *see also id.* ("the Tribe's reservation was diminished by the 1871 Act and subsequently extinguished by the 1906 Act.").

Notwithstanding the lack of a tribal land base and pursuant to 25 U.S.C. § 478, the Secretary held an election for members of the Tribe on December 15, 1934, on the question of whether the Tribe would accept or reject the terms of the IRA. *See Ten Years of Tribal Government Under I.R.A.*, United States Indian Service, 1947, at 20.³ The Tribe voted to accept the IRA by a vote of 166 to 1. *Id.*

Even though the Tribe voted in the Secretarial election to accept the IRA, the Tribe's application to reorganize under the IRA, *see* 25 U.S.C. § 476, initially was held up because it had no reservation land and no land remained in trust or restricted status for either the Tribe or individual members. *See Stockbridge-Munsee Community*, 366 F. Supp. 2d at 732,

² Apparently, the land that was auctioned was "heavily forested and difficult to farm." *Id.* According to the court's decision, the United States did not allow the Tribe or its members to harvest the timber. *Id.*

³ This document has been added to the record and may also be viewed at the website cited by the Regional Director, thorpe.ou.edu/IRA/IRAbook/index.html, as well as at the Department of the Interior's website at library.doi.gov/images/Haas.TenYears.pdf.

777. To rectify that, beginning in 1937, the United States began to reacquire certain lands within the boundaries of the Tribe's 1856 reservation and "rededicat[ed] the property as the Tribe's reservation." *Stockbridge-Munsee Community*, 554 F.3d at 661 (citing 2 Fed. Reg. 629 (Apr. 1, 1937); 13 Fed. Reg. 7718 (Dec. 13, 1948); and Act of Oct. 9, 1972, Pub. L. No. 92-480, 86 Stat. 795). More recently, the Tribe has begun to acquire land on its own and has applied to have the land taken into trust. *See, e.g., Shawano County, Wisconsin, Board of Supervisors v. Midwest Regional Director*, 40 IBIA 241 (2005). The present appeal involves the Tribe's fee-to-trust application for 5 properties totaling approximately 404 acres, all located in the Town of Bartelme. *See n.l.*

The Tribe submitted its initial fee-to-trust application to BIA in September 2000.⁴ At that time, the Tribe's application consisted only of the Herrmann, Dumke, and Stemlar properties. In April 2002, the Tribe submitted the Gara 2 and Collins properties to BIA for consideration. On December 14, 2004, the Superintendent determined to accept all parcels into trust on behalf of the Tribe. The County appealed to the Regional Director, arguing *inter alia*, that the environmental review was deficient. On February 16, 2006, the Regional Director issued his decision in which he agreed with the County that the environmental review was procedurally flawed, vacated the Superintendent's decision, and remanded the matter to the Superintendent to address the issues raised by the County.

On June 28, 2007, and after additional environmental analysis, the Superintendent again determined to take all 5 properties into trust for the Tribe. Again, the County appealed to the Regional Director, and raised many of the arguments that it now reiterates on appeal to the Board. The Regional Director issued his decision on December 1, 2008, and affirmed the Superintendent's decision.

The Regional Director found that the Superintendent properly had considered the fee-to-trust application pursuant to the "on-reservation" criteria set out in 25 C.F.R. § 151.10 because each of the 5 properties is located "within the boundaries of the Tribe's reservation as set aside by the Treaty of 1856" and, therefore, meets the regulatory definition of "on-reservation" acquisition regardless of whether the reservation boundaries remain intact, or whether the reservation has been judicially determined to have been diminished or disestablished. Regional Director's Decision at 3. The Regional Director further found that the Tribe's application described its need for additional trust land, principally because its existing landbase was "largely cut-over and submarginal" and

⁴ The cover letter accompanying the Tribe's application is dated August 1, 2000. However, it bears the stamp of BIA's Great Lakes Agency with a receipt date of September 18, 2000.

unsuitable for farming, homes, or development. *Id.* at 4. The Regional Director noted that the lands were to be used for purposes of constructing 53 homes for tribal members; providing grounds for hunting, fishing, gathering, and other recreation; preserving wildlife; and promoting the Tribe's timber harvesting enterprise and other commercial development. *Id.* at 5. The Tribe's safety facility presently is located on one of the properties.

With respect to the impact on the County from the withdrawal of these lands from the tax rolls, the Regional Director noted that the County's objections primarily express "the County's characterization of the Superintendent's decision and [its] disagreement with it," *id.* at 6, or contend that BIA failed to consider the total loss of tax income in future years. With respect to the latter, the Regional Director noted that BIA is not required to consider speculative losses, such as taxes due in future years that have not yet been assessed. The Regional Director addressed the County's concern that while no jurisdictional conflicts currently exist, future conflicts could arise. Again, the Regional Director noted that BIA is not required to consider speculative uses that may arise for the land in the future that might conflict with County zoning/land use. Finally, the Regional Director determined that BIA had properly completed the required environmental review, which resulted in a Finding of No Significant Impact (FONSI). He further noted that there were no comments in response to the FONSI.

