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Attorney for Appellant
Capay Valley Coalition

UNITED STATES DEPARTMENT OF INTERIOR

INTERIOR BOARD OF INDIAN APPEAL

CAPAY VALLEY COALITION)
)
Appellant)
)
PACIFIC REGIONAL DIRECTOR, BUREAU)
OF INDIAN AFFAIRS)
)
Appellee)
<hr/>	
)
YOCHA DEHE WINTUN NATION)
)
Real Party in Interest)
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APPELLANT'S REPLY BRIEF

1 I. INTRODUCTION

2 Appellant Capay Valley Coalition (“CVC”) respectfully submits this Reply Brief to Real
3 Party In Interest Yocha Dehe Wintun Nation’s (“Tribe”) Response. CVC remains concerned
4 that granting the Tribe’s application to convert such a significant amount of land from fee to
5 trust will have a significant impact on the cultural and agricultural resources of the Capay
6 Valley. In addressing the issues raised CVC’s Opening Brief, the Tribe laces its Response with
7 personal attacks on Appellant and some of its members. These personal attacks provide an
8 example of how the Tribe’s non-accountability of trust status can be used against neighbors and
9 surrounding parcels. Moreover, the tone of the Tribe’s Response demonstrates the Tribe’s
10 disrespect for the process as well as those in the Capay Valley that seek to preserve the valley’s
11 agricultural heritage and resources.

12 CVC and its members have reason to be concerned with the amount of acreage that the
13 Regional Director approved to be held in trust for the Tribe. The Tribe’s intensive commercial
14 development in the Capay Valley has resulted in the conversion of agricultural lands and
15 increased traffic to the valley. Moreover, the Tribe continues to put forward plans about further
16 expansion of its intensive commercial development and activities in the Capay Valley. Of the
17 previous land converted to trust, the Tribe has not preserved that land in agricultural production.
18 The Tribe developed all of that land into housing, administrative offices, a casino, hotel, a golf
19 course, parking lot, gas station, and fire station.

20 As demonstrated in CVC’s Opening Brief, the Pacific Regional Director’s April 28, 2014
21 Notice of Decision (“NOD”) to acquire the 853± acres of land into trust for the Tribe is not
22 supported by the administrative record. Moreover, the Tribe’s Application seeks far more land
23 than the Tribe needs for the stated purpose in the Application. Neither the Tribe nor the
24 Regional Director’s NOD demonstrate a reason, purpose or need to transfer over 750 acres of
25 agricultural land from fee to trust, especially when the Tribe claims that it intends to keep the
26 land in agricultural production. The Administrative Record demonstrates that the Tribe can
27 achieve its goals and purposes with a reduced acreage – 99 acres. As demonstrated in CVC’s
28 Opening Brief and in the Administrative Record, the land is located in a protected agricultural

1 valley. Thus, no need exists to transfer the land to trust if the Tribe intends to maintain and
2 protect the agricultural character of the land. If on the other hand the Tribe has additional plans
3 for the agricultural land and does not want to be burden with the jurisdictional oversight of the
4 County of Yolo regarding such development, then the Tribe would want to convert the
5 otherwise protected agricultural land to trust in order to remove any obstacles to its
6 development. The Administrative Record does not support the decision to convey over 750
7 acres of agricultural land to trust. As such, Appellant Capay Valley Coalition respectfully
8 requests that the Assistant Director remand the matter to the Regional Director for consideration
9 of additional information and a reasonable determination based upon the administrative record.

10 II. SUPPLEMENTAL BACKGROUND INFORMATION

11 As discussed above, the Tribe's Response makes personal attacks against CVC's
12 members, specifically Pamela Welch and Tom Frederick. Resp. Br. at p. 6. The Tribe asserts
13 that Ms. Welch and Mr. Frederick offered to sell their property adjacent to the Tribe's casino
14 and that if the Tribe refused the offer they would challenge the fee to trust application. *Id.* The
15 Tribe basis this assertion and attack on hearsay contained in a letter written by the Tribe. See
16 RAR, 44, Attachment D. The Tribe misstates and misrepresents the position stated by Ms.
17 Welch and Mr. Frederick. Two separate letters dated July 8, 2012 and July 10, 2012 from Ms.
18 Welch and Mr. Frederick to the Tribal Council, clearly state that they opposed the trust
19 application and that they viewed the matter as land use issue. See Attachments 1 and 2 to this
20 Reply Brief. As they stated in their letters, the Tribe's trust lands have heavily impacted land
21 use in the valley and that based upon previous history land taken into trust for housing was later
22 converted to casino and in another instance to a golf course. *Id.* The letters also expressed their
23 ongoing concern regarding the lack of legal accountability granted to the Tribe by the trust
24 process. *Id.* The Tribe's lack of legal accountability with regards to land use impacts the rights
25 of not just the adjacent property owners, but also other property owners in the Capay Valley.
26 Again, the Tribe's personal attacks demonstrates the Tribe's disrespect for the process as well
27 as those in the Capay Valley that seek to preserve the valley's agricultural heritage and
28 resources.

