Exhibit A

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

Received
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von Briesen & Roper, s.c.

MORRISON COUNTY, MINNESOTA, RICHARDSON TOWNSHIP, AND LEIGH TOWNSHIP, Appellants,	)	Order Affirming Decision
v.	)	Docket No. IBIA 17-069
ACTING MIDWEST REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	September 29, 2023

Morrison County (County), Richardson Township, and Leigh Township, Minnesota (collectively, Appellants), appealed to the Board of Indian Appeals (Board) from a March 2, 2017, decision (Decision) by the Acting Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to accept approximately 3,238.81 acres of land (the "Willmus Property") in trust for the Mille Lacs Band of Ojibwe Indians (Band) of the Minnesota Chippewa Tribe.

We affirm the Regional Director's decision to take the Willmus Property into trust. The Regional Director properly determined that she had authority to take this land into trust because the Band was under Federal jurisdiction in 1934. She also correctly concluded that the Willmus Property is contiguous to the boundaries of the Band's historic reservation (and thus may be considered as an "on-reservation" acquisition) because it touches those boundaries at a corner. Finally, we also find that Appellants have not shown that the Regional Director's decision here was "biased," that she erred in her consideration of any of the criteria for an on-reservation acquisition set out in 25 C.F.R. § 151.10, or that she failed to comply with applicable environmental laws. We decline to consider Appellants' constitutional claims because the Board lacks jurisdiction to hear them.

Statutory and Regulatory Background

The Regional Director approved the acquisition under Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108 (formerly codified at 25 U.S.C. § 465), which authorizes the Secretary of the Interior (Secretary) to acquire land in trust for Indians in her discretion. The Supreme Court has clarified that the IRA limits the Secretary's

authority to take land into trust to those Indian tribes that were under Federal jurisdiction in 1934, when the IRA was enacted. *Carcieri v. Salazar*, 555 U.S. 379, 382 (2009).

The acquisition of land in trust for Indians is governed by the regulations set out in 25 C.F.R. Part 151, which 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 fee-to-trust acquisition (like the Willmus Property at issue here), it must notify State and local governments with jurisdiction over the property and give them an opportunity to submit written comments regarding "the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments." *Id.* § 151.10. The applicant must then be allowed a reasonable opportunity to respond to the comments received. *Id.*

For an on-reservation acquisition—that is, a tribal request to acquire land located within or contiguous to an Indian reservation—the regulations require BIA to consider the following criteria:

> (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
> (b) The need of 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;
> (g) If the land to be acquired is in fee status, whether the [BIA] is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
> (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM [Departmental Manual] 6, Appendix 4,[1] National Environmental Policy Act [(NEPA)] Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

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[1] While the regulations provide that BIA's supplementary NEPA requirements are found in 516 DM 6, Appendix 4, those requirements are now found in 516 DM 10.

25 C.F.R. § 151.10(a)-(c) and (e)-(h).[2] The term "contiguous" is not defined in 25 C.F.R. Part 151.

For an off-reservation acquisition—that is, an acquisition where the land is outside of and not contiguous to the tribe's reservation—BIA must consider both the criteria set out above, *id.* § 151.11(a), and also several additional criteria, *id.* § 151.11(b)-(d). Specifically, BIA must consider the location of the off-reservation land relative to State boundaries, and its distance from the boundaries of the tribe's reservation. *Id.* § 151.11(b). As the land to be taken into trust gets farther from the tribe's reservation, BIA must give greater scrutiny to the tribe's justification of the economic benefits from the acquisition, and greater weight to the concerns raised by State and local governments about the acquisition's impacts on regulatory jurisdiction, real property taxes, and special assessments. *Id.* § 151.11(b), (d). If an off-reservation acquisition will be used for business purposes, the tribe must provide a plan specifying the anticipated economic benefits associated with that proposed use. *Id.* § 151.11(c).

Background

The Willmus Property is a tract of land covering approximately 3,238.81 acres in Morrison County, Minnesota. The property is rural and undeveloped: no one lives or works there, and there are no buildings or structures on it. *See* Decision, Mar. 2, 2027, at 7 (Administrative Record (AR) 5); *see also* Letter from Band to Regional Director, May 3, 2016, at 1 (Band's Response to Comments) (AR 47). It was purchased in fee by the Band in two transactions in 1994 and 2001, and the Band uses it for hunting and gathering.[3] *See* Band's Fee-to-Trust Application, Dec. 15, 2015 (Application) (AR 83). The northeast corner of the Willmus Property touches the southwest corner of the historic boundaries of the Band's reservation (as established by the Treaty of 1855). Application at 3-5; Decision at 3.

On December 15, 2015, the Band submitted an application to the Regional Director asking her to take the Willmus Property into trust on its behalf. The Band explained that it

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[2] Section 151.10(d) only applies to acquisitions for individual Indians and is therefore omitted here.

[3] As designated by the Regional Director, Parcels I through VIII, totaling approximately 3,218.81 acres, were deeded to the Band as one tract in 1994. Parcel IX, comprising approximately 20 acres, was deeded to the Band as one tract in 2001. *See* Warranty Deeds (AR 89); Application at 2-3. In its application, the Band referred to the Willmus Property as comprising two tracts (410TF000187 and 410TF000143). *See* Application at 1.

uses the property for "traditional cultural purposes, including hunting, gathering and other cultural activities," Application at 1, and that it planned to continue to use the property for those purposes after it was taken into trust, *id*. at 12.

BIA notified State and local governments about the application on January 26, 2016, soliciting written comments regarding taxes, special assessments, governmental services, and zoning applicable to the property. Notice of (Non-Gaming) Land Acquisition Application, Jan. 26, 2016 (AR 72). The State of Minnesota, the County, Leigh Township, and Richardson Township submitted comments on the application. The State did not oppose the acquisition, but asked that it be made subject to an existing highway right-of-way. Letter from State to Regional Director, Feb. 18, 2016 (State Comments) (AR 67). The County objected to the acquisition on the grounds that it would remove the land from the County's tax rolls; that the Band had not demonstrated a need for additional land, particularly since it already "enjoy[ed] considerable revenues" from its casinos and other businesses; and that the acquisition would create law enforcement problems that would cost the County additional resources. Letter from County to Regional Director, Mar. 24, 2016 (AR 57). Leigh Township responded that the taxes levied on the Willmus Property by the township came to $3,225.51 per year, 8% of its total tax levy, and that removing the property from the tax rolls would have a significant impact on the 80 remaining households in the township, many of which are retired or low-income households. Letter from Leigh Township to Regional Director, Feb. 16, 2016 (Leigh Township Comments) (AR 68). Richardson Township responded that it is opposed to any properties in the township being removed from the tax rolls; that the Band should not be exempt from paying its fair share of the tax burden for services received; and that the subject parcels located in Richardson Township are not attached to any tribal trust lands or tribal infrastructure. Letter from Richardson Township to Regional Director, Feb. 20, 2016 (Richardson Township Comments) (AR 66). The Band reviewed and responded to these objections. *See* Band's Response to Comments (AR 47); Correction to Band's Response, May 3, 2016 (AR 48).

On March 2, 2017, the Regional Director announced her intent to approve the Band's application and take the Willmus Property into trust. Decision at 11. She concluded that the property could be taken into trust as an on-reservation acquisition because it touches the Band's reservation at a point and is thus "contiguous." *Id.* at 3 & n.3. She then discussed each of the applicable § 151.10 criteria. She found that she had authority to take this land into trust (§ 151.10(a)) because the Band was under Federal jurisdiction in 1934 and thus the Supreme Court's decision in *Carcieri* did not deprive her of that authority. *Id.* at 5-6. She found that the Band had demonstrated a need for this additional land (§ 151.10(b)) because its acquisition would further the goals of promoting the Band's self-support, reversing the damage caused by allotment, and ensuring that the Band has a sufficient land base for future generations. *Id.* at 6. The Regional Director

rejected the County's argument that the Band could not show "need" because it already enjoyed economic success, citing Board precedent holding that a tribe need not be landless or in financial difficulty to justify the need to take land into trust. *Id.* The Regional Director identified the purposes for which the land will be used (§ 151.10(c)) as hunting and gathering. *Id.* at 7.

Next, the Regional Director considered the tax impacts that this trust acquisition would have on State and local governments (§ 151.10(e)). *Id.* at 7-8. In response to Leigh Township's claim that the loss of 8% of its total levy would have a "significant impact" on its remaining taxpayers and Richardson Township's comment that the Band should not be exempt from taxation, the Regional Director found that the townships had not provided evidence to support their concerns about future tax increases on their residents, and that BIA was not required to consider "speculati[ve]" losses. *Id.* at 8. The Regional Director also explained that BIA is only required to consider the impacts to programs and services that local governments articulate, and that the townships and the County had not identified any specific impacts on their programs or services. *Id.* Finally, the Regional Director noted that the Band had offered to offset Leigh Township's revenue loss by paying the equivalent of 3 years of assessed taxes. *Id.*

In response to the County's concerns regarding jurisdictional problems (§ 151.10(f)), the Regional Director noted that under Public Law 280, 83 P.L. 280, 67 Stat. 588 (1953), the County will retain concurrent law enforcement jurisdiction over the parcel, and that the Band was interested in entering into a law enforcement agreement with the County to improve the provision of services and reduce costs to the County. Decision at 9. With respect to BIA's ability to discharge the additional responsibilities associated with the acquisition (§ 151.10(g)), the Regional Director found that BIA's Minnesota Agency Office had determined that it would be able to do so. *Id.* at 10. The Regional Director identified four Agency staff available to assist the Band, and noted that additional responsibilities from the acquisition were expected to be minimal and would not impose any significant burden on BIA. *Id.*

Finally, the Regional Director considered the information submitted by the Band to ensure compliance with applicable environmental procedures (§ 151.10(h)). The Regional Director found that BIA was not required to prepare an environmental impact statement or an environmental assessment under the National Environmental Policy Act (NEPA) because no change in land use was planned here and thus a "categorical exclusion" applied; that no further compliance with the National Historic Preservation Act (NHPA) was required; that BIA was not required to consult with the United States Fish and Wildlife Service by the Endangered Species Act (ESA) because it had determined that this acquisition would have "no effect" on relevant ESA-listed species and their habitat; and that no further compliance with 602 DM 2 was required. *Id.* at 10-11.