This appeal followed, in which the County raises the same arguments before the Board as it raised before the Regional Director. The County also raises a new challenge to the Regional Director's authority to take land into trust for the Tribe under the IRA based on the Supreme Court's decision in *Carcieri*, which was decided after the Regional Director issued his decision. A citizens group, Shawano County Concerned Property Taxpayers Association, Inc. (SCCPTA), submitted comments on the issue of BIA's authority to take land into trust for the Tribe.⁵ We turn now to a discussion of these arguments.

⁵ Both the cover letter and its enclosure from SCCPTA refer to a fee-to-trust acquisition for the Tribe in the Town of Red Springs, and thus, SCCPTA's comments appear to be directed to a different trust acquisition than the ones we consider today, which are located in the Town of Bartelme. SCCPTA's cover letter also requests consideration "for current and future . . . fee to trust applications [from the Tribe]." Letter from SCCPTA to Board, Dec. 30, 2009; *see also* letter from SCCPTA to Board, Jan. 20, 2010 ("[o]ur letter and attachment [are] intended to be a proactive dissemination of historical records that may[be] pertinent [to the Tribe's fee-to-trust applications]"). The Regional Director strenuously objects to the Board's consideration of SCCPTA's brief on the grounds that SCCPTA lacks standing, failed to exhaust remedies by appealing the Superintendent's decision to the

(continued...)

Discussion

A. Statutory Scheme

BIA relied on § 5 of the IRA, 25 U.S.C. § 465, as authority to acquire land for the Tribe. *See* Superintendent’s Decision, June 28, 2007, at 1-2. The regulations governing acquisitions of trust land permit such action “[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). Proposed acquisitions located within the boundaries of a Tribe’s reservation are evaluated by BIA pursuant to 25 C.F.R. § 151.10; off-reservation acquisitions are evaluated pursuant to 25 C.F.R. § 151.11, which include the factors set forth in § 151.10 plus two additional requirements. For purposes of determining which section applies — § 151.10 or § 151.11 — the definition of “reservation” is not limited to the tribe’s present-day reservation boundaries but, “where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.” *Id.* § 151.2(f). The criteria found in § 151.10 are:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

⁵(...continued)

Regional Director, and failed to first move to intervene or participate as amicus. In addition, the Regional Director argues that SCCPTA’s brief relates to a different trust acquisition in the Town of Red Springs and urges us to disregard the brief on that ground.

We agree with the Regional Director that SCCPTA has provided no basis upon which we could conclude that it would have standing to pursue this appeal in its own right or to formally intervene as an “interested party” within the meaning of the regulations. But, we construe SCCPTA’s two letters as a motion to participate as amicus curiae, and it is granted. *See* 43 C.F.R. § 4.313(a) (motions to intervene or participate as amicus curiae will be liberally construed). SCCPTA’s arguments are limited to supporting the County’s assertion that the Tribe was not “under Federal jurisdiction” in 1934, and we consider them in that context.

We reject SCCPTA’s effort to have the Board retain SCCPTA’s comments and the accompanying appendices for future appeals from trust acquisition decisions on behalf of the Tribe. It is the burden of amici and interested parties to determine whether to participate in an appeal before the Board, and to submit appropriate arguments when the decision is made to participate.

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;⁶

....

(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 [(NEPA)] Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

B. Standard of Review

The standard of review in trust acquisition cases is well established. Decisions of BIA officials on requests to take land into trust are discretionary, and the Board does not substitute its judgment for BIA's judgment in discretionary decisions. *Arizona State Land Department v. Western Regional Director*, 43 IBIA 158, 159-60 (2006); *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). Instead, the Board reviews discretionary decisions to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of BIA's discretionary authority, including any limitations on its discretion that may be established in regulations. *Arizona State Land Department*, 43 IBIA at 160. Thus, proof 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

⁶ Subsection 151.10(d) applies only to trust acquisitions for individuals, for which reason we omit mention of it here.

particular conclusion with respect to each factor. *See id.*; *Eades v. Muskogee Area Director*, 17 IBIA 198, 202 (1989). Nor must the factors be weighed or balanced in a particular way or exhaustively analyzed. *Jackson County v. Southern Plains Regional Director*, 47 IBIA 222, 231 (2008); *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008); *County of Sauk v. Midwest Regional Director*, 45 IBIA 201, 206-07 (2007), *aff'd sub nom. Sauk County v. U.S. Department of the Interior*, No. 07 C 0543 S (W.D. Wis. May 29, 2008). Moreover, an appellant bears the burden of proving that BIA did not properly exercise its discretion. *Aitkin County*, 47 IBIA at 104; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246; *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. *Aitkin County*, 47 IBIA at 104; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246-47.

In contrast to the Board's limited review of BIA discretionary decisions, the Board has full authority to review any legal issues raised in a trust acquisition case, except those challenging the constitutionality of laws or regulations, which the Board lacks authority to adjudicate. *Jackson County*, 47 IBIA at 227-28; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 247. An appellant, however, bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 247.

C. Merits

I. Statutory Authority for the Acquisition – 25 C.F.R. §§ 151.10(a)

BIA's fee-to-trust land acquisition regulations require BIA to identify the existence of statutory authority for a trust acquisition, including any limitations contained in such authority. *See* 25 C.F.R. § 151.10(a). In the present case, BIA relied upon § 5 of the IRA, 25 U.S.C. § 465, which authorizes the Secretary to acquire land in trust for the purpose of providing land for Indians. *See* Superintendent's Decision, June 28, 2007, at 1-2.

