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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CAPAY VALLEY COALITION, an  
unincorporated association,

Plaintiff,

v.

SALLY JEWELL, in her official capacity  
as Secretary of the Interior; KEVIN K.  
WASHBURN, in his official capacity as  
the Assistant Secretary of Indian Affairs  
of the United States Department of  
Interior; AMY DEUTSCHKE, in her  
official capacity as Pacific Regional  
Director, Bureau of Indian Affairs;  
BUREAU OF INDIAN AFFAIRS; and  
DOES 1 through 100, inclusive,

Defendants,

and

YOCHA DEHE WINTUN NATION,

Intervenor.

No. 2:15-cv-02574-MCE-KJN

**MEMORANDUM AND ORDER**

Plaintiff Capay Valley Coalition (“Plaintiff” or “CVC”), a mutual benefit, non-profit corporation whose members consists of residents, citizens, and farmers in the Capay Valley, seek declaratory and injunctive relief against Defendants Sally Jewell, in her official capacity as Secretary of the Interior; Kevin K. Washburn, in his official capacity as

1 the Assistant Secretary of Indian Affairs (“AS-IA”) of the United States Department of  
2 Interior; Amy Deutschke, in her official capacity as Pacific Regional Director; and the  
3 Bureau of Indian Affairs (“BIA”) (collectively “Federal Defendants”). Plaintiff challenges  
4 the BIA’s decision to convert approximately 853 acres of land into trust for the Yocha  
5 Dehe Wintun Nation (“Tribe” or “Intervenor Defendant”). The Tribe was granted leave to  
6 intervene on April 18, 2016. ECF No. 11. CVC moved for summary judgment on  
7 July 22, 2016. Pl.’s MSJ, ECF No. 17. The Federal Defendants cross-moved for  
8 summary judgment on September 7, 2016, Fed. Defs.’ MSJ, ECF No. 19, and the Tribe  
9 filed a separate motion for summary judgment also on September 7, 2016, Tribe’s MSJ,  
10 ECF No. 20. For the reasons described below, Plaintiff’s motion is DENIED, Federal  
11 Defendants’ motion is GRANTED, and the Tribe’s motion is GRANTED.<sup>1</sup> The decision  
12 of the BIA is affirmed.

## 13 14 **BACKGROUND<sup>2</sup>**

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16 In June 2011, the Tribe applied with the BIA to have approximately 853 acres of  
17 land in Yolo County held by the Tribe in fee simple transferred into trust. The subject  
18 property consists of 15 parcels of land located in the Capay Valley. Currently, there are  
19 five single family homes on the property; four of them are unoccupied, and the fifth  
20 houses the Tribe’s Cultural Department. The property is surrounded by agricultural land  
21 and is located adjacent to land already held in trust for the Tribe.

22 According to the application, the Tribe intends to use 99 acres to develop 25  
23 residential housing units, a school, cultural and educational facilities, and a wastewater  
24 treatment system. The Tribe has stated it has no plans of changing the current  
25 agricultural status of the remaining 753.9 acres.

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27 <sup>1</sup> Because oral argument would not have been of material assistance in rendering a decision, the  
Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

28 <sup>2</sup> The following facts are derived from Plaintiff’s Complaint, the parties’ briefing, and the  
administrative record; they are undisputed.

1 On July 29, 2013, the BIA issued a notice to state and local governments seeking  
2 comments on the Tribe's application, specifically seeking information on the potential  
3 impact of acquisition on property taxes, special assessments, governmental services,  
4 and whether the intended use is consistent with zoning. CVC and Yolo County  
5 submitted comments, each opposing the application based among other things on the  
6 Tribe's purported need for the land under 25 CFR § 151.10(b). The Pacific Regional  
7 Director of the BIA issued a Notice of Decision ("NOD") in April 2014, approving the  
8 Tribe's application. CVC timely appealed, and the AS-IA affirmed the decision to acquire  
9 the approximately 853 acres in trust for the Tribe. The present suit followed.

## 11 PROCEDURAL FRAMEWORK

13 The Indian Reorganization Act ("IRA"), enacted in 1935, authorizes the Secretary  
14 of the Interior, in her discretion, to acquire land and hold it in trust "for the purpose of  
15 providing land for Indians." 25 U.S.C. § 465. "When the Secretary takes land into trust  
16 on behalf of a tribe pursuant to the IRA, several important consequences follow."  
17 Connecticut ex rel. Blumenthal v. U.S. Dep't of Interior, 228 F.3d 82, 85 (2d Cir. 2000).  
18 "Land held in trust is generally not subject to (1) state or local taxation; (2) local zoning  
19 and regulatory requirements; or, (3) state criminal and civil jurisdiction, unless the tribe  
20 consents to such jurisdiction." *Id.* at 85-86 (citations omitted) (citing 25 U.S.C. § 465;  
21 25 C.F.R. § 1.4(a); 25 U.S.C. §§ 1321(a), 1322(a)).

