



COUNTY OF YOLO

Board of Supervisors

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(530) 666-8195 • FAX (530) 666-8193

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County Administrator, **Patrick S. Blacklock**

Deputy Clerk of the Board, **Julie Dachtler**

September 24, 2013

Amy Dutschke, Regional Director
United States Department of Interior
Bureau of Indian Affairs, Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

Re: Notice of Application Seeking Acceptance of Title to Real Property 'In Trust' by the United States of America for the Yocha DeHe Wintun Nation, California

Dear Ms. Dutschke:

The County of Yolo submits this letter and the attached Exhibits as comments on the above-mentioned Fee-to-Trust Application dated July 29, 2013. An extension of time to answer was graciously granted through October 2, 2013 (see attached as Exhibit A). The County has serious concerns regarding this Fee-to-Trust application which is currently configured for ±852.9 acres. As such, we must oppose it. We understand and support the rationale for transferring approximately 100 acres described as needed for residential, cultural and related purposes. However, there is no demonstrated reason, purpose or need to transfer ±752.9 acres described as indicated for agricultural purposes from fee to trust status. Existing Yolo County General Plan and zoning provisions protect this already designated agricultural land and since it is owned by the Tribe, there is no threat of any change in that status. Therefore, we must oppose the proposal as drafted. If the BIA approves the Fee-to-Trust application, we respectfully request that the deed restrict the portion designated for agriculture purpose in perpetuity.

Exhibit B, attached herein, is my comment letter dated January 25, 2013 on behalf of the County of Yolo in response to the "Finding of No Significant Impact for the Proposed Trust Acquisition of 15 Land Parcels Located in the Capay Valley of Yolo County for the Yocha Dehe Wintun Nation." This letter expresses a great many of the concerns of the County of Yolo applicable to this application and is incorporated by reference into these comments.

The County of Yolo notes that the Yocha Dehe Wintun Nation has been a valuable partner to the County and the broader community through years of collaborative relationships and extensive charitable giving. The County has never objected to a portion of these parcels going into trust, in particular the parcels necessary to achieve the Tribe's stated purpose of providing "new and expanded tribal community/governmental facilities and services to its members in the areas of Tribal housing, education, cultural preservation/education as well as related water/wastewater facilities and supporting infrastructure." However, the Tribe has never specified the acreage that is necessary to achieve these stated purposes, but consistently includes the acres necessary for these purposes in its application for ±852.9 acres of agriculturally zoned land. The County has pointed out in numerous meetings with the

Tribe that under no reasonable assessment of these purposes is there any support for taking ±852.9 acres of land into trust, especially in an area that is located in a protected agricultural valley. The County therefore respectfully urges the Bureau of Indian Affairs (BIA) to reduce the amount of acreage it ultimately grants into trust and re-open the environmental assessment process to properly consider these issues.

In response to the four questions in the Notice, the County of Yolo has determined the following:

(1) If known, the annual amount of property taxes currently levied on the subject property allocated to your organization:

The current assessed values for the subject parcels are set forth in the table below. Some of these parcels are currently subject to a Williamson Act contract that is in non-renewal. Those values will be increasing to their Proposition 13 base year value over the next few years, resulting in approximately a 10% greater loss of tax to the County of Yolo.

<u>Parcel Numbers</u>	<u>Acres</u>	<u>Prop 13 Base Year Value</u>	<u>Enrolled for Taxes</u>
060-030-001	17.69	\$ 340,702	\$ 291,870
060-030-008	26.32	\$ 633,598	\$ 567,137
060-030-009	16.02	\$ 298,315	\$ 255,313
060-020-019	19.76	\$ 380,689	\$ 325,813
060-020-018	17.82	\$ 356,296	\$ 304,936
060-020-020	153.7	\$ 2,509,795	\$ 2,046,151
060-030-016	57.02	\$ 1,458,521	\$ 1,330,560
047-020-001	113.09	\$ 361,884	\$ 361,884
048-230-001	316.41	\$ 3,382,099	\$ 3,382,099
060-014-001	1.55	\$ 218,661	\$ 218,661
060-010-001	4.49	\$ 110,103	\$ 101,771
060-013-001	2.30	\$ 47,370	\$ 43,102
060-020-011	10.41	\$ 221,919	\$ 202,548
060-020-014	5.28	\$ 113,835	\$ 104,010
060-030-017	92.14	\$ 1,096,851	\$ 969,338
Totals	854 ac.	\$ 11,530,638	\$ 10,505,193

(2) Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization:

There are none known at this time.