While this appeal was in briefing, the Supreme Court decided *Carciere*. In that decision, the Court held, based on one of the definitions of "Indian" in § 19 of the IRA, *id.* § 479, that the Secretary's authority to take land into trust under § 465 was limited to tribes that were "under Federal jurisdiction" at the time the IRA was enacted in June 1934. *See* ___ U.S. at ___, 129 S. Ct. at 1061, 1068. In *Carciere*, the tribe for which the Secretary sought to acquire land in trust was the Narragansett Indian Tribe of Rhode Island

(Narragansett Tribe), which the Federal government formally recognized in 1983. *See* 48 Fed. Reg. 6,177, 6,178 (Feb. 10, 1983). No party in *Carciери* contended that the Narragansett Tribe was “under Federal jurisdiction” in 1934. *See Carciери*, ___ U.S. at ___, ___, 129 S. Ct. at 1068 (majority opinion), 1070 (Breyer, J., concurring). Instead, the Court focused on the meaning of “now” as used in the phrase “now under Federal jurisdiction,” which is used in one part of the definition of “Indian” in the IRA. *See* 25 U.S.C. § 479. The Court concluded that “now” meant at the time Congress enacted the IRA in 1934, not when the Secretary sought to take land into trust under § 465. *Carciери*, ___ U.S. at ___, 129 S.Ct. at 1068. Thus the Court’s interpretation of the word “now” in § 479 was dispositive.

In its reply brief, the County raised a new argument, relying on *Carciери*, challenging BIA’s authority to accept any land into trust for the Tribe under the IRA. The County argued that *Carciери* “is dispositive of this [appeal],” Reply Brief at 2, and the County now contends that BIA lacks authority under § 465 because the Tribe was landless in 1934 and, therefore, could not then have been “under Federal jurisdiction.” In response to this new argument and because *Carciери* was decided only a month before the County’s opening brief was filed in this appeal, the Board permitted the Regional Director to respond to this additional issue raised in the County’s reply brief. Order for Additional Briefing, May 5, 2009.

We reject the County’s assertion that *Carciери* is dispositive. The Supreme Court in *Carciери* decided *when* a tribe must have been “under Federal jurisdiction” for § 465 to apply, but it did not decide under *what circumstances* a tribe may be considered to have been “under Federal jurisdiction” in 1934. Thus, at most, *Carciери* introduces a new issue that we must consider — whether the Tribe was “under Federal jurisdiction” in 1934 — but it neither decides nor gives guidance on the answer to that issue.⁷

On the merits of whether the Tribe was under Federal jurisdiction in 1934, the County makes two related arguments. First, the County argues that because the Indian Land Consolidation Act (ILCA) defines “Indian tribe” in reference to having tribal or

⁷ Given the fact that *Carciери* litigation was well underway when the County’s appeal was pending before the Regional Director, and the case was pending before the Supreme Court when the County filed its opening brief to the Board, the County arguably should have raised its statutory challenge to BIA’s authority sooner. On the other hand, the Supreme Court’s decision did resolve a significant issue that is relevant to the applicability of § 465, and because BIA relies upon § 465 as its source of authority to accept the land into trust for the Tribe, we will address this newly raised issue.

individual land held in trust, *see* 25 U.S.C. § 2201(1), and because the Tribe had no such trust land in 1934, it was not an Indian tribe under Federal jurisdiction at that time. According to the County, ILCA provides the appropriate guidance to define what it means to be a tribe “under Federal jurisdiction,” and thus in order to be an Indian tribe capable of being under Federal jurisdiction, a tribe must necessarily have land held in trust. Second, and closely related to its first argument, the County argues that in order to be a tribe under Federal jurisdiction in 1934, the Tribe must have had a reservation. SCCPTA’s submission piggybacks onto the County’s second argument by introducing an excerpt from proposed findings of fact that were presented to the district court in the *Stockbridge-Munsee* litigation. As we construe SCCPTA’s submission, SCCPTA contends that the same historical facts that led the court to find that the Tribe’s reservation was disestablished must necessarily also demonstrate that the Tribe was not under Federal jurisdiction in 1934.⁸

We reject both arguments, the first because ILCA’s definition of “Indian tribe” is simply irrelevant to our inquiry, and the second because the absence of a reservation or trust land for the Tribe in 1934 does not mean that the Tribe was not under Federal jurisdiction at that time, nor does SCCPTA’s “information” demonstrate otherwise. To the contrary, in 1934, the Secretary necessarily recognized and determined that the Tribe *did* constitute a tribe under Federal jurisdiction when he called and conducted a special election at which the Tribe’s adult Indians voted on the question of whether to accept or reject the application of the IRA. *See* 25 U.S.C. § 478. It is this latter fact that we find conclusive in determining whether the Tribe was “under Federal jurisdiction” in 1934.