22 Title 25, Code Federal Regulations, section 151.10 ("Section 151.10") sets forth  
23 the criteria the Secretary shall consider in evaluating requests for the acquisition of land  
24 in trust status when the land is located within or contiguous to an Indian reservation, and  
25 the acquisition is not mandated. Relevant to the present Complaint and motion (ECF  
26 Nos. 1 and 17), CVC challenges the BIA's decision, arguing that the NOD failed to  
27 sufficiently consider (1) the Tribe's need for the land to be placed in trust under  
28 Section 151.10(b); (2) the potential jurisdictional issues associated with transferring the

1 land to trust under Section 151.10(f); and (3) any land use conflicts that may arise due to  
2 the transfer under Section 151.10(f).

3  
4 **STANDARD**

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6 The Administrative Procedures Act (“APA”) standards of review govern a court’s  
7 review of an agency’s actions under the IRA. 5 U.S.C. § 701 et seq.; see Pyramid Lake  
8 Paiute Tribe of Indians v. U.S. Dep’t of the Navy, 898 F.2d 1410, 1414 (9th Cir. 1990)  
9 (judicial review of final agency actions is governed by the APA). Under the APA, the  
10 court shall set aside any agency decision that it determines is “arbitrary, capricious, an  
11 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).  
12 This standard is “highly deferential, presuming the agency action to be valid and  
13 affirming the agency action if a reasonable basis exists for its decision.” Ranchers  
14 Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric.,  
15 499 F.3d 1108, 1115 (9th Cir. 2007) (quoting Indep. Acceptance Co. v. California,  
16 204 F.3d 1247, 1251 (9th Cir. 2000)).

17 In an action brought under the APA, the court ultimately must determine whether  
18 the agency decision “was based on a consideration of the relevant factors and whether  
19 there has been a clear error of judgment. This inquiry must be ‘searching and careful,’  
20 but ‘the ultimate standard of review is a narrow one.’” Marsh v. Or. Nat. Res. Council,  
21 490 U.S. 360, 378 (1989); citing Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402,  
22 416 (1971). In making this inquiry, courts review whether the agency has relied on  
23 factors which Congress has not intended it to consider, entirely failed to consider an  
24 important aspect of the problem, offered an explanation for its decision that runs counter  
25 to the evidence before the agency, or is so implausible that it could not be ascribed to a  
26 difference in view or be the product of agency expertise. Motor Vehicle Manufacturers  
27 Association v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983); Great Basin

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1 Mine Watch v. Hankins, 456 F.3d 955, 962 (9th Cir. 2006); Natural Resources Defense  
2 Council v. Department of the Interior, 113 F.3d 1121, 1124 (9th Cir. 1997).

3 Summary judgment is an appropriate procedure in reviewing agency decisions  
4 under the dictates of the APA. See, e.g., Nw. Motorcycle Ass'n v. U.S. Dept. of Agric.,  
5 18 F.3d 1468, 1471–72 (9th Cir. 1994). Under Federal Rule of Civil Procedure 56,  
6 summary judgment may be had “where, viewing the evidence and the inferences arising  
7 therefrom in favor of the nonmovant, there are no genuine issues of material fact in  
8 dispute.” Id. at 1472. In cases involving agency action, however, the court’s task “is not  
9 to resolve contested facts questions which may exist in the underlying administrative  
10 record,” but rather to determine whether the agency decision was arbitrary and  
11 capricious as defined by the APA. Gilbert Equip. Co. v. Higgins, 709 F. Supp. 1071,  
12 1077 (S.D. Ala. 1989); aff’d, 894 F.2d 412 (11th Cir. 1990); see also Occidental Eng’g  
13 Co. v. Immigration & Naturalization Serv., 753 F.2d 766, 769 (9th Cir. 1985).

14 The APA precludes the trial court reviewing an agency action from considering any  
15 evidence outside of the administrative record available to the agency at the time of the challenged  
16 decision. See 5 U.S.C. § 706(2)(E); Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44  
17 (1985); Havasupai Tribe v. Robertson, 943 F.2d 32, 34 (9th Cir. 1991). Although the arbitrary  
18 and capricious standard “is narrow and presumes the agency action is valid, . . . it does not shield  
19 agency action from a thorough, probing, in-depth review.” Northern Spotted Owl v. Hodel, 716  
20 F. Supp. 479, 481-82 (W.D. Wash. 1988) (citations omitted). The court cannot, however,  
21 substitute its judgment for that of the agency or merely determine that it would have decided an  
22 issue differently. See Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 377 (1989);  
23 Citizens to Pres. Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

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**ANALYSIS**

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3 Plaintiff bears the burden of proving that the BIA's analysis of these factors was  
4 arbitrary and capricious. South Dakota v. U.S. Dep't of Interior, 423 F.3d 790, 800  
5 (8th Cir. 2005). To meet this burden, Plaintiff must “[p]resent evidence that the [BIA] did  
6 not consider a particular factor; it may not simply point to the end result and argue  
7 generally that it is incorrect.” Id. The Court addresses each of Plaintiff's three  
8 arguments identified above in turn.

**A. The NOD Sufficiently Considers Tribal Need Under Section 151.10(b)<sup>3</sup>**

9  
10 Plaintiff first contends that the BIA's NOD fails to demonstrate the necessity for  
11 853 acres to be placed into trust to achieve the Tribe's goals, as required under  
12 Section 151.10(b). More specifically, Plaintiff argues that because the Tribe's proposed  
13 project for development of the newly acquired land requires only 99 acres, the remaining  
14 754 acres do not need to be transferred into trust, and the Tribe can continue its  
15 agricultural operations on those and other lands it owns in fee simple. Plaintiff notes that  
16 the NOD fails to explain how the Tribe's agricultural goals would be hindered by 754  
17 acres remaining in fee. In response to the Tribe's purported need to exercise its  
18 sovereign jurisdiction over the land, Plaintiff contends the Tribe fails to support that need  
19 with specific uses that would promote cultural values and customs.<sup>4</sup> Plaintiff also  
20 contends the BIA was obligated to consider the Tribe's entire trust land to date, its

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22 <sup>3</sup> Plaintiff cites to Section 151.10(c) for the proposition that one of the criteria to be considered is  
23 the Tribe's need for the land. The Court assumes the citation to subsection (c) is a typo, as subsection (b)  
24 addresses need for the land, while subsection (c) addresses what purposes the land will be used for.  
25 Plaintiff also cites Section 151.10(a)(3) for the position that the Tribe must establish a need for the land.  
26 However, there is no Section 151.10(a)(3). To the extent Plaintiff intended to cite to Section 151.3(a)(3),  
27 that subsection has no bearing on the analysis. Section 151.3(a) sets out three scenarios in which land  
28 may be transferred into trust, and it is undisputed that the Tribe's application meets those delineated in  
subsections (a)(1) and (a)(2), rendering analysis of (a)(3) unnecessary under the facts presented.  
Nonetheless, the Secretary also determined that acquisition of the land was “necessary to facilitate tribal  
self-determination, economic development, or Indian housing,” as required under subsection (a)(3).

<sup>4</sup> To the extent Plaintiff takes issue with the Tribe's more specific justifications—such as the  
creation of a “buffer zone”—such specific justifications are not required, and as explained below the BIA  
was therefore not obligated to precisely evaluate each stated need. See Shawano County v. Acting  
Midwest Reg'l Dir., 53 IBIA 62, 78 (2011).

1 recently deferred plans for additional development, and the possibility of transferring less  
2 than 853 acres to trust.

3 At bottom, Plaintiff contends that the Tribe's purported need for 754 of the 853  
4 acres is not supported by the record, and further looks to the Tribe's previous  
5 development of trust lands in the Capay Valley as an indication that the Tribe will likely  
6 develop these 853 acres in the same way. Because the BIA simply parrots the Tribe's  
7 statement of need without support in the record, Plaintiff argues, the BIA's grant of the  
8 land in trust was in error.

9 The Court finds, however, that the BIA—as affirmed by the AS-IA—properly  
10 considered the Tribe's need for the property in question. As provided in the AS-IA's  
11 Decision, “need simply is not ascertained by an assessment of how much land is needed  
12 for proposed development. The [Tribe] may acquire land in trust to expand its land base  
13 without being required to develop the land.” AR004618. Indeed, nothing requires the  
14 BIA to consider why the Tribe needs the land in trust as opposed to in fee. See City of  
15 Yreka v. Salazar, No. 2:10-cv-1734-WBS-EFB, 2011 WL 2433660, at \*9 (E.D. Cal.  
16 June 14, 2011) (citing South Dakota, 423 F.3d at 801). Moreover, nothing requires the  
17 BIA to individually evaluate each and every acre in the Tribe's application, or to consider  
18 the possibility of transferring less than the total requested acreage. See Shawano  
19 County v. Acting Midwest Reg'l Dir., 53 IBIA 62, 78 (2011) (rejecting plaintiff's argument  
20 that the tribe may only need 25% of the requested land in trust). Rather, Section  
21 151.10(b) only requires the BIA to consider “the Tribe's needs and conclude generally  
22 that IRA purposes were served.” South Dakota, 423 F.3d at 801.

23 Here, the BIA determined that the Tribe needed the land for expansion and  
24 growth, including housing for Tribal members and a wastewater treatment and recycling  
25 plant. AR004365-66. The BIA additionally found acquisition of the land to be “essential”  
26 to the Tribe's “ongoing efforts to restore its ancestral land base,” and was “necessary in  
27 order for the Tribe to exercise its sovereign jurisdiction over the land.” Id. And  
28 specifically with regard to the land that would remain in agricultural use, the BIA found

1 the Tribe has an interest in “maintaining the rural character of the Nation and  
2 surrounding lands.” *Id.* The AS-IA additionally noted that the Tribe “cannot fully  
3 exercise tribal self-governance over the agricultural land unless and until it is in trust for  
4 the Nation.” AR004618. These portions of the record, among others, reflect the BIA’s  
5 proper consideration of Tribal need per Section 151.10(b).

6 **B. The NOD Sufficiently Considers Potential Jurisdictional Issues Under**  
7 **Section 151.10(f)**

8 Plaintiff next argues that the BIA failed to consider potential jurisdictional issues  
9 as required under Section 151.10(f). Specifically, even though the Tribe has provided  
10 that it does not anticipate any jurisdictional issues, Plaintiff contends the BIA did not  
11 consider that the transfer of 853 acres would allow the Tribe to extensively develop land  
12 that is currently agricultural land. Such development would have a large impact on land  
13 use, transportation, water resources, habitat, and special status species, to which the  
14 local government would have no recourse. Plaintiff asserts that “[s]imply because the  
15 Tribe does not anticipate jurisdictional conflicts does not mean that there is no potential  
16 for jurisdictional conflicts.” Pl.’s Mot., ECF No. 17, at 14. Plaintiff contends that the  
17 County raised these concerns and sought to restrict commercial development of the  
18 agricultural land in question, but was ignored.<sup>5</sup> Plaintiff further claims that to the extent  
19 such concerns were addressed, the NOD simply points to the money and services the  
20 Tribe provides to the County and Capay Valley, and that these funds and services do not  
21 alleviate the potential jurisdictional conflicts.

22 The Court finds the BIA properly considered potential jurisdictional issues under  
23 Part 151.10(f). Indeed, the NOD provides that since the State of California possesses  
24 criminal/prohibitory jurisdiction over Indian lands pursuant to 18 U.S.C. § 1162 and  
25 28 U.S.C. § 1360, the State’s jurisdiction would remain unchanged by the acceptance of

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27 <sup>5</sup> The BIA did in fact consider the County’s concern of future commercial development, and  
28 acknowledged in the NOD that such a restriction on the Tribe’s future use of the land would not be  
authorized.



1 the land in trust. AR004368. Moreover, because the Tribe has stated its intent to  
2 continue the agricultural use of the 754 acres, the fact that Yolo County would lose  
3 regulatory jurisdiction over the lands was found not to be a concern. *Id.* The BIA  
4 additionally found that the Tribe shared Yolo County's interest in protecting the rural  
5 character of the property. *Id.* In as much as Plaintiff's argument hinges on the BIA's  
6 failure to consider that the Tribe might someday develop the agricultural acreage, the  
7 BIA is not required to speculate as to future use of the land beyond what the Tribe avers.  
8 See City of Yreka, 2011 WL 2433660, at \*9 (E.D. Cal. June 14, 2011) (“[T]he Secretary  
9 need not consider ‘speculati[ve]’ future uses of land.” (second alteration in original)).  
10 Finally, as the County's concerns largely mirror Plaintiff's, the BIA's consideration of  
11 potential jurisdictional issues also properly addressed those concerns.<sup>6</sup>

12 **C. The NOD Sufficiently Considers Possible Land Use Conflicts Under**  
13 **Part 151.10(f)**

14 Closely related to its jurisdictional argument, Plaintiff argues that transfer of the 853 acres  
15 into trust could lead to development of that land, which would in turn cause a tremendous  
16 cumulative impact and growth-inducing impact.<sup>7</sup> Plaintiff contends that—while the Tribe has  
17 asserted that future development is not foreseeable or planned—the BIA did not consider that the  
18 Tribe has historically been an active developer in the Capay Valley. According to Plaintiff, “[t]he  
19 Regional Director's analysis and decision should have considered this cycle of growth-inducing  
20 impacts by looking beyond the Tribe's proposed development project to reasonably foreseeable  
21 developments based on a thorough evaluation of what the Tribe has considered for development  
22 in the recent past.” Pl.'s Mot. at 17. Moreover, according to Plaintiff, the BIA did not respond to  
23 the County's concerns regarding land use in the NOD.

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25 As provided above, however, the BIA is not required to speculate as to future use of

26 <sup>6</sup> It is questionable whether CVC has standing to raise the County's arguments for them.  
27 Assuming it does, the Court nevertheless finds CVC's arguments unavailing.

28 <sup>7</sup> To the extent Plaintiff challenges the Environmental Assessment (“EA”) as insufficient under  
NEPA, that argument was not raised in the present matter, see Pl.'s Mot. at 5 n. 1, and is thus waived.

1 the land beyond what the Tribe claims, and the Tribe's history of developing other trust  
2 land is therefore not relevant to the BIA's evaluation of the Tribe's trust application for  
3 this land. See City of Yreka, 2011 WL 2433660, at \*9 (E.D. Cal. June 14, 2011). And  
4 for the same reasons again, the BIA properly responded to the County's concerns.

5 **D. The BIA Engaged in a Sufficient Independent Evaluation**

6 With respect to all three arguments above, Plaintiff contends the NOD simply  
7 parrots the language of the Tribe's application, thereby indicating that the BIA failed to  
8 engage in an independent evaluation of the necessary factors. But nothing prevents the  
9 BIA from using language derived from the Tribe's application, or from any other  
10 document in the record, so long as it sufficiently considers the enumerated factors  
11 discussed above. And nothing in the administrative record indicates that the BIA did not  
12 in fact conduct an independent review simply because it used language from the Tribe's  
13 application. Because the BIA reached a reasonable conclusion based on its stated  
14 review and consideration of relevant information, the Court must defer to its decision.

15 **E. The Tribe Provided the BIA with All Relevant Information**

16 Lastly, and related to the arguments above, Plaintiff contends that the Tribe failed  
17 to provide the BIA with all relevant information and consequently, the BIA's decision was  
18 based on only partial information, insufficient for informed decision making. Specifically,  
19 Plaintiff asserts the Tribe failed to provide a complete accounting of its existing trust land  
20 and the use of that existing land, and failed to disclose "its recently considered  
21 development expansion plans on existing trust lands." Pl.'s Mot. at 19. First, it is  
22 unclear to the Court what significance this information might play in the BIA's  
23 determination because, as discussed above, the Tribe need not show that it was  
24 landless or otherwise out of space in order to show its need for the trust acquisition.  
25 Similarly, and also as discussed above, the BIA is not required to perform an acre by  
26 acre analysis of the Tribe's request, nor is the BIA required to speculate about possible  
27 land uses based on the Tribe's development of other lands. Lastly, in justifying its need  
28 for the present acquisition, the Tribe did in fact disclose that its present trust land was

1 fully developed. The Court thus finds no basis to overturn the BIA's informed decision to  
2 convert the requested 853 acres into trust for the Tribe.

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4 **CONCLUSION**

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6 For the reasons set forth above, Plaintiff's motion (ECF No. 17) is DENIED,  
7 Federal Defendants' motion (ECF No. 19) is GRANTED, and the Tribe's motion (ECF  
8 No. 20) is GRANTED. The decision of the BIA, as affirmed by the AS-IA, is upheld. The  
9 Clerk of Court is directed to enter judgment in favor of Defendants and Intervenor  
10 Defendant, and to close this case.

11 IT IS SO ORDERED.

12 Dated: September 14, 2017

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16 MORRISON C. ENGLAND, JR.  
17 UNITED STATES DISTRICT JUDGE  
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