Appellants filed a notice of appeal and an opening brief with the Board. BIA and the Band filed answer briefs, and Appellant filed a reply brief.

Discussion

I. Standard of Review

The Board's standard of review for trust acquisition cases is well-established. BIA's trust acquisition decisions are discretionary, and the Board does not substitute its own judgment for BIA's when reviewing a discretionary decision. *State of New York v. Acting Eastern Regional Director*, 58 IBIA 323, 329 (2014). Rather, we review these decisions to determine whether BIA properly considered the legal prerequisites to the exercise of its discretion, including any limitations on its discretion established in the regulations. *City of Moses Lake, Washington v. Northwest Regional Director*, 60 IBIA 111, 116 (2015). An appellant bears the burden of demonstrating that BIA did not properly exercise its discretion. *State of Kansas v. Acting Southern Plains Regional Director*, 61 IBIA 18, 24 (2015).

The record must show that the Regional Director considered the applicable factors set forth in 25 C.F.R. Part 151. There is no requirement that the Regional Director reach a particular conclusion with respect to each factor or that the factors be "weighed or balanced in a particular way or exhaustively analyzed." *Shawano County, Wisconsin v. Acting Midwest Regional Director*, 53 IBIA 62, 69 (2011); *see County of Sauk, Wisconsin v. Midwest Regional Director*, 45 IBIA 201, 206-07 (2007). But we must be able to discern from the Regional Director's decision (or at least from the record) that due consideration was given to timely comments submitted by interested parties. *State of New York*, 58 IBIA at 329; *Village of Hobart, Wisconsin v. Midwest Regional Director*, 57 IBIA 4, 13 (2013).

In contrast to the Board's limited review of BIA's discretionary decisions, the Board has full authority to review any legal issues raised in a trust acquisition case, with the exception of challenges to the constitutionality of laws or regulations, which the Board lacks jurisdiction to hear. *Shawano County*, 53 IBIA at 69.

II. *Carcieri* and Statutory Authority for this Acquisition (§ 151.10(a))

In *Carcieri v. Salazar*, the Supreme Court held that the Indian Reorganization Act only authorizes the Secretary to take land into trust on behalf of those Indian tribes that were under Federal jurisdiction in 1934 (when the IRA was enacted). 555 U.S. at 382. Here, the Regional Director concluded that the Band was under Federal jurisdiction in 1934 and that she therefore had authority to take this land into trust under the IRA. Decision at 5-6. In support of that conclusion, the Regional Director cited supplemental

information provided by the Band, including copies of treaties, statutes, congressional acts, and reports showing a continued relationship between the Band and the Federal government. *Id.* Specifically, the Regional Director referenced seven treaties between the United States and the Band signed between 1825 and 1967 and twelve statutes enacted between 1884 and 1933, as well as the Band's organization under the IRA and ratification of a constitution and bylaws in 1936. *Id.* The Regional Director also noted that the Board has already held that the Band was under Federal jurisdiction in 1934. *Id.* at 6 n.13 (citing *Mille Lacs County v. Acting Midwest Regional Director*, 62 IBIA 130, 140 (2016)).

Appellants argue that this conclusion was wrong because the Regional Director failed to explain why pre-1934 treaties and the Band's post-1934 organization meant that the Band was under Federal jurisdiction in 1934. Opening Brief (Br.), July 7, 2017, at 3. Appellants also argue that the Regional Director ignored the "true history of the Band," did not distinguish the Band from the larger Chippewa Tribe, and failed to mention the Removal Act of 1830 and the fact that the "purported Reservation" is west of the Mississippi.[4] *Id.*

But as the Regional Director observed, the Board already decided this issue in *Mille Lacs County*, 62 IBIA at 138-43. There, the Board considered whether *Carcieri* prohibited BIA from taking land into trust on behalf of the Band, and concluded that:

> the long history of Federal treaties, statutes, congressional appropriations, and executive agency actions undertaken with or on behalf of the Mille Lacs Band prior to and contemporaneous with the enactment of the IRA leaves no question that the Mille Lacs Band was under Federal jurisdiction in 1934, and, for that matter, recognized at the time.

Id. at 140. The Band submitted the same evidence here that supported our decision in *Mille Lacs County*. Decision at 5-6. Appellants have presented no new arguments or evidence that give us any reason to revisit those holdings. Appellants have failed to show

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[4] Appellants appear to argue not only that the Band was not under Federal jurisdiction in 1934, but that it was not Federally recognized. Opening Br. at 2-3. To the extent that Appellants argue that *Carcieri* deprives the Secretary of authority to take the Willmus Property into trust because the Band was not Federally recognized in 1934, a tribe does not need "to have been 'recognized' by the United States in 1934, formally or otherwise, in order for [the IRA] to apply." *Grand Traverse County Board of Commissioners v. Acting Midwest Regional Director*, 61 IBIA 273, 280-81 (2015). Nevertheless, the Board found in *Mille Lacs County* that the Band was in fact recognized in 1934. *Mille Lacs County*, 62 IBIA at 140.

that the Regional Director erred when she determined that the Band was under Federal jurisdiction in 1934, and we reject Appellants' argument that *Carcieri* bars BIA from taking the Willmus Property into trust.

III. Claims of Bias and Violations of Due Process

Next, Appellants argue that the Regional Director was biased and violated their right to due process because the Band and BIA participated in a "consortium" agreement that allowed the Band to "reprogram" funds so that BIA could hire more employees and process trust applications faster. Opening Br. at 3-7; Reply Br., Oct. 26, 2017, at 8-29. The Board recently heard and rejected fundamentally the same claims in *Village of Hobart, Wisconsin v. Acting Midwest Regional Director*, 69 IBIA 84, 101-14 (2023) (*Hobart II*). There, we concluded that the Regional Director's approval of the relevant trust acquisitions was not biased and that the appellants were not denied due process. *Id.* In particular, we found that there was no evidence of institutional bias, "prejudgment," or prohibited ex parte communications. *Id.* at 104-07. Most importantly, we held that, even assuming that BIA employees hired under the consortium agreement faced a conflict of interest, due process was not violated because the Regional Director, who is not a consortium employee, made the final decision on the trust acquisitions. *Id.* at 107-11. That independent review by the Regional Director, we found, cured any potential conflict of interest. *Id.* at 111.

We reach the same conclusions here for the same reasons. The facts here do not differ materially from the facts in *Hobart II*. The terms of the consortium agreement here are fundamentally the same as the consortium agreement in *Hobart II*. *Compare* Memorandum of Understanding Between Mille Lacs Band of Ojibwe Indians and the Bureau of Indian Affairs–Midwest Regional Office (Midwest MOU) FY 2014–FY 2017 (Appellants' Reply Br., Ex. 3) *with* Memorandum of Understanding Between Oneida Tribe of Indians of Wisconsin and the Bureau of Indian Affairs–Midwest Regional Office FY 2008–FY 2010.[5] Nothing in the record here provides any additional evidence of bias, prejudgment, prohibited ex parte communications, or conflict of interest beyond what we addressed in *Hobart II*. Appellants' arguments are essentially the same as the arguments made in *Hobart II*, and fail for the same reasons: Appellants have not carried their burden of proof by making a "substantial showing of bias" (or by establishing that the BIA decisionmaker had a "pecuniary interest" in the outcome of this application) because there is no evidence of bias and because any conflict of interest was cured by the Regional Director's independent review. We refer the parties to the extended discussion of these issues in *Hobart II*, 69 IBIA at 101-14, and incorporate that discussion herein by reference.

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[5] A copy of the Midwest MOU at issue in *Hobart II* has been added to the record on appeal.

IV. On-Reservation or Off-Reservation: Cornering & Contiguous

The regulations governing discretionary trust acquisitions draw a distinction between "on-reservation" and "off-reservation" acquisitions. *Compare* 25 C.F.R. § 151.10 *with id.* § 151.11. A trust acquisition is "on-reservation" if the land to be taken into trust is either "located within" or "contiguous to" an Indian reservation. 25 C.F.R. § 151.10. For an on-reservation acquisition, the Regional Director is required to consider the criteria set out in § 151.10. All other acquisitions are "off-reservation." For off-reservation acquisitions, the Regional Director must consider both the criteria set out in § 151.10 and several additional criteria set out in § 151.11.