(3) Any government services that are currently provided to the property by your organization:

All of the usual and typical County services and obligations to a rural, unincorporated area, such as: Road maintenance, mutually aided emergency services, public and environmental health

services, law enforcement/crime prevention and prosecution/defense, recreation and natural resources.

(4) If subject to zoning, how the intended use is consistent, or inconsistent, with current zoning:

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

The County of Yolo requests that the BIA require the Tribe to prepare an Environmental Impact Study evaluating the environmental and socioeconomic impacts, including but not limited to those set forth in this letter and exhibits. The BIA is responsible for adequate environmental review of this project and must not ignore the repetitive statements of intent from the Tribe for a casino, resort or other intense commercial use to occur on this land.

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

The County is concerned that once the parcels are in trust pursuant to this application, the Tribe may proceed with any development they desire, including an intense commercial use. To secure the Tribe's statement in their Fee-to-Trust application and "Notice of (Off-Reservation/Non-Gaming) Land Acquisition Application" that there is no planned change in land use and there are no known current/future construction or development proposals, the County requests that if the BIA approves the Fee-to-Trust, it specifically restrict the deed at the time the land is taken into trust to preclude any intense commercial use, including but not limited to gaming casino, resort hotel or truck stop/gasoline station as well as preclude any change in the current land use. If such a deed restriction is not put in place, the County could be faced with an intense commercial use on this property sometime in the future and would be unable to raise objections or deal with the impacts of that development. Such a restriction placed in the deed on the use of the land is the only option left to protect the current agriculturally zoned uses because the Tribe has been unwilling to enter into an enforceable memorandum of understanding with the County that would guarantee that use of the land remains consistent with the Tribe's stated intentions.

As previously stated, the County is opposed to the application as drafted, while a BIA initiated deed restriction is supportable. The County has a strong public interest in reviewing development on the above mentioned land for public health, safety and welfare considerations and impacts, including but not limited to impacts from economic development. The Board of Supervisors must be provided more

information through BIA environmental review under the auspices of the National Environmental Policy Act (NEPA) before it can adequately review and respond regarding the County's concerns and impacts. The BIA must fulfill its duties pursuant to the NEPA to fully analyze the environmental impacts from the Fee-to-Trust decision and to consider all of the existing information regarding the Tribe's potential and previously stated and/or agreed upon use of the land. If you have any questions or concerns, please contact Yolo County Counsel Robyn Drivon at (530) 666-8172 or Yolo County special counsel Cathy Christian, Esq. at (916) 446-6752.

Very truly yours,



Duane Chamberlain, Chairman
Yolo County Board of Supervisors

Enclosures



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

AUG 27 2013

IN REPLY REFER TO:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7013 0600 0001 1880 7109

Robyn Truitt Drivon
County of Yolo
Office of County Counsel
625 Court Street, Room 201
Woodland, CA 95695

Dear Ms. Drivon:

We are in receipt of your letter dated August 13, 2013 regarding the Notice of Land Acquisition Application pertaining to the Yocha Dehe Wintun Nation's request to have 853 acres of real property in Yolo County. In your letter, you request a 30-day extension to allow sufficient time for the county staff to review the NOA and recommend comments to the Board of Supervisors for its approval. As requested, we have extended the comment period to October 2, 2013. For further assistance on this project, please contact Lorrae Russell, Realty Specialist, at (916) 978-6071.