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III. ARGUMENT

A. THE REGIONAL DIRECTOR ABUSED HER DISCRETION IN GRANTING THE APPLICATION TO TRANSFER 853 ACRES OF LANDS FROM FEE TO TRUST

1. APPELLANT CORRECTLY STATED THE LEGAL STANDARD GOVERNING REVIEW OF THE REGIONAL DIRECTOR'S DECISION

The Tribe asserts that CVC misstates the legal standards controlling the Regional Director's authority to approve an application to convert land from fee to trust. Resp. Br. at pp. 2-3. Contrary to the Tribe's assertion, CVC clearly stated the applicable law and legal standard regarding the Regional Director's consideration and approval of the fee to trust Application. See Op. Br. at pp. 2-4. "Decisions of BIA officials whether to take land into trust are discretionary. The Board does not substitute its judgment in place of BIA's judgment in decisions which are based upon the exercise of BIA's discretion. Rather, the Board reviews such discretionary decisions to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations." *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). The decision must reflect that the Regional Director considered the appropriate factors set forth in 25 C.F.R. Part 151, but there is no requirement that BIA reach a particular conclusion with respect to each factor. *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008). The administrative record must support the Regional Director's decision and the Regional Director must properly consider the criteria required under section 151.10.

2. THE REGIONAL DIRECTOR'S FAILED TO PROVIDE AN INDEPENDENT ANALYSIS IN APPROVING THE APPLICATION

The Tribe asserts that the Regional Director issued a well-reasoned decision in granting the application. Resp. Br. at p. 8. The Regional Director's NOD, however, essentially recites the Tribe's application. Compare RAR, Doc 47 at p. 18 with RAR, Doc 1 at p. 14. A comparison of the NOD and the application indicate that the Regional Directors. Naturally the Tribe believes the NOD is a well-reasoned decision as the NOD substantially mirrors the Tribe's application. Contrary, to the Tribe's assertion, the Regional Director's decision regarding the Tribe's need for the additional land simply quotes directly from the Tribe's June

1 2011 Application to conclude there is a need for additional land. RAR Doc. 47 at p. 18 (“This
2 trust application is necessary in order for the Tribe to exercise its sovereign jurisdiction over the
3 land at its fullest.”); compare with RAR Doc. 1 at p. 14 (“This trust application is necessary in
4 order for the Tribe to exercise its sovereign jurisdiction over the land at its fullest.”) The whole
5 conclusion in the NOD was essentially lifted from the Tribe’s application. Compare RAR, 47 at
6 p. 18 with RAR Doc 1 at p. 14. Thus, the Regional Director did not review the material and
7 give proper consideration to the issue, but instead adopted the Tribe’s bare assertions without
8 any evidentiary support in the administrative record.

9 **3. THE BIA FAILED TO PROPERLY CONSIDER ALL CRITERIA REQUIRED UNDER**
10 **25 CFR § 151.10**

11 **a. THE BIA FAILED TO DEMONSTRATE THE EXISTENCE OF TRIBAL**
12 **"NEED" FOR THE LAND TO BE PLACED IN TRUST**

13 One of the criteria is that the Regional Director must determine that the land to be
14 acquired is “necessary” to facilitate tribal self-determination, economic development, or Indian
15 housing. See 25 C.F.R. § 151.3(a)(3); see also *City of Lincoln v. U.S. Dept. of Interior*, 229 F.
16 Supp.2d 1109, 1124 (D.Or. 2002). The Tribe relies upon *County of Charles Mix v. U.S. Dept.*
17 *of Interior*, 799 F.Supp.2d 1027, 1045 (D.S.D 2011) to assert that section 151.10(b) does not
18 require the BIA to consider why the Tribe needs the land held in trust. Section 151.10(b),
19 however, does require that the Regional Director explain why the Tribe needs the additional
20 land.” See *South Dakota v. U.S. Department of the Interior*, 314 F.Supp.2d 935, 949-51
21 (D.S.D. 2004). While the Regional Director need not discuss the history and purpose of the
22 IRA for every decision, the Regional Director must provide a rational basis that is supported by
23 the administrative record. *Id.* In this case, the Regional Director did not, especially given the
24 fact that the NOD essentially repeats the Tribe’s application.