The question here is whether the Willmus Property is on- or off-reservation. It is not located within the Band's reservation, but one corner of the property touches a corner of the Band's reservation (which, for ease of reference, we will call "cornering"). *See* Map of Willmus Property (AR 85). The Regional Director concluded that, because the Willmus Property touches the Band's reservation at a corner, it is "contiguous" to the reservation and may be treated as an on-reservation acquisition. Decision at 3 & n.3. In support of her conclusion, the Regional Director cited BIA's Fee-to-Trust Handbook, which defines "contiguous parcels" as "parcels of land having a common boundary . . . including parcels that touch at a point."[6] *Id.* at 3 n.3.

Appellants argue that this was error and that the Willmus Property is really an off-reservation acquisition that must be remanded to the Regional Director so that she can consider the additional criteria set out in § 151.11. They make two arguments in support of these contentions.[7]

First, they argue that the Willmus Property is not contiguous to the Band's reservation (and thus cannot be considered "on-reservation") because cornering lands are

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[6] The Fee-to-Trust Handbook is not binding on Appellants because it was not promulgated through notice-and-comment rulemaking. *See, e.g., County of San Diego, California v. Pacific Regional Director*, 58 IBIA 11, 28 n.22 (2013).

[7] BIA and the Band, citing *County of Sauk*, 45 IBIA at 208-09 n.11, suggest that the Board should not consider Appellants' argument that this is an off-reservation acquisition because they have raised this specific issue for the first time on appeal. But unlike in *County of Sauk*, Appellants did not have the opportunity to challenge a decision maker's conclusion that this was an on-reservation acquisition until this appeal from the Decision, and Appellants did so in their opening brief. Moreover, the Band's application itself asked BIA to evaluate the off-reservation criteria (in an abundance of caution), so it was perhaps not unreasonable for Appellants to assume that the Decision would do so.

not contiguous as a matter of law. Opening Br. 9-10, 12-14. The Board has not yet decided whether the term "contiguous," as used in the trust acquisition regulations, includes "cornering." The term "contiguous" is not defined by either the IRA or its regulations (and the term "cornering" does not appear in the statute or regulations). The Board has held, in the past, that "lands must touch" to be contiguous under Part 151 ("at a minimum"), *Jefferson County, Oregon, Board of Commissioners v. Northwest Regional Director*, 47 IBIA 187, 205-06 (2008), and cornering lands do touch. But the Board nonetheless expressly declined to decide this issue in *Jefferson County* because that case did not involve cornering lands. *Id.* ("Because the issue is not presented, we need not resolve here whether lands that corner each other are 'contiguous' for purposes of Part 151.").[8]

Today, the issue is squarely before us, and we affirm the Regional Director's conclusion that cornering lands are "contiguous" as that term is used in 25 C.F.R. § 151.10. The dictionary definition of "contiguous" includes cornering. *See, e.g.*, *Contiguous,* Black's Law Dictionary (10th ed. 2014) (defining "contiguous" as "[t]ouching at a point or along a boundary"); *Contiguous*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/contiguous (last visited September 26, 2023) (defining "contiguous" as "being in actual contact: touching along a boundary or at a point").[9] Despite that, there appears to be no general consensus in the law on this issue; cornering lands are considered contiguous in some jurisdictions and legal contexts, but not others. *See, e.g.,* 2 Powell on Real Property § 18.03 ("Cornering tracts may or may not be considered contiguous."); 10 Thompson on Real Property, Thomas Editions § 90.02 (noting that cornering parcels have been held to be contiguous in some jurisdictions but not others). In public land law, cornering lands are sometimes included with contiguous lands, and sometimes excluded. *See, e.g.,* Taylor Grazing Act, 43 U.S.C. § 315m (granting "a preference . . . to lease" certain lands to owners of "lands contiguous thereto or cornering thereon"); 30 C.F.R. § 250.105 (using the phrase "contiguous (not cornering)" in its definitions of "lease term pipelines" and "right-of-way pipelines"). Our sister Board, the Interior Board of Land Appeals (IBLA), has held, in other contexts, that cornering lands are not contiguous. *The Kemmerer Coal Co.*, 5 IBLA 319, 322 n.6 (1972) (noting that "[e]ven cornering lands are not regarded as contiguous" under the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 203). The Department of the Interior has reached the same conclusion regarding the use of the term "contiguous" in homestead acts. *See, e.g.,* *Henry Petz*, 62 I.D. 33, 33 (1955) (concluding that contiguous did not include cornering

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[8] To the extent that Appellants suggest that the Board decided this issue in *Jefferson County*, *see* Opening Br. at 10-11 (arguing that the Board cited relevant Interior Board of Land Appeals precedent "with approval"), they are incorrect.

[9] A copy of this excerpt of the online Merriam-Webster Dictionary has been added to the record on appeal.

under section 2455 of the Revised Statutes); *Hugh Miller*, 5 I.D. 683, 683 (1887) (concluding that contiguous did not include cornering parcels "within the meaning and intent of the last clause of Section 2289 of the Revised Statutes").

But none of that law or precedent dealt with whether lands are contiguous to Indian reservations, and we conclude that the best interpretation of the law, in the specific context of the Indian Reorganization Act and the regulations set out in 25 C.F.R. Part 151, is that cornering lands are contiguous. The history of the Act and its regulations supports that conclusion. The IRA itself does not distinguish between on- and off-reservation acquisitions, and neither did its first set of regulations. *See* 43 Fed. Reg. 32311 (1978). By 1991, however, an increase in requests for off-reservation trust acquisitions, often for casinos or other gaming establishments, drew mounting objections from local governments due to a "loss of regulatory control and removal of the property from the tax rolls." 56 Fed. Reg. 32278 (1991). To help "reduce or eliminate adverse impacts on surrounding local governments," BIA revised the Part 151 regulations to add additional criteria for off-reservation acquisitions. *Id.* Those regulations also defined an on-reservation acquisition as the acquisition of land "located within" or "contiguous to" an Indian reservation. *Id.* (The preambles to the regulations do not address whether cornering lands are contiguous.)

Thus, the agency's purpose when it separated on- and off-reservation trust acquisitions was to balance the IRA's goals of restoring tribal lands and ameliorating the damage done by allotment with the concerns of local governments. The regulations struck that balance by requiring increased scrutiny of off-reservation trust acquisitions, but not acquisitions "located within" or "contiguous to" an Indian reservation. Excluding cornering lands from the meaning of "contiguous" would complicate the agency's ability to achieve the goals of the IRA without doing much to protect the interests of local governments. The potential jurisdictional problems and tax losses that may be caused by the acquisition of cornering lands do not differ materially from lands that are located within or share a boundary with a reservation. Like other "contiguous" lands, there is no distance between cornering lands and the reservation: so even if the additional criteria for off-reservation acquisitions applied, the agency would not be required to give "greater scrutiny" to "the tribe's justification of anticipated benefits from the acquisition" or "greater weight to the concerns" voiced by State and local governments. *See* 25 C.F.R. § 151.11(b).

Moreover, if BIA had meant "contiguous" to depart from its ordinary dictionary meaning and exclude cornering lands, it would have explicitly defined the term. *See Estate of Matthew Hunts Along, Jr.*, 64 IBIA 291, 295 (2017). Indeed, the Department has done just that when it wanted to exclude cornering parcels from contiguous lands in other regulatory contexts. *See, e.g.,* 30 C.F.R. §§ 250.105 and 250.1001 (including "contiguous (not cornering)" in various definitions); 43 C.F.R. § 3110.3-3 ("Cornering lands are not

considered contiguous lands."). The fact that BIA did not do so here gives further support to our conclusion that it meant to include cornering lands as contiguous.

We note that some public land statutes and regulations may exclude cornering lands from their definitions of contiguous on the grounds that there may not be access between cornering lands. The Board, however, has rejected the argument that Part 151's definition of "contiguous" depends on "direct transportation access between two tracts," finding "no basis in the rule or in precedent justifying such a construction." *Jefferson County*, 47 IBIA at 207. "Were we to adopt it, lands plainly 'on-reservation' even constituting, for example, a land-locked inholding inside the reservation, could be held to be 'noncontiguous' or 'off-reservation' if no nearby road connected the inholding with surrounding land." *Id.* at 207-08. Moreover, the "checkerboarding" land ownership and jurisdiction created by cornering lands is already common in Indian lands (as a consequence of the now-repudiated allotment policies that the IRA is meant to fix). *See, generally*, 1 Cohen's Handbook of Federal Indian Law § 1.04 (Nell Jessup Newton et al. eds., 2023) ("Reservations became checkerboards as the sale of surplus land to [non-Indians] isolated individual Indian allotments.").

Finally, we also find it significant that other regulations drawing a distinction between on- and off-reservation lands—namely, the regulations implementing the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.*—include cornering lands in their definition of contiguous. 25 C.F.R. § 292.2 ("Contiguous means two parcels of land having a common boundary . . . and includes parcels that touch at a point."). Like the Part 151 regulations, those gaming regulations strike a balance between the needs of the tribes and the needs of surrounding communities. *See* 25 C.F.R. § 292.13 (allowing gaming activities on "newly acquired lands" where the Secretary determines that it "would not be detrimental to the surrounding community"). Construing these regulations together, in light of their similar purposes, further supports our conclusion that the Part 151 regulations including cornering lands in their definition of contiguous.