We first explain our reasoning before addressing the County’s arguments. Under § 18 of the IRA, 25 U.S.C. § 478, the terms of the IRA would not apply to a reservation if the adult Indians of a reservation voted to reject its application. To permit tribes to exercise this option, the Secretary was required to conduct elections pursuant to § 478. The

⁸ SCCPTA readily admits that it “has not investigated these records” and “has not done research on” the Tribe’s 1937 election to reorganize under the IRA. *See* SCCPTA’s Open Letter to Property Owners (Open Letter) (enclosed with SCCPTA’s letter to the Board, Dec. 30, 2009), at 5, 6. Attached to the Open Letter is an “Appendix A,” which begins with a numbered paragraph 64, which SCCPTA states is excerpted from the State of Wisconsin’s proposed findings of fact in the *Stockbridge-Munsee* litigation. The document includes citations to “MD,” which apparently refers to a “Master Document” used by the parties and the court in that litigation, but which SCCPTA has not provided to the Board. SCCPTA describes its “Appendix B” as “additional evidence collected by SCCPTA.” Open Letter at 4. By attaching the appendices, we understand SCCPTA to accept as correct the facts or propositions stated therein.

Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe’s voters voted not to reject the provisions of the IRA. Regardless of whether the election for the Tribe, in the absence of a reservation, had any immediate, practical effect, the Secretary’s act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be “under Federal jurisdiction” in 1934. That is the crux of our inquiry, and we need look no further to resolve this issue.

We turn now to the County’s arguments. First, the County urges us to apply the definition of “Indian tribe” to the IRA that is found in the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2201, legislation that was enacted 75 years after the IRA. ILCA defines “Indian tribe” as “any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust.” 25 U.S.C. § 2201(1). The County then takes a leap and states that, according to ILCA’s definition, “in order to be an Indian tribe *capable of being under federal jurisdiction* [in 1934], the tribe must necessarily have land held in trust.” County’s Reply Brief at 2 (emphasis added). The County argues that ILCA’s definition “is consistent with the analysis set forth in *Carciere*.” *Id.*

We reject this argument. The County cites no authority for taking a definition from one statute and applying it to a statute enacted 75 years earlier. Second, far from being consistent with *Carciere*, the County’s analysis is squarely at odds with that of the Supreme Court. The Court in *Carciere* soundly rejected the argument: “[Section] 2201 is, by its express terms, applicable only to Chapter 24 of Title 25 of the United States Code. [Citation omitted.] The IRA⁹ is codified in Chapter 14 of Title 25.” *Carciere*, ___ U.S. at ___ n.9, 129 S.Ct. at 1068 n.9. Therefore, the definition of Indian tribe, found in § 2201, has no bearing on the meaning of the phrase “under Federal jurisdiction” in the IRA.

Next, we reject the County’s argument that the Tribe or its members must have had trust land or a reservation to be “under Federal jurisdiction.” It is well-established that the purposes of the IRA not only included the encouragement of tribal self-determination and preservation of what remained of tribal lands but also the acquisition of land for landless Indians. *See, e.g., South Dakota*, 487 F.3d at 552; *Stockbridge-Munsee Community*, 366 F. Supp. 2d at 731-32. And although the option given to the Indians — whether to reject the application of the IRA — was made in reference to a reservation,¹⁰ the Secretary clearly did not construe the IRA to preclude landless tribes from holding an election on whether to

⁹ 25 U.S.C. §§ 465 and 479 were enacted as §§ 5 and 19, respectively, of the IRA.

¹⁰ Section 478 provides that certain provisions of the IRA do not apply “to any reservation wherein a majority of the adult Indians” voted against the application of the IRA.

accept or reject the IRA. *See, e.g.*, SCCPTA Exh. A, ¶ 90 (identifying additional Wisconsin tribes — Forest County Potawatomi, Sokaogan Chippewa Community, and St. Croix Band Chippewa Indians — as landless in 1934); *Ten Years of Tribal Government Under I.R.A.*, United States Indian Service, 1947, at 20 (the Secretary held an election for these tribes in 1934-35 under the IRA). If the Indians voted not to reject the IRA, the Secretary understood the IRA to permit him *inter alia* to purchase land in trust and proclaim a reservation, as was done for the Tribe in 1937. *See* 2 Fed. Reg. 629 (Apr. 1, 1937) (Secretary took land into trust under § 465 for the Tribe and proclaimed it “an Indian reservation” in accordance with § 467). Thereafter, the remaining provisions of the IRA, e.g., to adopt a tribal constitution and incorporate, would then apply to the Indians’ newly acquired reservation.

Our conclusion is supported by the Supreme Court’s decision in *United States v. John*, 437 U.S. 634 (1978). In *John*, the Court recounted the history of the Mississippi Choctaw Indians. In pertinent part, the United States moved the Mississippi Choctaws in the late 1800’s, with only limited success, from their lands in Mississippi to a new homeland in Oklahoma. Through the infamous Treaty of Dancing Rabbit Creek of 1830, the Tribe was to cede all lands east of the Mississippi River. *Id.* at 640-41 & n.8, 645-55. Choctaws who remained in Mississippi were to hold lands in fee. In or about 1918, the United States purchased lands that were to be sold on contract to the Mississippi Choctaws and eventually held in fee. 437 U.S. at 644-45. Such was the state of affairs for the Mississippi Choctaws in 1934: No reservation land, but individual tracts of land being purchased from the United States by the individual Indians to be held in fee. *Id.* at 646. On March 30, 1935, the Secretary held an election under § 478 for the Mississippi Choctaws, who voted not to reject the IRA. *Ten Years of Tribal Government Under I.R.A.*, United States Indian Service, 1947, at 17. Notwithstanding the absence of a reservation for the Mississippi Choctaws in 1934, the Court in *John* had no difficulty concluding that the tribe fell within the scope of and benefits afforded by the IRA. *Id.* at 645-51.

