

## **FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED YOCHA DEHE WINTUN NATION OF CALIFORNIA FEE TO TRUST AND HOUSING PROJECT**

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**AGENCY:** Bureau of Indian Affairs

**ACTION:** Finding of No Significant Impact

### **EXECUTIVE SUMMARY:**

The Yocha Dehe Wintun Nation (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to approve the acquisition in trust of 853± acres of land, which would allow the Tribe to provide 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, while enabling most of the land to remain in agricultural production. The land proposed for development and trust acquisition, which is currently owned in fee title by the Tribe, is located adjacent to the Tribe's existing reservation on State Route 16 (SR-16) near the town of Brooks in the Capay Valley in unincorporated Yolo County, California. The project site occurs in Section 34, Township 10 North, Range 3 West and Section 3, Township 11 North, Range 3 West on the "Guinda, California" and "Brooks, California" U.S. Geological Survey 7.5-Minute Topographic Quadrangles.

Based on the analysis documented in the Final Environmental Assessment (EA) and consideration of comments received during the public review period, the BIA has reached a finding of no significant impact (FONSI). This finding constitutes a determination that the Proposed Action is not a major federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) is not required. Comment Letters received on the EA are provided as **Attachment A**. Responses to each comment letter received are provided as **Attachment B**.

### **ATTACHMENTS:**

**Attachment A:** Written Comment Letters Received on EA

**Attachment B:** Responses to Written Comment Letters Received on EA

**Attachment C:** U.S. Fish and Wildlife Service Section 7 Consultation

## **BACKGROUND:**

The Tribe's purpose for requesting the 853± acres of land be taken into trust is to provide housing and expanded governmental, educational, and cultural facilities/services under the direct control of the Tribal government to accommodate the Tribe's current members and anticipated growth. The proposed expansion of the Tribe's reservation would ensure that the Tribe can continue to provide housing for its existing and future members and the space necessary to conduct the governmental, educational, and cultural functions of Tribal government. The proposed trust land is planned for vital Tribal functions including housing, language and cultural programs, educational services, community events, as well as Tribal government and administration. An essential benefit of the proposed expansion of trust land would be sufficient space to allow for the development of a wastewater treatment facility to serve existing and proposed housing, educational, cultural, and related facilities. The proposed wastewater treatment plant would replace the current septic system that serves existing housing and governmental facilities on existing trust land. 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.

The Tribe, which consists of 63 members governed by a council of five members led by a Tribal Chairperson, currently provides housing for each of its adult members on the existing reservation. Approximately 25 Tribal members will reach adulthood in the coming years and will require housing for their expanding families. The existing 63± acre reservation at Puhkum Road (formerly County Road 75A) is largely developed and is insufficient to meet the Tribe's housing needs in the near future. The Tribe's school, community center, and governmental space are also currently located on the existing 63± acre reservation and are insufficient to meet the Tribe's current needs and projected growth. Temporary trailers are currently being used to provide much needed office space for the Tribal government.

The Proposed Action and developments would allow the Tribe to provide necessary housing for its members, to relocate and expand its school to the new trust land and allow Tribal governmental operations to thereby expand into the space used today by the Tribe's school. The proposed trust land acquisition would protect the Tribe's heritage and would provide the opportunity to enhance public awareness of the Tribe's history and contribution to the Capay Valley, which is the Tribe's traditional homeland. Under the Proposed Action, the Tribal government would be able to fully exercise its sovereignty over its own future growth while helping to largely preserve the rural/agricultural character of the Capay Valley consistent with surrounding land uses.

An Environmental Assessment (EA), documenting and analyzing the potential impacts of the Proposed Action and Alternatives, was completed in May 2011. The EA was distributed for public review from June 15, 2011 to July 14, 2011. The BIA received 9 comment letters. One

letter requesting an extension to the 30-day comment period was received and it was subsequently granted. In response to the comments received on the EA, three pages of the document were updated to reflect minor corrections raised by commenters, with the changes shown in underline/strikeout on Final EA pages 3-38, 3-66 and 3-80.