25 The Tribe argues that the administrative record supports the Regional Director’s findings
26 with regard to need for the property. Resp. Br. at p. 11. The Regional Director concluded that
27 trust status was “essential” for the Tribe to exercise its sovereign jurisdiction and to restore the
28 ancestral land base. RAR, Doc 47 at pp. 18-19. The NOD, however, fails to state why it is

1 essential or necessary. It only states that it is necessary. Moreover, the NOD fails to provide a
2 rational basis for the decision. RAR, Doc 47 at p. 18.

3 To the extent the NOD discussed the need for the trust land to create a buffer zone, the
4 administrative record does not support that finding. RAR, 47 at p. 18. The Tribe's Response
5 also states "Placing the requested acreage in trust will also help create a buffer zone that gives
6 the new residential community greater personal security and privacy." Resp. Br. at p. 8. This
7 statement is from NOD and the Tribe's Application. See RAR, Doc 47 at p. 18; RAR, Doc 1 at
8 p. 14.) This statement, however, is inconsistent with evidence contained in the administrative
9 record. The Tribe's application for trust land proposes developing the outer edges of the
10 property adjacent to land owned by others. See RAR, Doc 1. The proposed development of the
11 trust land does not provide the Tribe the buffer that it claims. Moreover, the proposed additional
12 cultural resource center and cultural activity center are on the highway and both on edge of
13 property adjacent to farming activity by adjacent landowner Gordon. See EAR, Doc 2 at p. 23,
14 Figure 2-2. Additionally, the Tribes' septic pond is adjacent to land not owned by the Tribe. *Id.*
15 Finally, many of the proposed new houses are close to others property lines. *Id.* Thus, the NOD
16 and the Tribe claim that the land is necessary to create a buffer zone, when in fact there will be
17 no buffer zone from much of the proposed development.

18 The Tribe's Response indicates that the Tribe provided sufficient information regarding the
19 existing land use. Resp. Br. at p. 11. The Tribe cites to its application to support its response.
20 See RAR, Doc 1 at pp. 14-15. The application, however, implies that all the facilities are all
21 located on the same 63-acre parcel of land, when they are not. *Id.* The NOD simply restates this
22 and rubber-stamps the statements in the Tribe's application. See RAR, Doc 47 at p. 18. Again,
23 it appears the Regional Director failed to conduct any independent analysis or review of the
24 application, but simply adopted whatever the Tribe submitted.

25 The Tribe's Response asserts that CVC has a lack of appreciation for the Tribe's need for
26 housing. Resp. Br. at p. 13, fn. 13. To this end, the Tribe asserts that it is inappropriate for tribal
27 members to live in HUD home on a bingo hall parking lot. *Id.* CVC's Opening Brief made it
28 abundantly clear that the primary issue with the Regional Director's NOD is that it granted the

1 trust application for the 754 acres of agricultural land and the threat that poses to the Capay
2 Valley. Not the 99-acres that the Tribe claims it needs for housing and other tribal facilities.
3 Again, the Tribe misrepresents CVC's statements and arguments in this matter and does so in a
4 tone of disrespect to those who oppose the Tribe's trust application.

5 The Tribe states that CVC insinuates that the Tribe cannot be trusted to preserve and
6 protect the rural character of it's own homeland." Resp. Br. at p. 13. CVC not only insinuates,
7 but asserts that argument based upon the Tribe's history in the valley with respect to the
8 development of its trust lands. Previous lands acquired in trust for the Tribe have been
9 developed into casinos, parking lots, a large hotel, a golf course, tribal housing and tribal offices.
10 See RAR, Doc 1, p. 14. Nothing in the administrative record demonstrates that the Tribe has
11 sought to preserve the agricultural resources it has previously acquired in trust. *Id.* Thus, based
12 upon the Tribe's history of large scale commercial development in the Capay Valley— casino,
13 hotel, golf course, etc. - it stands to reason that the Tribe will continue on its path of commercial
14 development on trust land especially when the Tribe has no outside legal accountability with
15 respect to developing the trust lands. Not only does the history of previous development support
16 this position, but the Tribe's own intention for expansion of its facilities clearly indicates that the
17 Tribe intends to continue its commercial development in the Capay Valley.