For all these reasons, we find that nothing in the plain language, history, or purpose of the IRA or its regulations gives us any reason to constrain the meaning of "contiguous" to exclude lands that touch at a corner. As such, we hold that the Regional Director did not err by treating these cornering lands as contiguous.[10]

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[10] Our conclusion here is consistent with proposed Part 151 rules published by the Department (but not yet adopted) that would explicitly define contiguous to include cornering lands. 87 Fed. Reg. 74334, 74341 (Dec. 5, 2022) (proposing to define "contiguous" as "two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point").

Second, Appellants argue that, even if cornering lands are contiguous, the Regional Director still erred here because the Willmus Property is not a single parcel, but rather 24 separate parcels, only one of which corners the Band's reservation. Opening Br. at 9-10, 12-14. The rest, they contend, must be analyzed as off-reservation acquisitions. The Regional Director rejects that argument and maintains that an acquisition comprising multiple contiguous parcels may be processed as a single "on-reservation" acquisition as long as one of the parcels touches an Indian reservation. BIA Answer Br., Sept. 18, 2017, at 20-21, 23.

We agree with the Regional Director. It is true that the Band acquired this land in two separate transactions, and it is also true that local authorities have divided this land into 24 separate "tax parcels."[11] But nothing in the IRA or the Part 151 regulations suggests that the number of transactions or tax parcels has any bearing on the Regional Director's analysis or constrains her discretion in any way. The Part 151 regulations focus not on parcels, but on the "land": they provide that "*land* may be acquired for a tribe in trust status . . . [w]hen the tribe already owns an interest in *the land*." 25 C.F.R. § 151.3(a)(2) (emphasis added). They also state that an acquisition qualifies as on-reservation when "*the land* is located within or contiguous to an Indian reservation." *Id.* § 151.10 (emphasis added). Thus, the inquiry here turns on the land, not tax parcels, and the Band has asked BIA to take the entire Willmus Property into trust as a single block of land.[12] Appellants

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[11] In addition to arguing that the Regional Director should have considered each tax parcel separately, Appellants contend that alleged inconsistencies in the record regarding the number and identification of parcels constitute error. Opening Br. at 38-39. As BIA explains on appeal, the Willmus Property comprises two tracts as identified by the Band's internal tracking system. BIA Answer Br. at 51-52. Those same two tracts were identified as nine parcels by the title company that prepared the title commitment for the acquisition. *Id.* Finally, the Regional Director included the 24 tax parcel identification numbers, designated by the County, in the Decision. *Id.* at 2. But regardless of how the Willmus Property is described—as two parcels by the Band, as nine by the title company, or as 24 by the Regional Director—all of those designations refer to the same 3,238.81-acre Willmus Property. Thus, Appellants have not identified any inconsistencies. Appellants also point to two purported errors in the March 2016 Certificate of Inspection and Possession (CIP): the CIP identified only 23, not 24, tax parcels, and it listed two parcels Appellants maintain are not held in fee by the Band. Opening Br. at 35. But BIA acknowledges that one parcel was omitted from the CIP and that the two parcels not owned by the Band are "clerical errors." BIA Answer Br. at 47-48. In any event, neither error is present in the Decision itself. Thus, Appellants have not demonstrated that the Regional Director failed to consider the full Willmus Property.

[12] The 24 tax parcels form one contiguous whole, a fact that Appellants do not contest.

provide no support, and the Board is aware of none, for their claim that trust acquisitions must be considered at the tax-parcel level. Indeed, the Board itself has described trust properties comprising multiple contiguous tax parcels as a single "property." *See, e.g.*, *Desert Water Agency v. Pacific Regional Director*, 63 IBIA 127, 129 (2016) (describing the acquisition property as being "divided into four parcels" and identifying those four parcels by their assessor's, or tax, numbers); *Arizona State Land Department v. Western Regional Director*, 43 IBIA 158, 158 (2006) (describing the land taken into trust as being "composed of 24 tax parcels").

Appellants complain that this interpretation of the law could allow "any tribe to purchase consecutive parcels of land and string them together to expand their reservation hundreds of miles from its historic borders." Reply Br. at 33. Such a scheme would likely prove impractical—here, the Band has been unable to acquire most of its former reservation, much less "consecutive parcels of land" strung together for "hundreds of miles." In any event, those are not the facts here, and the Board takes no position at this time on whether BIA would be required to consider the additional criteria for off-reservation trust acquisitions in such a hypothetical scenario. We reject Appellants' argument that the Regional Director erred by treating the Willmus Property as a single block of land and, for all the reasons set out above, affirm her decision to treat the Willmus Property as an on-reservation trust acquisition.

V. Review of the Regional Director's Consideration of the § 151.10 Criteria

A. Overview of the § 151.10 Criteria

Through the IRA, Congress conferred broad authority on the Secretary of the Interior to take land into trust for Indians. *See South Dakota v. U.S. Dep't of the Interior*, 423 F.3d 790, 797 (8th Cir. 2005) (citing 25 U.S.C. § 465, now recodified at *id.* § 5108). The only limitations that Congress imposed on that authority are that the land must be acquired for Indians, it must be acquired using authorized funds, and the acquisition must serve the goals identified in the Act's legislative history. *See id.*

That authority, here delegated to the Regional Director, is further constrained by the regulations adopted by the Department set out at 25 C.F.R. Part 151. For on-reservation trust acquisitions like the Willmus Property, those regulations require the Regional Director to "consider" seven listed criteria before taking the land into trust for an Indian tribe. 25 C.F.R. § 151.10(a)-(c), (e)-(h). The Regional Director need only "consider" these factors, however: there is "no requirement that [she] reach a particular conclusion with respect to each factor." *Roberts County, South Dakota v. Acting Great Plains Regional Director*, 51 IBIA 35, 46 (2009). "Nor must the factors be weighed or balanced in a particular way or exhaustively analyzed." *Id.*

Notably, nothing in the Act or the regulations prohibits the Regional Director from taking land into trust whatever her conclusions about these criteria. She is not required to "resolve" any "problems or issues" that the trust acquisition might create. *Id.* at 52. These criteria were introduced only "to insure that conflicting interests are *evaluated* before land is acquired in trust status." 45 Fed. Reg. 62035 (Sept. 18, 1980) (emphasis added). Thus, the Regional Director may take land into trust even if she concludes, for example, that doing so will create jurisdictional problems or land use conflicts, or have significant tax impacts. *See* 25 C.F.R. § 151.10(e), (f).

To succeed on their claims here, Appellants must show that the Regional Director erred, either by failing to consider one of the listed criteria or by reaching conclusions regarding those criteria that were "arbitrary and capricious" or otherwise unsupported by the administrative record. "Simple disagreement" with the Regional Director's conclusions cannot carry Appellants' burden of proof. *Roberts*, 51 IBIA at 46.

B. The Tribe's Need for Additional Land and Purpose of Acquisition: § 151.10(b) and (c)

Before taking the Willmus Property into trust, the IRA's regulations required the Regional Director to consider both the "need of . . . the tribe for additional land" and the "purposes for which the land will be used." 25 C.F.R. § 151.10(b) & (c). The Regional Director considered these criteria, describing both the "need" and "purpose" for this trust acquisition in her Decision. Decision at 6-7. As she explained, the Band lost most of its reservation through "treaty cessions and subsequent allotment of reservation land." *Id.* at 6. Indeed, the record confirms that, today, the Band owns only about 7% of its former reservation (and only about 6% is held in trust). *See* Band's Response to Comments at 3. "Because the Band's land base has been reduced dramatically from its original territory," the Regional Director explained that the Band "now needs 'additional land to restore its depleted land base and to facilitate tribal self-determination and self-sufficiency' including 'exercise of the Band's treaty hunting and gathering rights' and 'other cultural traditional activities.'" Decision at 6 (quoting Application at 7). The Regional Director also found that "transferring this land into trust will further the goals of promoting self-support, reverse the damage of allotment, and . . . protect the land from future loss or detrimental encumbrance, ensuring that the Band has sufficient land base for future generations." *Id.* And the Regional Director clearly explained that the "purpose" of taking this land into trust is to "provide an area for Band Members to hunt and gather." *Id.* at 7. Appellants argue that the Regional Director's consideration of these criteria was inadequate for several reasons. Opening Br. at 14-17.

First, Appellants argue that the Regional Director failed to justify the Band's need for the Willmus Property to be held in trust; this trust acquisition, they contend, is "a want,

rather than a need." *Id.* at 15-16; Reply Br. at 36-37; *see also* Morrison County Resolution 2016-026, Mar. 22, 2016, at 2 (unnumbered) (Morrison County Resolution) (AR 57) (the County commenting that "[t]here is an insufficient need for this land . . . to be put into trust under these circumstances"). But Congress's goals when it passed the Indian Reorganization Act were expansive, and it gave the Secretary broad authority to take land into trust "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." *South Dakota v. U.S. Dep't of the Interior*, 487 F.3d 548, 552 (8th Cir. 2007). Thus, any trust acquisition that helps a tribe to "achieve self-support and ameliorat[es] the damage resulting from the prior allotment policy" serves the needs of that tribe. *South Dakota*, 423 F.3d at 799. For these reasons, the Board has held that "BIA has broad leeway in its interpretation or construction of tribal 'need' for the land." *State of New York*, 58 IBIA at 341. "Flexibility in evaluating 'need' is an inevitable and necessary aspect of BIA's discretion," and it is "not the role of an appellant to determine how that 'need' is defined or interpreted by BIA." *Id.* The Regional Director found that taking this land into trust would help to protect it from future loss and ensure that the Band has a sufficient land base for future generations, and those findings are more than sufficient to establish the Band's need. Nothing in the law or the Board's precedent suggests that this finding of need was inadequate.