## **DESCRIPTION OF THE PROPOSED ACTION:**

The BIA's Proposed Action consists of the transfer of the site into federal trust status for the benefit of the Tribe. The proposed fee-to-trust conveyance is for 15 parcels totaling approximately 853 acres. A reasonably foreseeable consequence of this action is the subsequent development of the site for new and expanded facilities for Tribal housing, education, cultural preservation/education as well as related water/wastewater facilities and supporting infrastructure (Proposed Project). The Proposed Project would include up to 25 residences for Tribal members, a new Tribal school, up to three cultural/education facilities, a domestic water storage tank, wastewater treatment plant, and supporting uses. The proposed development envelopes for the new structures will be clustered and will occur on approximately 99 acres, while the majority of the land proposed for trust (754± acres) will remain in agricultural production.

## **ALTERNATIVES CONSIDERED:**

The BIA considered two alternatives to the Proposed Action which are described in the EA and summarized below. Alternative B – Reduced Acreage and Alternative C – No Action were evaluated in full detail in the EA.

### **Alternative B – Reduced Acreage**

As with Alternative A, Alternative B would involve placing land into federal trust status for the benefit of the Tribe; however, under Alternative B, Parcels 3 through 6 and 11 through 15 would be omitted from the trust land acquisition, decreasing the acreage from approximately 853± acres to approximately 751± acres. As with Alternative A, this trust action would shift civil regulatory jurisdiction over the 751± acres from the State and the County to the Tribe for land held in trust for the Tribe by the federal government.

The proposed development under Alternative B is similar to that proposed under Alternative A including the construction of 25 residences, up to three cultural/education centers, one Tribal school, one domestic water storage tank, and one WWTP. Public services, water supply, wastewater treatment and disposal, and roadway improvements would all be provided for Alternative B as described for Alternative A. The land use would not change for the parcels omitted from the proposed action under the reduced intensity Alternative B. Project construction protective measures and BMPs would be the same as those described for Alternative A.

### **Alternative C – No Action**

Under the No-Action Alternative, neither the 853± acre Alternative A nor the 751± acre Alternative B would be placed into trust for the benefit of the Tribe and these properties would not be developed as identified under Alternatives A and B. The Tribe would retain ownership of the properties in fee title, and jurisdiction would remain with Yolo County.

If no additional land is taken into trust for the benefit of the Tribe, then Tribal housing and community facilities would continue to be confined to the existing 63± acre trust parcel. To provide the 25 homes and additional facilities that will be needed to support Tribal members and their families in the coming years, the density of development on the existing trust parcel would increase substantially and would likely include the construction of several multi-level structures. Because there is no space on the existing trust parcel for a WWTP, the Tribe would continue to rely on septic tanks and leach fields for wastewater disposal, and would be unable to utilize recycled water.

### **ENVIRONMENTAL IMPACTS:**

As part of the Final EA, potential impacts to land resources, water resources, air quality and climate change, biological resources, cultural resources, socioeconomic conditions/environmental justice, transportation and circulation, land use, public services, noise, hazardous materials, and visual resources were evaluated, with the following conclusions:

- A. **Land Resources:** Implementation of BMPs and mitigation measures will ensure impacts to land resources will be less than significant. See Final EA Sections 2.1.9, 4.1.1, and 5.1.
- B. **Water Resources:** Project design, BMPs incorporated into the Proposed Project, and mitigation measures will ensure that impacts to water resources are not significant. See Final EA Sections 2.1.9, 4.1.2, and 5.2.
- C. **Air Quality and Climate Change:** BMPs incorporated into the Proposed Project and mitigation measures will ensure impacts to air quality and climate change will be less than significant. See Final EA Sections 2.1.9, 4.1.3, and 5.3.
- D. **Biological Resources:** Project design, BMPs incorporated into the Proposed Project, and mitigation measures will ensure that impacts to biological resources are not significant. See Final EA Sections 2.1.9, 4.1.4, and 5.4.
- E. **Cultural Resources:** While there were eight resources identified within the project area of potential effect (APE), all resources are outside the area of direct impact (ADI). Moreover, none of these properties would be impacted by the Proposed Project. Mitigation measures will ensure impacts to unknown cultural resources are less than significant. See Final EA Sections 4.1.5 and 5.5.
- F. **Socioeconomic Conditions/Environmental Justice:** There will be no significant impacts associated with socioeconomic conditions and environmental justice. See Final EA Sections 4.1.6 and 5.6.