18 The Tribe's Response argues that it cannot assert full governance over the agricultural
19 lands that it seeks to protect, unless they are converted to trust. Resp. Br. at p. 13. The Tribe
20 fails to demonstrate why it needs to exercise full governance over agricultural lands that it seeks
21 to "protect" when they are already protected in their fee status. *Id.* As the County stated, the
22 Tribe can achieve the protection of the agricultural land while maintaining the fee status of the
23 lands.

24 The land is currently zoned agricultural. The County has previously noted that
25 prior agreements have protected land owned by the Tribe. Indeed, the Tribe
26 currently operates over 10,000 acres of agricultural land in Yolo County and none
27 of it in trust. The Tribe has protected land in the past with a perpetual agricultural
28 conservation easement. The Tribe's stated desire to protect agricultural land
under its ownership is no way threatened by the County; the use of other available
mechanisms, for instance permanent agricultural easements, would ensure that
existing fee lands would stay in the Tribe's control in perpetuity. Tribal housing

1 likewise, is consistent with the County's clustered agricultural housing ordinance
2 which allows a density of housing on agriculturally zoned property.

3 RAR Doc 38 at p. 3. The current zoning and other legal mechanisms provide the Tribe the
4 authority and ability to achieve its purported goal of protecting agricultural lands within the
5 Capay Valley. Thus, the Tribe cannot demonstrate the necessity for transferring the property
6 from fee to trust.

7 **b. THE BIA FAILED TO SUFFICIENTLY CONSIDER POTENTIAL**
8 **JURISDICTIONAL PROBLEMS ASSOCIATED WITH THE TRANSFER OF**
9 **LAND INTO TRUST**

10 Section 151.10(f) requires the Secretary to "consider" "[j]urisdictional problems and
11 potential conflicts of land use which may arise" in "evaluating requests for the acquisition of
12 land in trust status when the land is located within or contiguous to an Indian reservation." The
13 Tribe asserts that the Regional Director sufficiently considered the jurisdictional problems and
14 potential conflicts of land use that may arise from the acquisition. Resp. Br. at p. 14; citing 25
15 C.F.R. § 151.10(f); *City of Lincoln, supra*, 299 F.Supp.2d at 1124. "The regulations only
16 require that the BIA undertake an evaluation of potential problems." *Id.* Moreover, the Tribe
17 takes issue with CVC's assertion that the NOD simply restates that the Tribe's assertions that
18 the Tribe does not anticipate any jurisdictional conflicts as a result of the transfer of property
19 into trust. See RAR, Doc 47 at pp. 21-22. Compare RAR Doc 1 with RAR Doc 47. A
20 comparison of the two, however, clearly indicates that the Regional Director adopted the
21 Tribe's assertions and simply ignored the information provided by the County of Yolo. Thus,
22 the record indicates that the Regional Director ignored the County's concerns regarding
23 jurisdictional conflicts. See RAR, Doc 38 at p. 3; Op. Br. at pp. 9-10.) The County raised
24 concerns that if a deed restriction is not put into place, the County could be faced with an
25 intense commercial use of this property in an otherwise protected agricultural valley. RAR,
26 Doc 38 at p. 3. The Regional Director, as well as the Tribe's Response Brief, ignore the
27 County's public interest concerns to limit or restrict intense commercial development in
28 otherwise protected agricultural valley. See Resp. Br. at pp. 14-15.

1 The transfer of 853± acres into trust creates the possibility that the Tribe will extensively
2 develop what are currently undeveloped and almost entirely agricultural lands. Were the Tribe
3 to pursue such development, numerous problems would arise relating to land use and
4 transportation impacts within the Capay Valley and regionally along with environmental
5 impacts on water resources, habitat, and special status species. Local and state government
6 would face challenges dealing with the immediate and spillover effects of these impacts on non-
7 trust lands but would have no recourse to stop the Tribal development causing these impacts.
8 Instead of addressing the jurisdictional conflicts raised by the County, the NOD discusses the
9 money the Tribe provides to the County and the services that the Tribe provides within the
10 Capay Valley, but not the potential jurisdictional conflicts raised by the County. See RAR, Doc
11 47 at pp. 21-22. As such, the Regional Director's NOD should be vacated and the matter
12 remanded to the Regional Director.