Second, Appellants argue that the Regional Director "simply concurred with the Band's alleged stated need" and provided "little to no explanation for [her] agreement and acceptance of the Band's stated need." Opening Br. at 16. Similarly, Appellants contend that the Regional Director did not adequately consider the purpose for which the land will be used because she merely "repeat[ed]" the Band's stated purpose without further analysis. *Id.* at 17. According to Appellants, the Decision "in no meaningful way explains why the [Regional Director] believed the Band's reasons related to need and purpose are convincing." Reply Br. at 35. But Appellants cannot prevail on their claims merely by arguing that the Regional Director failed to prove that the Band needs this land in trust. Appellants bear the burden of proof here, and they must show that the Regional Director erred by failing to consider one of the required criteria or by reaching conclusions that are "arbitrary and capricious" or unsupported by the administrative record.

They have not made that showing. The Regional Director described the Band's need and purpose for this land, Decision at 6-7, and the Board has found such consideration sufficient. *See Thurston County, Nebraska v. Great Plains Regional Director*, 56 IBIA 296, 306-07 (2013) (finding a statement that a trust acquisition would contribute

to self-government, self-sufficiency, and self-determination sufficient).[13] Appellants have not shown that the Regional Director's conclusions were "arbitrary and capricious" or unsupported by the record. "[S]imple disagreement" with the Regional Director's reasoning cannot carry Appellants' burden of proof. *County of Sauk*, 45 IBIA at 217. The Regional Director, moreover, was not required to "exhaustively analyze[]" these criteria.[14] *Shawano County*, 53 IBIA at 69. Appellants cannot reverse the burden of proof by demanding that the Regional Director prove that the Band's "need and purpose are convincing." *See* Reply Br. at 35.

Third, Appellants argue that the Band did not need this land to be taken into trust because it already enjoys considerable economic success and owns thousands of acres of land across Minnesota. Opening Br. at 15-16; Morrison County Resolution at 2 (arguing that the Band has no need for this land because it "enjoys considerable revenues from two casinos, major hotels in St. Paul, and numerous smaller commercial business holdings, plus the Band owns thousands of acres of land across Minnesota"). But as the Regional Director explained, the IRA is "not confined to helping only impoverished Indians," and the Board has repeatedly held that tribes "need not be landless or suffering financial difficulties to need additional land." Decision at 6 (quoting *County of Sauk*, 45 IBIA at 210). Both the Board and the courts have repeatedly rejected the argument that a tribe's gaming revenue, financial security, or economic success disqualifies it from the acquisition of more land into trust. *See Mille Lacs County*, 62 IBIA at 145, and cases cited therein. Indeed, we have already rejected

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[13] On reply, Appellants suggest that the Band does not need the additional land to be held in trust because the Band already owns the land in fee, and transferring it to trust would not change the Band's occupancy or use. To the extent that Appellants maintain that the Band must demonstrate that it has particular need for the land to be held *in trust*, the Board has repeatedly rejected such an interpretation of § 151.10(b). *See, e.g.*, *State of South Dakota v. Acting Great Plains Regional Director,* 39 IBIA 283, 293-94 (2004) (holding that Part 151 permits, *but does not require*, separate consideration of an applicant's demonstrated need to have the land held in trust, as opposed to being retained in fee).

[14] For instance, Appellants find fault with the Regional Director for not explaining why she accepted the Band's claim that its 1,200 acres of on-reservation land is not enough to exercise its hunting and gathering rights. Reply Br. at 37. But the Regional Director is not obligated to discuss every piece of evidence that a tribe submits in its application for a trust acquisition. It was sufficient for the Regional Director to consider the Band's application and describe the basis for its need for the additional land—in this case, the restoration of the Band's land base, increased self-determination, and the protection of the land for future generations.

Appellants' argument as specifically applied to the Mille Lacs Band itself.[15] *See id.* We reconfirm that the Band's economic success and land holdings do not preclude the taking of this land into trust.

Fourth, and finally, Appellants claim that the Regional Director failed to identify and address the Band's "other stated purpose related to land management." Reply Br. at 38; *see also* Opening Br. at 17. Appellants point to the Band's application, which provides that the purposes for which the land will be used include ensuring that the land is preserved in a manner consistent with the Band's cultural beliefs and traditions. But we are not convinced that this constitutes a separate purpose for this land. The Band's statement is better understood as a description of a principle that will guide its use of the land—ensuring that the land will be preserved in a culturally appropriate manner—rather than a discrete purpose for which the land will be used. Rather, the Band's stated purpose, which Appellants acknowledge that the Regional Director addressed, *see* Reply Br. at 38, is to use the land for hunting and gathering. Section 151.10(c) required the Regional Director to consider the Band's "purposes" for this land, but it did not require her to consider the details of the land management practices that the Band will use to pursue those purposes.

We hold that the Regional Director adequately considered the need and purposes of this trust acquisition.

C. Tax Impacts: § 151.10(e)

Next, § 151.10(e) required the Regional Director to consider the impact on the State and its political subdivisions resulting from the removal of the Willmus Property from the tax rolls. Here, the Regional Director considered how much money each of the Appellants would lose in taxes annually and listed her estimates of those losses in her Decision. Decision at 7-8; *see also* Band's Response to Comments at 7 (AR 47) (estimating Richardson Township's tax losses); Leigh Township Comments at 1 (AR 68) (estimating its tax losses); State Comments at 1 (AR 67) (estimating Morrison County's tax losses). For Morrison County and Richardson Township, the losses were each less than one-tenth of a percent; for Leigh Township, however, the losses made up about 8% of the township's total tax levy. Decision at 8.

Appellants do not dispute that the Regional Director accurately reported their potential tax losses. Instead, they argue that the Regional Director failed to consider the

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[15] Appellants emphasize that the Board has held that consideration may be given to a tribe's financial status. Opening Br. at 14. But as we have explained, while such consideration is not prohibited, neither is it mandatory. *County of Sauk*, 45 IBIA at 210 n.12.

impacts that these tax losses would have on them. *See* Opening Br. at 18-21. In particular, they claim that this loss of revenue will harm their ability to maintain roads and bridges and provide fire protection services (or, alternatively, that they will be forced to raise taxes on their remaining residents to make up the losses). *Id.* at 19. After reviewing these claims, we conclude that the Regional Director did not err and properly considered the impacts of these tax losses.[16]

As the Board has explained in past decisions, the Regional Director is only required to consider these tax losses and their potential impacts. She is not required to find that the impacts would be "minimal." *State of South Dakota v. Acting Great Plains Regional Director*, 63 IBIA 179, 188 (2016). And she is not prohibited from taking this land into trust even if doing so would have significant impacts.

Here, Appellants do not dispute that the Regional Director considered the tax losses, but complain that she did not consider the impacts of those losses. That claim fails because Appellants have not identified any impacts that these tax losses would have on their programs and services. As the Regional Director noted, "[n]either the townships nor the County articulated the details of any particular program or service that would be cut or diminished because of the proposed acquisition." Decision at 8. And Appellants did not "provide evidence to support their concerns about future tax increases on their residents." *Id.*

The administrative record supports the Regional Director's findings. None of the comments submitted by Appellants articulate how any specific programs or services could be affected by these tax losses. *See* Morrison County Resolution at 1-2 (AR 57) (neither estimating tax losses nor identifying any specific impacts of such losses on County services); Richardson Township Comments at 1 (AR 66) (neither estimating tax losses nor identifying any specific impacts of those losses on its services); Leigh Township Comments at 1 (estimating tax losses and stating that those losses will have "a significant impact," but not identifying any specific impacts on services). For example, Richardson Township commented that "all residents of the Township share in the tax burden that it takes to maintain roads, bridges and fire service in our community." Richardson Township Comments at 1. But this bare statement does not identify any impacts that these tax losses

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[16] Appellants suggest that the tax impacts of the acquisition should have been considered as the cumulative impact of numerous simultaneous acquisitions. Opening Br. at 17. The Board presumes that this reflects Appellants' position that the Willmus Property is actually 24 separate parcels that the Regional Director should have considered individually. As we explained above, we reject that position. In any event, the Regional Director did consider the cumulative impact of the trust acquisition of all the land in the Willmus Property.

might have on any specific programs or services. It does not give the Regional Director anything in particular to consider (beyond the tax losses themselves, which she did consider); it is merely a general complaint that would apply to any trust acquisition. Similarly, Leigh Township stated that the loss of 8% of its tax levy would have a "significant impact on the remaining tax payers." Leigh Township Comments at 1. But again, all trust acquisitions have some such effect; the Regional Director must consider the *impacts* of the tax losses, and the township did not provide any evidence or explanation of specific impacts. The Board has repeatedly held that the mere fact that some revenue would be lost does not itself constitute a significant impact. *See, e.g.*, *Desert Water Agency v. Acting Pacific Regional Director*, 59 IBIA 119, 129 (2014).

As the Regional Director noted, she was under no obligation to speculate about how these tax losses might affect Appellants; she was "only required to consider the impacts to programs and services that State and local governments have articulated." Decision at 8; *see, e.g., State of South Dakota*, 63 IBIA at 188. Because Appellants did not articulate those impacts, we conclude that the Regional Director adequately considered the tax losses that would be caused by this trust acquisition.