Although the County makes only limited arguments that the absence of a reservation or trust land necessarily precludes the Tribe from having been under Federal jurisdiction in 1934, SCCPTA’s submission piggybacks onto that argument by purporting to introduce, for the Board’s consideration, historical evidence produced for the *Stockbridge-Munsee Community* litigation. As we understand SCCPTA’s argument, the Tribe was not under Federal jurisdiction in 1934 because the 1906 Act dissolved the Tribe and because the historical evidence demonstrates that the Tribe was no longer “under Federal supervision” in 1934.

First, SCCPTA's argument was rejected by the Supreme Court in *John*, where the State argued unsuccessfully that the Mississippi Choctaws had ceased to exist as a tribe and that the Federal government had abandoned its supervision of the Tribe, thus divesting the Federal government of any jurisdiction over the Tribe. The Supreme Court rejected that argument, concluding that even if the State's jurisdiction had gone unchecked at times, and even if Federal supervision had not been continuous, that did not destroy the Federal government's jurisdiction over the Tribe. *Id.* at 650 n.20, 652-53.

Moreover, we find nothing in SCCPTA's submission that undermines our conclusion that by calling and conducting an election for the Tribe in 1934, the Secretary necessarily recognized and determined that the Tribe was under Federal jurisdiction, notwithstanding the Department of the Interior's admittedly inconsistent dealings with the Tribe in previous years. The historical record relied on by SCCPTA, much of which is recited in the District Court's decision in *Stockbridge-Munsee*, includes statements by Departmental officials that the Tribe was no longer considered under Federal "control" or "supervision," although we have found no statements that the Tribe was not under Federal "jurisdiction." To the contrary, as SCCPTA itself concedes in its Appendix A, and as the court expressly found in *Stockbridge-Munsee*, the Federal government continued to have dealings with the Tribe in four areas (including sending school-age tribal members to government-run schools for tribal children) and BIA did not require the presence of a reservation in order for it to assert *jurisdiction* over Indians and provide services to them. *See Stockbridge-Munsee*, 366 F. Supp. 2d at 725-26, 730, 776; SCCPTA Appendix A ¶ 79.¹¹

Thus, while there may have been no tribal *land* over which the Federal government exercised "supervision," *see* 366 F. Supp. 2d at 731, 751, or jurisdiction, *see* SCCPTA Appendix B ¶ 10, the absence of trust land or a reservation does not mean that the Tribe was no longer under Federal jurisdiction. *See John*, 437 U.S. at 650. The evidence indicates that the Department continued to recognize the Tribe. *See* 366 F. Supp. 2d at 732 (Assistant Commissioner's statement that the absence of a reservation meant there was no "*present* basis for organizing *this* tribe") (emphasis added); 777 (Assistant Solicitor's comments on review of the Tribe's proposed constitution that organization of the Tribe "was originally held up, despite the fact that it constitutes a recognized tribe, because the Band had no reservation"). SCCPTA's proposition that the termination of a land base

¹¹ Indeed, SCCPTA, by embracing the proposed findings of fact contained in its Appendix A, *accepts* several historical facts that would further support us finding that the Tribe was under Federal jurisdiction in 1934, if we were not to conclude that the Secretary's own implicit recognition and determination in 1934 to that effect is dispositive.

meant that the Tribe itself had been terminated was soundly rejected by the court in *Stockbridge-Munsee*. See 366 F. Supp. 2d at 778 (“The issue is whether the Stockbridge-Munsee Reservation, not the Tribe, was disestablished. The Act of 1906 is devoid of an indication that Congress intended to dissolve the Stockbridge and Munsee as a Tribe”). Again, as SCCPTA concedes in its Appendix A, BIA distinguished between tribes with reservations and those tribes with no remaining treaty-granted reservation lands, but did not exclude the latter category of tribes from elections on whether to accept the terms of the IRA. See SCCPTA Appendix A ¶ 90.

Finally, SCCPTA argues that “[t]he IRA’s purpose was to end the forced allotments of Indian reservation lands under the Dawes Act.” Open Letter at 6.¹² Apparently, SCCPTA may be contending that since the Tribe’s reservation had already been entirely allotted, there was no basis for the IRA to apply to the Tribe. We reject this argument. While it is true that one purpose of the IRA was the elimination of allotments, other purposes of the IRA included securing the perpetual protection of tribal reservations (§ 2), acquiring land for landless as well as reservation Indians (§ 5), proclaiming new Indian reservations (§ 7), appropriating funds for individual Indians to enroll in vocational and trade schools (§ 11), establishing Indian preference in hiring for positions within the Federal government to serve Indians and tribes (§ 12), and encouraging tribes to adopt formal governing documents (§ 16). Nothing in the IRA limited its application only to tribes that continued to have a reservation.¹³

By virtue of holding an election under the IRA for the Stockbridge Indians, we conclude that the Secretary necessarily recognized and determined in 1934 that the

¹² The Dawes Act, otherwise known as the General Allotment Act, 25 U.S.C. § 331, was enacted in 1887 pursuant to the then-policy of Congress to provide Indian families with land on which to make a permanent home and engage in an agrarian lifestyle. See *Estate of John Joseph Kipp*, 8 IBIA 30, 42 (1980) (citing *Hopkins v. United States*, 414 F.2d 464 (9th Cir. 1969)).