13 **c. THE REGIONAL DIRECTOR FAILED TO SUFFICIENTLY CONSIDER**
14 **POTENTIAL LAND USE CONFLICTS CREATED BY THE TRANSFER**

15 The Tribe asserts that in approving the Trust application, the Regional Director could not
16 consider land use conflicts if the Tribe developed the property beyond what is discussed in the
17 application. To this end, the Tribe asserts that the Regional Director need only consider facts
18 that are or should be within the Regional Director's knowledge relevant to the purposes for
19 which the potential trust land will be used. Resp. Br. at p. 16; citing *Village of Ruidoso v.*
20 *Albuquerque Area Director*, 32 IBIA 130, 139 (1998).

21 In *Village of Ruidoso*, the Interior Board of Indian Appeals held that BIA failed to include
22 in its decision a discussion of the facts which are or should be within the BIA's knowledge and
23 which have some bearing on the present or future use of the property. As the Area Director had
24 failed to consider all of the relevant facts the IBIA vacated the Area Director's decision. *Id.*
25 The IBIA directed the Area Director to consider the Tribe's economic development plan or
26 other relevant documents that shows its planned future uses of the property. *Id.*

27 The Tribe asserts that future development is not reasonably foreseeable. Resp. Br. at p.
28 17. The Tribe, however, fails to discuss the fact that the Tribe is the most active developer in

1 the Capay Valley and has brought enormous commercial activity, including traffic into the
2 Valley. Additionally, the Regional Director completely ignores the County's comments and
3 concerns. The County, through its comment letter, articulated this concern.

4 Although the Tribe has stated in the Fee-to-Trust application there will be no
5 change in land use, there is enough information in the attached exhibits and prior
6 experience which indicate there is a strong possibility of a future change of use to
7 some degree of commercial activity. The rural western Yolo County portion of
8 State Highway 16 presents an ideal corridor of land worthy of permanent
9 protection from development.

10 The County is concerned that once the parcels are in trust pursuant to this
11 application, the Tribe may proceed with any development they desire, including
12 an intense commercial use.

13 RAR Doc 38 at p. 3.

14 As Regional Director has knowledge of the Tribe's history of intensive commercial
15 development and plans for future development the Regional Director should have addressed that
16 in the NOD. All of this information was within the Regional Director's knowledge at the time
17 of the NOD and should have been considered and evaluated prior to the approving the trust
18 application.

19 **B. THE NOTICE OF DECISION FAILED TO COMPLY WITH NEPA**

20 The Tribe argues that concerns regarding the development of the agricultural lands held in
21 trust are unfounded and speculative. See Resp. Br. at pp. 21-22. The Tribe goes on to assert
22 that since such future uses are unplanned and speculative, NEPA did not require that they be
23 addressed in the Environmental Assessment. As addressed in CVC's Opening Brief, once lands
24 are transferred to trust status, state and local land use regulations no longer apply. See *Conn. Ex*
25 *rel. Blumenthal v. U.S. Dep't of Interior*, 228 F.3d at 85 (2d Cir.2000); 25 U.S.C. 465. As a
26 result, transferring land from fee to trust for the Tribe effectively pre-approves any future
27 development the Tribe may wish to pursue on trust land, including intensive residential or
28 commercial development. The Tribe continues to maintain that its development intentions for
the 853± acres are to only develop approximately 99 acres, leaving the remaining 750± acres in
agricultural operation. RAR, Doc 1, at p. 16. The Tribe's currently proposed developments
include 25 residential housing units for Tribal members, a new Tribal school, cultural and

1 educational facilities, and a wastewater treatment system to accommodate the Tribe's current
2 members and anticipated growth. *Id.* The Tribe's recently abandoned plans for development
3 onto existing trust land would create dense land uses on already developed trust parcels. See
4 RAR Doc 4. There would be ample space for the Tribe's recently abandoned development
5 expansion plans or even greater expansion on the 853± acres spread along State Route 16
6 adjacent to existing Tribal buildings and less than 2 miles from the Tribe's casino that the BIA
7 has approved for transfer into trust. As previously stated, the County of Yolo expressed this
8 very concern. EAR, Doc 11. Yolo County noted that "[f]uture land use decisions [by the Tribe]
9 could result in higher-density development that could be inconsistent with surrounding land
10 uses and the rural agricultural character of the Capay Valley. Of particular concern to the
11 County is the potential for highway commercial development on the parcels adjacent to State
12 Route 16." *Id.*; see also RAR Doc. 4.