On appeal, Appellants now argue that these tax losses will result in a "failure . . . to repair roads and bridges due to inadequate funding." Opening Br. at 19. They also claim that the losses will hurt the County's ability to provide services to the Willmus Property and affect the Onamia School District. *Id.* at 20-21. But because Appellants have raised these issues for the first time on appeal to the Board, and did not put them before the Regional Director, we decline to consider them here. *See* 43 C.F.R. § 4.318.

Finally, the Regional Director noted that the "Mille Lacs Band 'is willing and prepared to provide a payment equivalent to three years of the assessed Leigh Township property taxes to the Township once the Willmus [Property] is accepted into trust.'" Decision at 8 (citing Band's Response to Comments). Appellants contend that it was improper for the Regional Director to consider this offer because any such agreement is speculative (and, in any event, would only mitigate these tax losses for 3 years). Opening Br. at 20. But nothing in her Decision suggests that the Regional Director gave any particular weight to this offer, much less that she relied on it to approve this trust acquisition. Rather, she simply acknowledged its existence in passing. Decision at 8. And to the extent that Appellants are suggesting that the approval of this trust acquisition should have been conditioned on the execution of this agreement, the Board has already held that tribes are under no obligation to offer compensation to offset tax losses. *See Shawano County*, 53 IBIA at 81.

For these reasons, we conclude that the Regional Director properly considered the criterion set out in § 151.10(e).

D. Jurisdictional Problems: § 151.10(f)

Before taking the Willmus Property into trust, Section 151.10(f) required the Regional Director to consider any "[j]urisdictional problems and potential conflicts of land use which may arise." 25 C.F.R. § 151.10(f). On appeal, Appellants contend that the Regional Director erred when considering this criterion because (1) she failed to recognize the jurisdictional problems that the acquisition will create for law enforcement on the Willmus Property, Opening Br. at 22, and (2) she ignored the potential conflicts of jurisdiction that could be caused by the State's reservation of mineral rights on the property, *id*. at 23-24. We find neither of these arguments persuasive.

1. Law Enforcement

If the Willmus Property is taken into trust, the Band will gain law enforcement authority over this land, but Morrison County will keep concurrent jurisdiction because Minnesota is a mandatory Public Law 280 State. The Regional Director noted this in her Decision. Decision at 9. Nothing in the record suggests that the Willmus Property has any significant law enforcement needs: the property is vacant and rural, with no businesses or buildings, and no public roads travel through it. Band's Response to Comments at 9. The County does not claim that its law enforcement officers have ever been called to the property. *Id.*

Nonetheless, Appellants argue that the Regional Director failed to consider that they will "incur additional expenses" coordinating law enforcement efforts with the Band and working out a cooperative law enforcement agreement. Morrison County Resolution at 2; Reply Br. at 44. It is not clear that these potential expenses are the kind of "jurisdictional problem" that falls under § 151.10(f), and the record suggests that, given the nature of the property, any such expenses will be minimal or even non-existent. The County is also not actually required to negotiate a cooperative law enforcement agreement with the Band (although such an agreement may be useful). Decision at 9 n.40. In any event, the Regional Director explicitly considered the County's concerns in her Decision. *Id.* at 9. Nothing more was required.

2. The State's Mineral Rights and Right-of-Way

The State of Minnesota holds a highway right-of-way over part of the Willmus Property and also, apparently, certain mineral rights. Appellants argue that the Regional Director erred by failing to consider the "jurisdictional problems" that might arise from the State's rights. Opening Br. at 23. These claims fail for several reasons.

First, Appellants are raising their concerns about the State's mineral rights for the first time on appeal. The State, who is not an appellant here, did not raise that issue in its comments to the Regional Director, and neither did any of the Appellants. *See* State Comments at 1-2. The Board has a well-established general rule that it will not consider arguments or issues raised for the first time on appeal to the Board. *See, e.g., Benewah County, Idaho v. Northwest Regional Director*, 55 IBIA 281, 297 (2012). We see no reason to depart from that practice here.

Second, Appellants have no standing to bring these claims. Appellants must defend their own interests on appeal, not the State's. *See, e.g., Mille Lacs County*, 62 IBIA at 137 n.4 (holding that county lacked standing to assert interests of State); *Aitkin County, Minnesota v. Acting Midwest Regional Director*, 47 IBIA 99, 110 n.8 (2008) (holding that county lacked standing to assert interests of State or town).

Third, even if we were to reach these arguments, the Regional Director did consider the State's right-of-way in her Decision: she explained that, "[u]pon trust acquisition, title will vest in the United States subject to the rights enumerated in the title evidence; any vested rights the State currently holds to the highway corridor will remain vested in the State." Decision at 9.

Fourth, Appellants have not shown that these mineral rights create any jurisdictional problem. As just noted, the Regional Director explained that the Willmus Property would be taken into trust "subject to the rights enumerated in the title evidence" and thus that "any vested rights the State currently holds . . . will remain vested in the State." *Id.* at 9; *see* BIA Answer Br. at 36. Appellants have not demonstrated that the Regional Director erred in her consideration of § 151.10(f).[17]

E. BIA's Additional Responsibilities: § 151.10(g)

Section 151.10(g) requires the Regional Director to consider whether BIA is "equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status." The Regional Director's consideration of this criterion necessarily involves broad discretion because BIA's ability to discharge additional responsibilities is "a

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[17] To the extent that Appellants challenge the Regional Director's actions under § 151.13, which obligates BIA to require title information from an applicant, Appellants lack standing. Section 151.13 is independent of § 151.10 and sets forth a discrete requirement—that the applicant furnish title evidence—that arises after a decision is made to take land into trust. *Thurston County, Nebraska v. Acting Great Plains Regional Director*, 56 IBIA 62, 69 (2012).

managerial judgment that falls within BIA's administrative purview." *State of Kansas v. Acting Southern Plains Regional Director*, 53 IBIA 32, 39 (2011). As such, the Board has held that this criterion does not "necessarily require BIA to include in the record specific evidence . . . to demonstrate that BIA will be equipped to handle additional responsibilities associated with a trust acquisition." *Id.*

Here, the Regional Director concluded that any additional responsibilities resulting from the acquisition of the Willmus Property would be "minimal." Decision at 10. She noted that the relevant BIA field office (BIA's Minnesota Agency) had reviewed the trust application, identified several staff who could help, and determined that it would be able to discharge the additional obligations. *Id.* at 9-10. She concluded that "[a]cceptance of this property in trust status will not impose any significant additional burden on the Minnesota Agency beyond those already inherent in the federal trusteeship over existing trust lands." *Id.* at 10.

On appeal, Appellants argue that the Regional Director failed to give adequate consideration to this factor because she (1) relied on the Minnesota Agency's assessment that it could discharge any additional duties, (2) failed to identify additional responsibilities that would fall to BIA and other Federal agencies, (3) ignored the supposedly substantial increase in BIA responsibilities that must necessarily come with acquiring thousands of acres of land in trust, and (4) refused to acknowledge that these obligations will fall on Appellants if BIA cannot fulfill them. Opening Br. at 24-27; Reply Br. at 48-51.

None of these arguments convince us that the Regional Director erred here.[18] Appellants do not explain why they believe that it was error for the Regional Director to rely on the conclusions of BIA staff. *See* Opening Br. at 26 (arguing that the Regional Director's Decision was merely "a rubber stamp of the Minnesota Agency"). The Minnesota Agency seems best suited to accurately assess the effects of these additional responsibilities since its staff are the ones who would take them on, and the Regional Director did not err by relying on their assessment.

Nor do Appellants point to any compelling evidence that these responsibilities would be more than minimal (a conclusion well within the Regional Director's "managerial

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[18] BIA and the Band maintain that Appellants waived any challenge under § 151.10(g) by failing to raise the issue in their comments. BIA Answer Br. at 38; Band Answer Br., Sept. 18, 2017, at 69. But the Notice of Application did not solicit comments on this issue and, more importantly, Appellants could not have known how the Regional Director would assess BIA's ability to discharge its duties until the Decision was issued. Therefore, we reject this waiver argument. *See supra* note 7.

judgment"). They identify three responsibilities that they claim would fall to BIA and "other Federal agencies": management of the property as wildlife habitat; management and regulation of hunting, fishing, and gathering; and assumption of the responsibility for environmental regulation by the U.S. Environmental Protection Agency (EPA). *Id.* at 25-26. Appellants express particular concern about the management of wetlands on the property. *Id.* at 26-27.

As a preliminary point, any additional responsibilities that will be borne by other Federal agencies (including EPA) are irrelevant under § 151.10(g) because that section, by its plain language, is limited to BIA's ability to discharge its own duties. *See* 25 C.F.R. § 151.10(g). Moreover, Appellants appear to be assuming that BIA will have to manage hunting, fishing, and gathering on the Willmus Property, as well as the property's natural resources. The record does not support that assumption. To the contrary, the Band's application for this trust acquisition indicates that the Band, which has its own Department of Natural Resources, will usc its own resources to manage the property. *See* Application at 9-10 ("The management and regulation of hunting, fishing and gathering by Band members is an essential element of the Band's sovereignty.").

Finally, Appellants do not explain why these obligations would fall on them if BIA were unable to discharge any of its duties. As Appellants recognize, the transfer of the Willmus Property into trust will leave in place the County's law enforcement jurisdiction, but it will not impose any additional duties for land management on Appellants.