¹³ Indeed, shortly after the IRA was enacted, the Secretary exercised the authority found in § 5 of the Act — the same authority relied upon by BIA in the present case — to acquire land for the Tribe, which he then proclaimed to be a reservation pursuant to § 7 of the IRA, 25 U.S.C. § 467. See 2 Fed. Reg. 629 (Apr. 1, 1937). The absence of a land base undoubtedly was seen by the Department as an obstacle to the Tribe reorganizing under the IRA, but it was hardly seen as an indication that the Tribe was not under Federal jurisdiction and not eligible for the benefits of the IRA.

Tribe was “under Federal jurisdiction.” We need look no further to determine that the Tribe is eligible to have land taken into trust for it pursuant to § 465. Given our determination that BIA has authority to take land into trust for the Tribe, we turn now to the County’s remaining arguments concerning BIA’s evaluation of the proposed trust acquisition under 25 C.F.R. Part 151.

2. Which Regulation Applies: 25 C.F.R. § 151.10 or § 151.11?

BIA evaluated the proposed acquisition as an on-reservation acquisition pursuant to 25 C.F.R. § 151.10; the County contends that BIA should have evaluated the acquisition pursuant to the off-reservation criteria of § 151.11 because the Tribe’s reservation ultimately was “extinguished” and at least one of the parcels in the proposed acquisition is not contiguous to any land currently held in trust for the Tribe. Because there is a judicial determination that the Tribe’s reservation was disestablished, because the parcels under consideration are each within the original boundaries of the disestablished reservation, and because the regulatory definition of “on-reservation” encompasses these factual circumstances, we conclude that BIA was not required to consider the acquisition as an off-reservation acquisition and that evaluation under § 151.10 was appropriate.

Consideration of a fee-to-trust land acquisition request is identical whether a proposed acquisition is on or off reservation, *except* that there are two additional required considerations for an off-reservation proposed acquisition. *See* 25 C.F.R. §§ 151.10, 151.11. A fee-to-trust acquisition is considered to be an on-reservation acquisition if it is within or contiguous to the tribe’s reservation, *id.* § 151.10; if it is outside and noncontiguous to the tribe’s reservation, it is considered an off-reservation acquisition, *id.* § 151.11. As the Board noted in another appeal brought by the County, *Shawano County*, 40 IBIA at 246, “Indian reservation,” for purposes of 25 C.F.R. part 151, is defined as “that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, . . . where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.” 25 C.F.R. § 151.2(f). Therefore, if a fee-to-trust application concerns a parcel or parcels of land within or contiguous to the exterior boundaries of the *former* reservation of the tribe and there has been a judicial determination that the tribe’s reservation was diminished or disestablished, the proposed acquisition is treated as an on-reservation acquisition subject to consideration under § 151.10.

Here, we note that there have been several judicial determinations that the Tribe’s reservation, as it existed in 1856, first was diminished by Act of Congress in 1871 and then

disestablished by the Act of 1906. See *Stockbridge-Munsee Community*, 366 F. Supp. 2d at 779 (“the court concludes that the Act of 1871 diminished the two-township Stockbridge-Munsee Reservation to 18 contiguous sections. The court further concludes, based on its review, that the Act of 1906 disestablished the [Tribe’s] Reservation”), *aff’d*, 554 F.3d at 665 (the record demonstrates “consistent treatment of the reservation as disestablished”); see also *United States v. Anderson*, 225 F. 825, 825 (E.D. Wisc. 1915) (“The Stockbridge and Munsee reservation, created by treaty and congressional acts, has been dissolved through the patenting in fee simple of the lands comprising the same . . . pursuant to Act Cong. June 21, 1906”).¹⁴ Next, our review of the record confirms that each of the parcels are found within the Tribe’s former reservation boundaries, namely each is located within the Town of Bartelme. The County does not dispute the fact that each of the five properties is within the exterior boundaries of the Tribe’s former reservation. We therefore conclude that BIA properly evaluated the trust acquisition application as an on-reservation acquisition subject to the considerations delineated at 25 C.F.R. § 151.10.¹⁵

3. The Tribe’s Need for Additional Land – § 151.10(b)

The County argues that BIA has not “properly articulate[d] the reasons for its decision to find need for additional land into trust.” Opening Brief at 2 (unnumbered). The County appears to argue that the Tribe must submit more detailed plans for its intended *use* of the land, although the County apparently obtained information through a

¹⁴ The County argues that the Seventh Circuit carefully avoided pronouncing the reservation as “disestablished.” Opening Brief at 1 (unnumbered). But the court’s decision shows otherwise. *Stockbridge-Munsee Community*, 554 F.3d at 665. Even if the Seventh Circuit had not used the word “disestablished” to characterize the history of the Tribe’s reservation, the County does not explain how or why the court’s use of the words “extinguished” or “dissolved” to describe the Tribe’s former reservation have a different meaning than “disestablished” for purposes of § 151.10. In any event, there is no suggestion that the three words were intended to have separate meanings, and we conclude that the court used these three words — extinguished, disestablished, and dissolved — interchangeably in its decision.