13 The Tribe simply argues that any development is speculative at this point. Based upon the
14 Tribe's history of commercial development and its more recent plans for development, it is not
15 speculative that with the legal barriers and obstacles removed, the agricultural lands that are
16 subject to the trust application will be the subject of future development. This is further
17 supported by the fact that the maintenance of agriculture on approximately 750 additional acres
18 to be taken into trust does no more to "foster direct Tribal control over their ongoing
19 agricultural enterprises" (EAR Doc 3 - EA, Sec. 2-4, p. 2-9) than the Tribe's maintenance of
20 agriculture on its other more than 11,000 acres held in fee simple. The entire area is zoned
21 agricultural. *Id.* - EA, Sec. 1-2, p. 1-2; Sec. 3-8, p. 3-69, Fig. 3-11. There is nothing different or
22 special agriculturally about these approximately 750 acres approved for transfer into Trust that
23 the Tribe and the EA maintain will be maintained in agricultural operations. The Tribe now has
24 the authority to develop these acres in ways that are inconsistent with Yolo County's
25 agricultural zoning regulations currently in operation on the land, a plan that would not be
26 feasible to pursue on land held in fee simple and subject to local land use regulations. As such,
27 The EA fails to sufficiently address the potential adverse impact of more intensive commercial
28

1 development on agricultural land, as well as the habitat and special status species in the area.
2 (See Op. Br. at pp. 14-20.)

3 **IV. CONCLUSION**

4 Based upon the foregoing and the Opening Brief, Appellant Capay Valley Coalition
5 respectfully requests that the Assistant Secretary vacate the NOD and FONSI and remand the
6 matter to the Regional Director.

7 Dated: February 19, 2015

8 Respectfully submitted,

9 LAW OFFICES OF DONALD B. MOONEY

10
11 By 
12 Donald B. Mooney
13 Attorneys for Appellant
14 Capay Valley Coalition

ATTACHMENT 1

ATTACHMENT 1

Capay Valley

VINEYARDS



P.O.Box 17, Brooks, CA 95606
ph (530) 796-4110

June 8, 2012

Tribal Council
Yocha Dehe
P.O.Box 18
Brooks, CA 95606

Dear Members of the Tribal Council --

In keeping with our policy of contacting you regarding issues, we are writing to let you know we plan to oppose any new trust taking.

We want to emphasize that our position isn't personally directed towards the Tribe or any of its members. This is a land use issue.

Our position is grounded in the aspects of the trust process that heavily impact us and neighbors. Trust status grants unlimited change of land use and is particularly problematic when situated here in the Capay Valley amidst a patchwork of smaller land holders. Past history has shown land taken into trust for housing has been converted to casino and in another instance to a golf course.

Additionally, the lack of legal accountability granted by the trust process negatively impacts the civil rights of neighbors.

We are always available to discuss this and any other issues that emerge.
Please feel free to contact us.

Sincerely,

Tom Frederick
Pam Welch

ATTACHMENT 2

ATTACHMENT 2

Capay Valley

V I N E Y A R D S



P.O.Box 17, Brooks, CA 95606
ph (530) 796-4110

July 10, 2012

Tribal Council
Yocha Dehe
P.O.Box 18
Brooks, CA 95606

Dear Members of the Tribal Council –

We have been asked to further explain our position on why we oppose changing land from fee to trust. This has always been a land use issue.

Typically land use is governed by zoning which is set by local jurisdictions – in this case the county. The zoning rules are reviewed and periodically changed with input from the community. Any request to do something different must follow a public process. Land in trust status is not governed by zoning – there are no restrictions on use.

By law, if you are adversely impacted by actions taken by another – you have the right to bring a suit in the courts. This basic right of all citizens is known as legal accountability. However, there is no accountability for actions on land held in “trust” by the Federal Government for Indian Tribes. Trust effectively takes away the civil rights of those who are neighbors to tribal trust properties.

We hope this has clarified the issue. We would be happy to meet with the council to discuss further.