- G. **Transportation and Circulation:** There will be no significant impacts associated with transportation and circulation. See Final EA Sections 4.1.7 and 5.7.
- H. **Land Use:** There will be no significant land use impacts. See Final EA Section 4.1.8 and 5.8.
- I. **Public Services:** Implementation of mitigation measures will ensure that impacts to public services are not significant. See Final EA Sections 2.1.9, 4.1.9, and 5.9.
- J. **Noise:** There will be no significant impacts associated with noise. See Final EA Sections 2.1.9 4.1.10, and 5.10.
- K. **Hazards and Hazardous Materials:** Implementation of mitigation measures will ensure that hazardous materials impacts are not significant. See Final EA Sections 4.1.11, and 5.11.
- L. **Visual Resources:** There will be no significant impacts associated with visual resources. See Final EA Sections 2.1.9, 4.1.12 and 5.12.
- M. **Cumulative Impacts:** Cumulative impacts to land resources, biological resources, cultural resources, socioeconomic conditions, land use, and hazardous materials would be less than significant. BMPs incorporated into the Proposed Project, and mitigation measures will ensure that cumulative impacts to water resources, air quality, transportation and circulation, public services, and noise are not significant. See Final EA Sections 2.1.9, 4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 4.4.6, 4.4.7, 4.4.8, 4.4.9, 4.4.10, and 4.5.

## **BEST MANAGEMENT PRACTICES:**

Protective measures and BMPs have been incorporated into the project design to eliminate or substantially reduce environmental impacts from the Proposed Project. These measures and BMPs are discussed below:

### **Alternative A – Proposed Project**

#### ***Land Resources***

- All structures would meet the Tribe’s building ordinance, which meets or exceeds California Building Code (CBC) requirements, including seismic standards.
- Non-corrosive materials and/or protective coatings for buried facilities would be used for construction on corrosive soil.
- As stated in the Final EA, at present, all of the Proposed Project parcels except for Parcels 9 and 10 are under Williamson Act contracts (Yolo Co. GIS, 2010; C. Lee, pers. comm., 2010). To date, nonrenewal notices have been filed for all of the project parcels currently under Williamson Act contract (C. Lee, pers. comm., 2011). The project parcels under Williamson Act contracts represent 420± acres (0.09 percent) of the 450,000± acres under Yolo County Williamson Act contracts (SACOG, 2008). Since

non-renewal notices have been filed for all the project parcels currently under Williamson Act contract, independent from the Tribe's current Fee to Trust application and consistent with the terms of the California Land Conservation Act of 1965 (Williamson Act), then the procedural guidelines for non-renewal have been met. No mitigation is necessary.

### ***Water Resources***

- Areas outside of buildings and roads would be kept as permeable surfaces to the extent practicable; either as vegetation or high infiltration cover, such as mulch, gravel, or turf block. Pedestrian pathways would use a permeable surface where possible, such as crushed aggregate or stone with sufficient permeable joints (areas between stone or brick if used).
- Existing vegetation would be retained where possible.
- Roof downspouts would be directed to splash blocks and not to underground storm drain systems.
- Runoff from rooftops and other impervious areas would be directed to vegetated areas to help treat and infiltrate stormwater prior to leaving the site.
- Runoff from roadways would filter through rock-lined swales and bio-swales.
- Permanent energy dissipaters would be included for drainage outlets.
- Rock rip-rap energy dissipaters would be installed at the point of release of concentrated flow.
- High water-demand plants would be minimized in landscaping plans. Native and drought-tolerant plant species (trees, shrubs, and ground cover) would be emphasized.
- Water-efficient fixtures and appliances would be installed in residences and community and governmental facilities.