Sincerely,

Regional Director

Enclosure

cc: Yocha Dehe Wintun Nation

TAKE PRIDE
IN AMERICA 

EXHIBIT A



COUNTY OF YOLO

Board of Supervisors

District 1, **Michael H. McGowan**
District 2, **Don Saylor**
District 3, **Matt Rexroad**
District 4, **Jim Provenza**
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County Administrator, **Patrick S. Blacklock**
Deputy Clerk of the Board, **Julie Dachtler**

January 25, 2013

Amy Dutschke, Regional Director
United States Department of the Interior
Bureau of Indian Affairs, Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

RE: Finding of No Significant Impact for the Proposed Trust Acquisition of 15 Land Parcels Located in the Capay Valley of Yolo County for the Yocha Dehe Wintun Nation

Dear Ms. Dutschke:

On behalf of, the County of Yolo Board of Supervisors ("County"), I write to address several serious errors in the recently issued Finding of No Significant Impact ("FONSI") associated with the proposed fee-to-trust application of the Yocha Dehe Wintun Tribe ("Tribe") for 15 parcels of land located in the Capay Valley area of Yolo County. These errors significantly misrepresent the need to take all of these parcels into trust and represent a serious threat to stable land use planning in the County. Moreover, they overlook existing enforceable agreements between the County and the Tribe governing the Tribe's application for any additional trust lands.

As an initial matter, the County notes that the Yocha Dehe Wintun Nation has been a valuable partner to the County and the broader community through years of collaborative relationships and extensive charitable giving. The County has never objected to a portion of these parcels going into trust, in particular the parcels necessary to achieve the Tribe's stated purpose providing "new and expanded Tribal community/governmental facilities and services to its members in the areas of Tribal housing, education, cultural preservation/education as well as related water/wastewater facilities and supporting infrastructure." Under no reasonable assessment of these purposes, however, is there any support for taking more than 850 acres of land into trust, especially in an area that is located in a protected agricultural valley. The County therefore respectfully urges the Bureau of Indian Affairs ("BIA") to withdraw the existing FONSI and re-open the environmental assessment process to properly consider these issues.

The 2002 Memorandum of Understanding between the County and the Tribe.

In October of 2002, the County and the Tribe entered into a Memorandum of Understanding ("MOU") governing a number of subjects arising from the Tribe's casino expansion plans.¹ Central to this MOU were Sections 1 (j) and (k). In section 1(j), as mitigation for its casino expansion plans, the Tribe agreed to place some of its non-trust agricultural parcels into a perpetual agricultural conservation easement. In Section 1(k), the Tribe agreed that prior to seeking to place additional land in trust, it would engage in good faith negotiations with the County.

¹ The MOU is attached hereto as Attachment A. Note that on the date of the MOU, the Tribe was then known as the Rumsey Band of Wintun Indians.

EXHIBIT B

Unfortunately, although there have been several meetings between the County and the Tribe over the last two years to discuss the proposed trust acquisition, they were ultimately not productive. The Tribe has been unwilling to enter into an agreement with the County that ensures that only development which is consistent with the stated purpose of housing, education and cultural preservation (and related infrastructure) will be permitted, and will be limited to Parcels 9 and 10 as described in the Final Environmental Assessment ("EA"). That of course means that in the future the Tribe's plans or needs could change and the County would be unable to protect the land use designation now prevailing in the Capay Valley – agriculture.

Even more discouraging, despite a long history of intergovernmental collaboration and strong agreements with the County, the Tribe insisted on limiting any agreement so that it could be abandoned upon providing notice to the corresponding party and to exclude any enforcement mechanism. The Tribe's proposal would not allow the County to engage in long-term land use planning nor would it allow neighboring landowners to plan accordingly.

The County's concern about the Tribe changing its plans in the future is not speculative. In 1995, the Tribe submitted a trust application envisioning the development of tribal housing and a community center on lands located to the east of the site that now houses the Cache Creek Casino Resort (prior to the development of the casino resort in 2002, the land was used for the Cache Creek Indian Bingo & Casino). Once accepted into Trust, the Tribe's plans for the land changed. Despite this unforeseen change in circumstances, the Tribe and the County were able to negotiate a solution that protected the interests of both the Tribe and the County and allowed the new development plan to proceed.

In exchange for the County's support of the Tribe's 1995 trust application (which was known as the "Schilling Ranch" application), the Tribe (1) reduced the acreage of their application from 300 acres to 83.5 acres; (2) agreed that the uses on the trust lands would be restricted to those described in the Tribe's 1994 letter to the Bureau of Indian Affairs initiating the proposed trust acquisition; and (3) agreed that the Tribe would not change its intended use of the Schilling Ranch until it presented to the County a proposal for such change along with an environmental assessment prepared in accordance with NEPA. A dispute resolution mechanism was also negotiated.