Here, the Regional Director determined that the property is identified as "rural vacant," that no change in land use is proposed, and that additional responsibilities associated with the acquisition are expected to be minimal. Decision at 9-10. While the Regional Director was not required to provide evidence for her conclusion that BIA is equipped to discharge these additional responsibilities, she nevertheless listed the five Minnesota Agency staff members available to assist the Band in their proposed use of the property, and she described those staff members' respective duties, which include administration and forest management. *Id.* at 10. In *State of Kansas*, we found that when a parcel is undeveloped and located near a tribe's reservation, as here, that factual basis is sufficient to support a determination that BIA will be able to discharge its role as trustee for the property. 53 IBIA at 39. Appellants have thus failed to demonstrate that the Regional Director erred in concluding that BIA has sufficient resources to discharge any additional responsibilities associated with this trust acquisition.

F. Section 151.10(h) and Compliance with Environmental Laws

Appellants argue that the Regional Director (1) did not properly consider the potential environmental effects of this trust acquisition, which they claim is required by the

criterion set out in § 151.10(h), and (2) violated various environmental laws, regulations, and binding agency guidance documents (including NEPA and the ESA). Opening Br. at 27-38; Reply Br. at 51-56. We conclude that, even assuming Appellants have standing to bring these claims, they have not shown that the Regional Director violated any environmental laws or erred in her consideration of § 151.10(h).

1. Standing

As a threshold matter, we are not convinced that Appellants have standing to bring their environmental claims. An appellant must be able to show standing for each claim that it asks the Board to consider. *Thompson v. Great Plains Regional Director*, 58 IBIA 240, 241 (2014); *County of Sauk,* 45 IBIA at 218. To evaluate standing, the Board applies the elements of constitutional standing articulated by the Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). That is, an appellant must demonstrate that: (1) it has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest; (2) the injury is causally connected with or fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560-61; *Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 296-97 (2014). In asserting a procedural injury under NEPA, those standards are somewhat relaxed: An appellant may prosecute a NEPA claim "without meeting all the normal standards for redressability and immediacy." *Arizona State Land Department*, 43 IBIA at 169 n.14 (emphasis omitted) (quoting *Lujan*, 504 U.S. at 573 n.7).

Here, it is not clear that Appellants have satisfied the injury-in-fact or causation prongs of *Lujan* for their environmental claims. While Appellants claim that they will suffer tax losses and various jurisdictional problems as a result of this trust acquisition, they have not even alleged that it will cause them environmental harm. In *County of Sauk*, we found that appellants lacked standing to bring a NEPA claim because the only injuries that the county claimed were related to tax and jurisdictional impacts. 45 IBIA at 219-20. And in *County of Santa Barbara, California v. Pacific Regional Director*, 65 IBIA 204, 214 (2018), the Board was "not convinced" that the county had standing under NEPA because the county's alleged injuries related to tax and jurisdictional impacts, and their "vague assertions" regarding harm to a sensitive creek were insufficient to satisfy the injury-in-fact standing requirement. Economic interests, moreover, cannot establish standing to bring NEPA claims because they do not fall within NEPA's "zone of interests." *See, e.g., Nev. Land Action Ass'n v. United States Forest Serv.*, 8 F.3d 713, 716 (9th Cir. 1993) ("The purpose of NEPA is to protect the environment, not the economic interests of those adversely affected by agency decisions.").

We have the same concerns here. Appellants do not clearly explain what environmental harms they believe might be caused by this trust acquisition, and never tie

any such harm to their own environmental interests. Even under the less restrictive standing analysis for alleged procedural harms, this falls short. *See Arizona State Land Department*, 43 IBIA at 169 n.14 (holding that when alleged injuries are "too speculative and generalized," an appellant cannot meet even a less stringent standing requirement).

Furthermore, even if we assume that Appellants could allege some harm to their own environmental interests if given another chance, it is not clear how any such harm could actually be caused by this trust acquisition. After all, the act of taking this land into trust is itself purely legal and has no effect on the environment. In some cases, a trust acquisition may allow a tribe to use the land in new ways that have potential environmental consequences. But here, the Band does not plan any change in land use and will continue to use this property for hunting and gathering. Thus, to have standing, Appellants not only had to allege harm to their own environmental interests, but also had to show that the harm would be caused by the trust acquisition and not by the Band's existing use of the property. *See, e.g.*, *Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 71 (2006) (finding no standing for environmental claims because the alleged cause of harm, a marina, had already been operating and was not dependent on the acquisition); *Arizona State Land Department*, 43 IBIA at 170-71 (finding no standing for nuisance claim arising from operation of mine on proposed acquisition land because mine had already been operating and was not dependent upon acquisition). We doubt that Appellants could make that showing on these facts, and such a showing was required to establish standing. In any event, for the reasons explained below, we conclude that, even assuming Appellants have standing to bring these claims, they have not shown that the Regional Director violated any environmental laws or failed to consider the criterion set out in § 151.10(h).

2. Information for Environmental Compliance: § 151.10(h)

Section 151.10(h) requires the Regional Director to consider 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(h). Throughout their briefs, Appellants conflate the requirements of § 151.10(h) with the merits of their environmental claims. By its plain terms, however, § 151.10(h) does not require the Regional Director to consider the effects of a trust acquisition on the environment. Nor does it independently require the Regional Director to comply with applicable environmental laws. Instead, by its own terms, it only requires the Regional Director to consider "[t]he extent to which the applicant has provided information" that will allow her to comply with the cited agency guidance (as applicable). *Id.*

Appellants do not allege, much less prove, that the Regional Director failed to consider the criterion actually set out in § 151.10(h)—that is, they do not allege that the

Regional Director failed to consider the extent to which the Band provided the information needed to comply with the provisions of 516 DM 6 and 602 DM 2. The record, moreover, shows that the Band provided such information. *See, e.g.,* Phase I Environmental Site Assessment, July 13, 2015 (2015 ESA) (AR 84) (detailed environmental site assessment prepared on behalf of the Band and submitted by the Band to BIA). Thus, Appellants have not shown that the Regional Director erred in her consideration of § 151.10(h).

3. NEPA

BIA must comply with NEPA before approving a trust acquisition. If the trust acquisition will have a significant impact on the human environment, NEPA requires BIA to prepare a comprehensive "environmental impact statement" (EIS). 42 U.S.C. § 4332(C). If the trust acquisition will not have a significant impact, a concise "environmental assessment" (EA) and "finding of no significant impact" (FONSI) will suffice. *See* 40 C.F.R. §§ 1501.5, 1501.6. NEPA's regulations, however, also allow agencies to "categorically exclude" classes of action from further NEPA review where those actions "normally do not have a significant effect on the human environment." 40 C.F.R. § 1501.4. BIA has adopted such a categorical exclusion for "[a]pprovals or grants of conveyances and other transfers of interests in land where no change in land use is planned." 516 DM 10.5(I). The Board has consistently affirmed the use of this categorical exclusion for trust acquisitions where there is no planned change in land use. *See, e.g., State of New York*, 58 IBIA at 349-50; *Thurston County*, 56 IBIA at 297; *Benewah County*, 55 IBIA at 297-98.

The Regional Director relied on that "categorical exclusion" here, concluding that "no change in land use is anticipated; therefore, the Willmus [Property] . . . acquisition will not have a significant effect on the quality of the human environment (individually or cumulatively) and neither an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required . . . and [the acquisition] can be categorically excluded." Decision at 10 (citing 516 DM 10.5(I)); *see also* NEPA Coordinator Review, Apr. 19, 2016, at 3 (AR 49); NEPA/Phase I Update, Jan. 5, 2017, at 3 (AR 16).

Appellants argue that the Regional Director erred by applying this categorical exclusion because she failed to consider whether there were any "extraordinary circumstances" present that would prevent its use. Opening Br. at 30-31. NEPA's regulations allow categorical exclusions, but bar their use where an action may have a significant environmental effect due to "extraordinary circumstances." 43 C.F.R. §§ 46.205(c), 46.215 (listing criteria for such extraordinary circumstances). Notably, Appellants do not argue that any such extraordinary circumstances are present here. *See* Opening Br. at 31. In fact, Appellants concede that "it may be true that the trust acquisition may not have a 'significant impact' on any of the listed circumstances, such as

wilderness and wetlands." *Id.* Instead, they argue only that such circumstances "may" be present and that the Regional Director erred by failing to explain "why those [extraordinary] circumstances do or do not apply to the Willmus [Property]." *Id.*

Even assuming that Appellants have standing to bring this NEPA claim, we find that their arguments are meritless.[19] Nothing in the record suggests that "extraordinary circumstances" exist here that would cause this trust acquisition to have a significant effect on the human environment. To the contrary, the effects of this trust acquisition are purely legal and will have no effect on the use of this land. In the absence of any facts suggesting extraordinary circumstances, nothing in NEPA or its regulations required the Regional Director to explain "why those [extraordinary] circumstances do or do not apply to the Willmus [Property]." Moreover, Appellants bear the burden of proof on this appeal. Arguing that "extraordinary circumstances" "may" exist is not enough to carry that burden, and Appellants cannot reverse the burden of proof by demanding that the Regional Director prove that no extraordinary circumstances exist. To prevail on these NEPA claims, Appellants had to show that the Regional Director erred by applying this categorical exclusion, and they have not made that showing.