¹⁵ Given our determination that the Tribe’s fee-to-trust application properly is considered as an on-reservation application pursuant to § 151.10 and for purposes other than gaming, we need not reach the County’s argument that BIA was required to follow the further guidance set forth in a memorandum dated January 3, 2008, by then-Assistant Secretary Carl Artman. That memorandum is limited to *off*-reservation fee-to-trust applications where the acquisition will be used for gaming.

Freedom of Information Act request that detailed the amount of acreage of each property and the specific tribal needs each property will meet.¹⁶ The County argues that even though the Tribe has articulated that the land will be used for such purposes as housing, forestry, parks and recreation, and governmental facilities, the Tribe has not shown that it “requires” the entire 404 acres in trust for the asserted needs and, in actuality, might only require 25% of the land in trust. *Id.*

The Tribe is not required to show that trust status for the land is required for the Tribe to achieve its stated needs, much less must it justify, acre-by-acre, the need for trust status. There simply is no requirement in the IRA or in the regulations that requires the Tribe to make this showing or for BIA to opine on it. *Aitkin County*, 47 IBIA at 109. As the Eighth Circuit Court of Appeals noted in *South Dakota v. U.S. Dept. of the Interior*, 423 F.3d 790, 801 (8th Cir. 2005), “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.”

The County also contends that BIA failed to require greater proof and greater specificity concerning the Tribe’s asserted and varied needs for the land. Nothing in the IRA or the regulations requires either the Tribe to provide a specific level of detail or for BIA to demand it, for which reasons we cannot say that BIA has abused its discretion by not seeking greater proof and specificity. The Tribe has provided reasonable explanations in support of its asserted needs: There is a waiting list for tribal housing; timber harvesting is a major source of income for the Tribe, ergo, the acquisition of forested lands will provide additional income through the Tribe’s business enterprise; and recreational activities such as hunting, fishing, gathering, and other activities promote the health and well-being of tribal members. Moreover, both the Superintendent’s decision and the Regional Director’s decision reflect that each official actively considered these asserted needs for the land. Therefore, we conclude that BIA gave appropriate consideration to this criteria, and was not required to demand greater proof or specificity from the Tribe.

4. The Tribe’s Purpose for the Additional Land - 25 C.F.R. § 151.10(c)

For the first time on appeal, the County contends that the “real purpose[]” for the transfer of land into trust is to avoid the payment of taxes on the land, which, the County argues, “is not a sufficient reason to grant trust status.” Opening Brief at 3 (unnumbered).

¹⁶ For example, the County reports that it learned that, for one parcel, the Tribe has designated 11 acres for 8 single family homes, 10 acres for future home sites, 100 acres for forestry purposes, 10 acres for parks and recreation, and 14 acres for multi-purpose. *Id.*

The County also observes that the waiting list for Tribal housing increased from 9 in 2004 to 22 in 2007 (an increase of 150%), and then asserts that “there is no justification” for the Tribe to devote 404 acres to the construction of 53 homes. *Id.* In the same breath, the County acknowledges that “[a]ll purposes proposed (building homes, creating government offices, commercial forestry or development, and parks and recreation) are noble purposes,” but argues that there is no justification for so much land to be in trust to accomplish these purposes. Opening Brief at 3 (unnumbered). The County does not argue that BIA failed to consider the purposes for the land; rather, the County seeks to require BIA to exert greater scrutiny over the purposes for the proposed trust acquisition. We reject the County’s arguments.

First, it is well established that we need not consider arguments that were not first raised before the Regional Director, *Aitkin County* 47 IBIA at 106 n.5, and we see no reason to depart from that rule to consider the County’s concern that the Tribe is only seeking to avoid paying taxes. In any event, the County cites no authority to show that, even if its assertion is true, the elimination of taxes is not a permissible objective of a tribal government.

The County’s next argument — that the Tribe does not need to construct 53 houses when it has a waiting list only for 22 homes — misses the point. Nothing in Part 151 requires the Tribe to limit its vision only to present needs nor, more importantly, does Part 151 permit BIA to second-guess or substitute its judgment for that of the Tribe in determining the planned uses for land that is the subject of a trust acquisition application. The Tribe decides its intended use, based on its judgment of tribal needs. BIA evaluates the request in that context. If the Tribe anticipates constructing 53 homes, BIA evaluates the request accordingly.

We conclude that BIA appropriately and adequately considered the Tribe’s asserted purposes for the use of the proposed land acquisitions.

5. Impact on County Tax Rolls – 25 C.F.R. § 151.10(e)

The County makes a number of arguments concerning the effect on its revenue from the withdrawal of the five properties from the County’s tax rolls, but its arguments are largely unsupported and conclusory for which reasons we reject them.

With respect to the actual dollar loss, the County argues that BIA failed to appreciate that its share of the property tax income from the proposed trust acquisition had nearly doubled in 3 years from \$3,902.17 in 2004 to \$6,699.67 in 2007, and that this amount would continue to rise. But, as the Regional Director points out, even if we were to assume

that the County's overall budget in 2007 remained at its 2002 amount of \$45,931,634, the loss of income to the County from the proposed trust acquisition would only amount to .015% of the County's budget, substantially less than 1%.¹⁷

The County then argues that the Regional Director failed to consider the impact of this pattern – the pattern of the Tribe's share of property taxes increasing significantly if the properties were to remain in fee and the anticipated use of the land for housing were to materialize – on the County's budget. The County concedes that, if the property remained vacant, the tax implications “may be somewhat small[] in significance.” Opening Brief at 4 (unnumbered). But, the County argues, if the Tribe builds 53 homes, then the taxes and the County's share of the taxes “would significantly increase” if the property remained in fee. *Id.* In essence, the County would have BIA speculate on the *future* loss of income to, and its cumulative effect on, the County. In a similar vein, the County points out that not only are the Tribe's lands within the County's borders, but three additional tribes (the Menominee, the Oneida, and the Ho-Chunk) also either have had lands taken into trust within the County or potentially could. The County argues that each acquisition erodes the County's tax base, and this cumulative effect should be evaluated.