Sincerely,

Tom Frederick
Pam Welch

1 **CERTIFICATE OF FILING AND SERVICE**

2 Pursuant to 43 CFR § 4.332(a) and § 4.333, I certify that a true and correct copy of this
3 Appellant's Opening Brief, was sent via electronic mail, on February 19, 2015, addressed to:

4 Kevin K. Washburn
5 Assistant Secretary – Indian Affairs
6 U.S. Department of the Interior
f2appeals@bia.gov

7 Yocha Dehe Wintun Nation
8 P.O. Box 18
9 Brooks, CA 95606
TribalCouncil@yochadehe-nsn.gov
sferguson@yochadehe-nsn.gov
djones@yochadehe-nsn.gov

10 Paula M. Yost
11 Matthew G. Adams
12 Dentons US LLP
13 525 Market Street, 26th Floor
14 San Francisco, CA 94105-2708
paula.yost@dentons.com
matthew.adams@dentons.com

15 Pursuant to 43 CFR § 4.332(a) and § 4.333, I certify that a true and correct copy of this
16 Appellant's Opening Brief, was mailed to the Regional Director of the Bureau of Indian Affairs
17 (BIA), by first class mail, postage prepaid, on February 19, 2015:

18 Amy Deutschke, Regional Director
19 Bureau of Indian Affairs
20 United States Department of Interior
21 Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

22 Pursuant to 43 CFR § 4.332(a) and § 4.333, Capay Valley Coalition has identified the
23 following interested parties/party representatives in this action based upon the notice list of the
24 BIA decision and commenters to the Environmental Assessment, and has served upon them a
25 true and correct copy of this Appellant's Opening Brief, by first class mail, postage prepaid, on
26 January 9, 2105:

25 Paula M. Yost
26 Matthew G. Adams
27 Dentons US LLP
28 525 Market Street, 26th Floor
San Francisco, CA 94105-2708
paula.yost@dentons.com
matthew.adams@dentons.com

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Marshall McKay, Chairman
Yocha DeHe Wintun Nation
P.O. Box 18
Brooks, CA 95606

California State Clearing House
Office of Planning & Research
P.O. Box 3044
Sacramento, 95814

Daniel Powell
Legal Affairs Secretary
Office of the Governor
State Capitol Building
Sacramento, CA 95814

Sara Drake
Deputy Attorney General
State of California
Department of Justice
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U.S. Senator Diane Feinstein
331 Hart Senate Office Building
Washington DC 20510

Capay Valley Coalition
P.O. 894
Esparto, CA 95627

Yolo County Assessor
625 Court Street, Room 104
Woodland, CA 95695

Yolo County Treasure/Tax Collector
625 Court Street, Room 102
Woodland, CA 95695

Yolo County Board of Supervisors
Julie Dachter, Deputy Clerk of the Board
625 Court Street, Room 204
Woodland, CA 95695

Yolo County Sheriff's Department
140 Tony Diaz Drive
Woodland, CA 95776

1 Yolo County Department of Planning and Public Works
2 292 West Beamer Street
3 Woodland, CA 95695

4 Stand Up for California
5 Cheryl Schmit, Director
6 P.O. Box 355
7 Penryn, CA 95663

8 Superintendent
9 Central California Agency – BIA
10 650 Capitol Mal, Suite 8-500
11 Sacramento, CA 95814

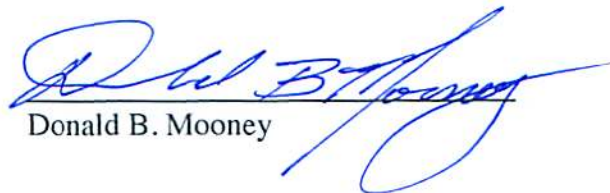
12 Capay Valley Coalition has identified the following interested parties/party representatives
13 that own property adjacent to the property acquired in trust, and has served upon them a true and
14 correct copy of this Appellant's Opening Brief, by first class mail, postage prepaid, on February
15 19, 2015:

16 Jim Eldon & Julie Rose
17 Tierra Rica
18 18265 County Road 70
19 Brooks, CA 95606

20 Joseph V. Costello, Jr
21 St Francis Land & Cattle LLC
22 1880 Lombard Street
23 San Francisco CA 94123

24 Donna & Larry Farnham
25 P.O. Box 141
26 Brooks, CA 95606

27 Charles M. Gordon, Jr.
28 Gordon Farms, Inc.
19341 County Road 76
Brooks, CA 95606


Donald B. Mooney