4. Endangered Species Act

Section 7 of the ESA requires Federal agencies to ensure that their actions are not likely to jeopardize the continued existence of any ESA-listed threatened or endangered species (or to adversely modify the designated critical habitat of such a species). 16 U.S.C. § 1536(a)(2). It also requires Federal agencies to discharge that obligation "in consultation" with the United States Fish and Wildlife Service (the Service) or the National Marine Fisheries Service (depending on the species at issue). *See id.* Formal consultation (which results in a "biological opinion") is required when an agency's action may adversely

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[19] Elsewhere in their brief, Appellants suggest that the Band intends to construct roads and "develop" the property, and that such plans disqualify the acquisition from a categorical exclusion. Opening Br. at 36 & n.171. First, Appellants point out that during a site visit to the property, BIA noted what appeared to be a "borrow pit" or trench and asked the Band for additional information. The Band responded that the material was likely present due to trail maintenance. Email from Band to BIA, Apr. 11, 2016 (AR 50). The BIA official updated his records accordingly, *id.*, and the Regional Director reviewed those records. Appellants fail to demonstrate error in that consideration. Second, Appellants point to the fact that three of the BIA employees available to help manage the property are engineers "who are responsible for the maintenance and construction of BIA roads and bridges." Opening Br. at 36 n.171. This, of course, in no way supports Appellants' speculation that the Band plans to develop this property.

affect an ESA-listed species, but informal consultation is sufficient when an action may affect a listed species but is not likely to have adverse effects. *See* 50 C.F.R. §§ 402.13, 402.14. Consultation is not required at all if an agency concludes that its action will have no effect on listed species or their habitat. *Id.* § 402.14(a) (requiring consultation only when an action "may affect" listed species or their habitat).

Using information from the Service, BIA identified two ESA-listed threatened species that may be present in the area of the Willmus Property: the Northern Long-Eared Bat and the Gray Wolf. Phase I Environmental Site Assessment, Apr. 4, 2016, at 17 (2016 ESA) (AR 49); *see also id.* at Appendix Q (Information for Planning and Conservation Trust Resources Report) (IPaC). Reviewing that information more closely, BIA found that no Northern Long-Eared Bat hibernacula or roost trees or Gray Wolf critical habitat are known to be located on the Willmus Property. *Id.* at 17. BIA then concluded that this trust acquisition would have "no effect" on these species because the Band plans to "maintain current land use." *Id.* (determining that this trust acquisition "will have 'no effect' on the threatened species on the subject property" for the same reasons that the NEPA categorical exclusion applies). Having made a "no effect" determination, the Regional Director concluded that the ESA did not require BIA to consult with the Service or take any further steps. Decision at 10.

Appellants argue that the Regional Director violated the ESA, but, even assuming they have standing to bring such claims, their arguments are not persuasive. Most fundamentally, Appellants have not shown that the Regional Director erred by concluding that this trust acquisition will have no effect on listed species (or their habitat). The agency action here is a trust acquisition. BIA concluded that this trust acquisition will have "no effect" on listed species (or their habitat) for the same reason that it will have no significant impact on the human environment under NEPA: because it is a purely legal transaction and no change in land use is planned. *See* 2016 ESA at 17 ("BIA-MRO . . . has determined that the project is categorically excluded from further consideration under NEPA. Therefore, BIA-MRO has determined that this project will have 'no effect' on the threatened species on the subject property."). Appellants do not explain how this trust acquisition could harm or even affect the Northern Long-Eared Bat or the Gray Wolf, and nothing in the record suggests that it could. Without making that showing, Appellants cannot prevail on their ESA claims.

Appellants contend that BIA "completely failed to address the . . . Gray Wolf." Opening Br. at 33. It is true that the Regional Director neglected to mention the wolf in her Decision. *See* Decision at 10. But she relied on BIA's underlying "no effect" determination, which included both "threatened species on the subject property." 2016 ESA at 17 (listing both the Gray Wolf and the Northern Long-Eared Bat as relevant threatened species). Thus, the Regional Director's reasoning may reasonably be discerned

by reading her Decision and the administrative record together. *See, e.g., Wolf Point Community Organization v. Acting Rocky Mountain Regional Director*, 40 IBIA 131, 134 (2004) (noting that the Board will affirm a decision, even if it does not explain itself, if "the administrative record and the decision, read together, . . . show how BIA reached its conclusion"); *see also Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974) (holding that the courts will "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned"). Appellants, significantly, have not shown any error in that reasoning or explained how this trust acquisition could affect the wolf.

Next, Appellants claim that "BIA failed to comply with the regulatory procedure of the ESA in obtaining a written concurrence from the Service." Opening Br. at 33. Appellants are correct that an agency may fulfill its obligation to consult under the ESA by engaging in informal consultation with the Service and obtaining the Service's written concurrence with its finding that an action will not adversely affect any listed species. *See* 50 C.F.R. § 402.13. But as explained above, BIA was not obligated to engage in consultation, either formal or informal, because it made a "no effect" determination that is supported by the administrative record. *See Cal. Ex rel. Lockyer v. USDA*, 575 F.3d 999, 1019 (9th Cir. 2009) ("An agency's finding that its action will have no effect on listed species or critical habitat obviates the need for consultation."). Because it was not required to consult, BIA was not required to obtain a written concurrence from the Service.

Finally, Appellants argue that listed species might be affected because "the record evidences roadway development" on the Willmus Property. Reply Br. at 53. This claim is apparently based on BIA's inspection of the property, which revealed something that appeared to be a "borrow pit" or trench, and which the Band explained was likely the result of past trail maintenance. *See* Email from Band to BIA, Apr. 11, 2016 (AR 50). But even if Appellants are correct, and someone once tried to build a trail on the Willmus Property, that does not suggest that BIA's action here—taking this land into trust with no planned change in land use—will have any effect on ESA-listed species or their habitat. To prevail on their ESA claims, Appellants had to show that the Regional Director erred when she made her "no effect" determination, and they have not made that showing.[20]

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[20] Appellants also note that the IPaC identified twenty species of migratory birds found in the area. Unlike the ESA, however, the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*, which prohibits the take or killing of migratory birds without a Federal permit, has no consultation requirement.

5. Environmental Site Assessments & 602 DM 2

Appellants also argue that the environmental site assessments used by BIA here failed to comply with the requirements set out in the Departmental Manual (at 602 DM 2). Opening Br. at 35-38. More specifically, Appellants point to concerns about "potential buried materials and fill soils" and "irrigation ditches . . . containing some PVC piping" raised by environmental reviewers in an assessment submitted by the Band. *Id.* at 37.

Appellants have no standing to bring these claims. The purpose of the cited provisions of the Departmental Manual is to protect the Department—not Appellants—from environmental liability. *See* 602 DM 2.1 (stating that its purpose is to "prescribe[] Departmental policy, responsibilities, and requirements regarding determinations of the potential to expose the Department . . . to liabilities and costs of remediation related to the release or threatened release of hazardous substances"). In this appeal, Appellants must defend their own interests, not the Department's. *See, e.g., Wind River Alliance v. Rocky Mountain Regional Director*, 52 IBIA 224, 229 (2010) (a party must assert its own rights and interests, and cannot rest its claim of relief upon the rights or interests of others). As discussed above in Section V.F.1, Appellants have not clearly alleged that this trust acquisition will harm their environmental interests, much less that their environmental interests will somehow be harmed by the agency's alleged failure to properly complete these site assessments. Thus, Appellants have failed to show that they have standing to bring these claims.

And even if Appellants had standing, we would still deny these claims. Appellants' claims are based on mischaracterizations of the record. The issues identified by the Appellants were all dismissed in the site assessment as "de minimis" conditions that do not "present a threat to human health or the environment." 2015 ESA at 16-17. The assessment did not confirm that "buried materials" were present at the site, but rather merely acknowledged the "potential" that such materials "could be present" and that "additional evaluation" would be required if there is a "future redevelopment." *Id.* at 17. No such development is proposed here. The site assessment then concluded that no recognized environmental conditions were found on the property. *Id.* at 16. Thus, even if Appellants had standing to bring these claims, they have still failed to show that the Regional Director erred in her reliance on these site assessments.

VI. Constitutional Issues

Appellants make several arguments challenging the constitutionality of the Indian Reorganization Act and the authority delegated to BIA to accept land in trust on behalf of Indian tribes. Opening Br. at 39-50. As we have consistently held, "[t]he Board . . . lacks authority to declare an act of Congress to be unconstitutional." *Thurston County*, 56 IBIA

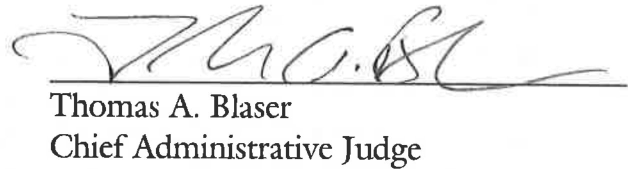
at 66. For that reason, we do not address the various constitutional challenges raised by Appellants.

Conclusion

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 March 2, 2017, decision.

I concur:

James A. Maysonett
Administrative Judge



Thomas A. Blaser
Chief Administrative Judge

Morrison County, Minnesota, Richardson Township, and Leigh Township v. Acting Midwest Regional Director, Bureau of Indian Affairs
Docket No. IBIA 17-069
Order Affirming Decision
Issued September 29, 2023
69 IBIA 137

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