The County's proposed agreement for the current trust application incorporated the terms from the 1995 agreement regarding future changes in use, but did not request a reduction in the acreage of the application. The Tribe rejected this approach, concerned that it would give the County "veto power" over future proposed projects on trust lands or bind the actions of future Tribal Councils. The Tribe also objected to the use of binding arbitration as a dispute resolution mechanism.

The effect of trust status on existing agricultural land parcels.

As noted in the County's comments to the proposed EA, the County and the Tribe have previously negotiated an agreement that protects farm land owned by the Tribe. Indeed, the Tribe currently operates over 10,000 acres of agricultural land in Yolo County and none of it is in trust.

Other than the land currently in trust to accommodate casino operations and certain housing and tribal governmental buildings, which is not subject to the County's zoning ordinances, the land owned by the Tribe in Yolo County is zoned agricultural. Some of it is additionally protected pursuant to the 2002 MOU which provided that it be placed in a perpetual agricultural conservation easement. The Tribe's stated desire to protect agricultural land under its ownership is in no way threatened by the County; indeed, the use of other available mechanisms, for instance permanent agricultural conservation easements, would ensure that existing fee lands used for agricultural production would stay in agricultural use under the Tribe's control despite any unanticipated future change of the underlying zoning by the County. Alternatively, use of the County's clustered agricultural housing ordinance would allow the Tribe to develop a denser group of homes than would typically be allowed on agriculturally-

zoned parcels in the County, while placing a large percentage of the acreage included in the current application into protected agricultural status under the control of the Tribe.

Moreover, the fee status of the Tribe's agricultural land has clearly not been a barricade to several tribal economic development endeavors, including the new Yocha Dehe Olive Mill, Seká Hills brand wine, the Tribe's cattle operation, and other organic and conventional agricultural production.

Mimicking the Final EA, the FONSI states that "the Proposed Action would allow the Tribe to maintain its agricultural operations under full Tribal governance for the majority of the land proposed to be taken into trust; this would thereby allow the Tribe to continue to build economic self sufficiency." (FONSI, p. 2.) No analysis or facts are presented that support this sweeping conclusion; the FONSI merely asserts that putting these particular parcels into trust would allow the tribe to "continue to build economic self sufficiency." Such general statements do not satisfy the requirement that an EA must provide sufficient information and analysis for determining whether to prepare an EIS or to issue a FONSI which clearly cannot be met when the EA fails to indicate why or how these particular parcels must be placed in trust. (See, 40 CFR 1508.9(a).)

Additionally, the FONSI states that two alternatives were considered in addition to the Proposed Action: Alternative B (reduced acreage) and Alternative C (no action). Alternative B, however merely reduces the acreage by slightly over 100 acres, a reduction of only approximately 12%. The EA and FONSI don't give any serious consideration to the reduced acreage proposal but merely set forth an unsubstantiated claim that putting agricultural acreage in trust "would foster direct Tribal control over their agricultural enterprises."

Absent an analysis of why trust status is necessary for the Tribe to conduct its agricultural operations on these particular parcels, and given the other paths available to the Tribe in concert with the County, the County is deeply concerned that in the future these existing agricultural parcels may be converted to some other use. It was precisely to avoid that possibility that the Tribe and the County previously agreed to negotiate in good faith before the Tribe sought to place additional land in trust.

Conclusion

The Board of Supervisors is committed to maintaining the quality of life within the Capay Valley through effective long-term land use planning and collaboration with the Yocha Dehe Wintun Nation. In the absence of a robust agreement between the County of Yolo and the Yocha Dehe Wintun Nation that resolves the issue of unanticipated future changes in land use on the parcels included in the Tribe's trust application, the County respectfully urges the Bureau of Indian Affairs ("BIA") to withdraw the existing FONSI and re-open the environmental assessment process to properly consider the issues outlined in this letter.

Sincerely,



DUANE CHAMBERLAIN, CHAIRMAN
YOLO COUNTY BOARD OF SUPERVISORS

Attachment

cc: The Honorable Senator Dianne Feinstein
The Honorable Senator Barbara Boxer
The Honorable Congressman John Garamendi
The Honorable Edmund G. Brown, Jr., Governor of California
The Honorable Senator Lois Wolk
The Honorable Assemblymember Mariko Yamada