As the Regional Director notes, we have repeatedly held that BIA need only consider the present impact on the tax rolls of a proposed trust acquisition, i.e., the actual taxes currently assessed. *See City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 75, 81-82 (2009), and cases cited therein. BIA is not required to consider tax revenue that might accrue upon the Tribe's future construction of homes. *See Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 81 (2006) (BIA was not required to consider revenue that might be realized if tribe constructed marina on land that remained in fee instead of going into trust). The County gives us no reason to revisit our precedent. Each acquisition must be assessed by BIA on its own merit because its impact on the tax rolls will be different and in each situation there may be different tax offsets. In the present case, the Superintendent found — and the County did not dispute — that in the 2 years preceding the Superintendent's decision, the Tribe “voluntarily paid out over \$488,000 to local governments and school districts.” Superintendent's Decision at 6.

¹⁷ The County did not provide the total amount of its budget income in 2007 so that we might compare apples to apples. Therefore, we rely on the only figure available to us, which is the County's total budget in 2002 of \$45,931,634. Of course, if the County's annual budget has grown, the percentage would be less; if the County's budget has shrunk in any meaningful respect, we would expect the County to inform us that it had grown more dependent on property tax income.

In addition, the Superintendent noted that the Tribe contributed to the purchase of a new rescue boat for the County. *Id.*¹⁸

Last, the County argues that there was “no good faith attempt to meet with the County regarding the [fee]-to-trust issue.” Opening Brief at 3. It admits that the Tribe offered \$100,000 for road improvements, but maintains that this offer came with an unacceptable stipulation that the County waive its right to challenge any future fee-to-trust applications from the Tribe. *Id.* We reject this argument because, even assuming that the County’s allegation is correct, the County fails to show how it renders the Regional Director’s decision defective. First, there is no requirement that the Tribe meet with the County nor any requirement that the Tribe offer the County compensation or “in lieu” payment to offset any tax loss to the County that may result from the removal of tribal fee lands from the tax rolls. Second and more importantly, nothing in the decisions of the Superintendent and the Regional Director reflects that either of them considered the Tribe’s \$100,000 offer in the course of their respective determinations.

We conclude that the County has not met its burden of showing that the Regional Director abused her discretion in considering the impact on the County tax rolls from the proposed trust acquisition.

6. Jurisdictional Concerns – 25 C.F.R. § 151.10(f)

The County concedes that, at present, “the purposes [asserted for the proposed trust acquisition] will not conflict with current zoning or current surrounding uses of the land.” Opening Brief at 4 (unnumbered). However, the County maintains that there is no assurance that the Tribe will not alter its use of the lands after trust status is obtained and if that should occur, the County will have no recourse.

¹⁸ The County asserts for the first time that the Tribe’s contributions “will be used as credits in the Tribe’s payments in the State of Wisconsin Gaming Compact [that] the Tribe is already contractually obligated to pay.” Opening Brief at 5 (unnumbered). The County did not first raise this argument with the Regional Director, for which reason we are not required to consider it. *See supra* at 76. Even if we were to consider it, we cannot determine, and the County does not explain, whether it is speculating that the Tribe will use this contribution as a credit against payments under the state compact or whether the Tribe’s gaming compact with the State of Wisconsin obligates the Tribe to make these particular payments.

We have consistently held that bare assertions and speculative concerns do not satisfy an appellant's burden in challenging the Regional Director's exercise of discretion in a trust acquisition appeal. 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. *City of Eagle Butte*, 49 IBIA at 82.

7. County's Remaining Concerns

The County purports to incorporate into its opening brief all of its previous arguments in the history of this appeal. We reject, without more, such a wholesale import of arguments. The County has the burden of showing error in the decision before the Board, i.e., in the Regional Director's December 1 Decision. If, for example, an appellant believes that a regional director repeated an error made by a superintendent, it is the appellant's burden to identify that error and show why it is in error. It is not the responsibility of the Board to comb through the record to determine what arguments the County has made and should continue to make. That responsibility lies exclusively with Appellant.

Conclusion

The Board concludes that the Regional Director properly held that he had authority to accept land into trust for the Tribe pursuant to 25 U.S.C. § 465 and that he properly considered the proposed fee-to-trust acquisitions as on-reservation acquisitions pursuant to 25 C.F.R. § 151.10. We further conclude that the County has failed to meet its burden of showing that the Regional Director failed to consider the factors set forth at § 151.10.

Therefore, 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 1, 2008, decision to accept 404.06 acres — known as the Collins property, Herrmann property, Stemlar property, Gara 2 property, and Dumke property — into trust for the Stockbridge-Munsee Community.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge