



COUNTY OF YOLO

Board of Supervisors

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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.

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