### ***Air Quality***

The following measures would reduce project-related greenhouse gas emissions associated with climate change:

- Buildings would be sited to take advantage of shade, prevailing winds, and sun screens to the extent feasible to reduce energy use.
- Buildings would be designed to include efficient lighting and lighting control systems.
- Energy efficient heating and cooling systems as well as appliances would be installed in residences and community and governmental facilities.
- Solar or other alternative power systems would be utilized where feasible.

### ***Biological Resources***

- Native trees would be preserved to the maximum extent feasible.
- All identified wetland areas would be avoided to the maximum extent feasible.
- All biological resources BMPs shall be consistent with the terms of the Section 7 Informal Consultation concurrence letter issued by the U.S. Fish and Wildlife Service (USFWS) under the federal ESA for the Proposed Project (see **Attachment C**).

### ***Public Services***

- Structural fire protection would be provided through compliance with Tribal ordinances no less stringent than applicable Uniform Fire Code requirements. The Tribe would ensure that appropriate water supply and pressure is available for emergency fire flows.
- The community and governmental facilities would be equipped with an early detection system that ensures an initial response to any fire alarm (automatic, local, or report). This would rely on automatic sprinkler systems in the occupied areas and smoke detection, along with automatic sprinkler systems, in the areas of the facility that are normally unoccupied, such as storerooms and mechanical areas.

### ***Visual Resources***

- Signage for all streets, community and governmental facilities, and the residential community would be subtly incorporated into the landscape.
- Lighting would only occur at street intersections, parking areas, residential areas, and the community and governmental facilities. The lighting would consist of pole-mounted lights, limited to 18 feet tall, with cut-off lenses and down cast illumination to the extent feasible.

### **SUMMARY OF FINAL EA MITIGATION MEASURES:**

The mitigation measures described in the Final EA are included either to reduce significant impacts to a less than significant level, to further reduce already less than significant impacts, or both.

Following is a summary of mitigation measures that have been incorporated into the Proposed Project design to eliminate or substantially reduce environmental impacts from the project (see the Final EA for a detailed description of all measures). Implementation of the protective measures and BMPs described above, along with the mitigation measures below, shall minimize potential impacts. The following mitigation measures are adopted for the Proposed Project (Alternative A):

### ***Land Resources***

- The Tribe shall obtain a National Pollutant Discharge Elimination System permit (NPDES Construction General Permit) from the United States Environmental Protection Agency (EPA) for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA). A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP would detail the BMPs to be implemented during construction and post-construction operation of the Proposed Project to reduce impacts related to soil erosion and water quality. The BMPs shall include, but are not limited to, the following:
  - Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction and remediation.
  - Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed for disturbed areas during the wet season.
  - No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
  - Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.
  - Creating construction zones and grading only one area or part of a construction zone at a time shall minimize exposed areas. If possible during the wet season, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.
  - Disturbed areas shall be re-vegetated following construction activities.
  - Construction area entrances and exits shall be stabilized with crushed aggregate.
  - Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.
  - A spill prevention and countermeasure plan shall be developed, which identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
  - Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the Clean Water Act [33 United States Code (U.S.C.) 1251 to 1387].



- During the wet season, construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater.
- Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
- Sanitary facilities shall be provided for construction workers.
- Disposal facilities shall be provided for soil wastes, including excess asphalt during construction and demolition.
- The Tribe shall require all workers to be trained in the proper handling, use, cleanup, and disposal of all chemical materials used during construction activities and shall provide appropriate facilities to store and isolate contaminants.
- The Tribe shall require all contractors involved in the project to be trained on the potential environmental damages resulting from soil erosion prior to development by conducting a pre-construction conference. Copies of the project's erosion control plan shall be distributed at this time. All construction bid packages, contracts, plans, and specifications shall contain language that requires adherence to the plan.

### ***Water Resources***

- Development and implementation of a SWPPP under Section 5.1 would reduce impacts to stormwater quality.
- Construction within floodplains, for the Outdoor Cultural Center on Parcel 2, designated on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps 0604230225B and 0604230350B shall occur only during the dry season.
- Construction on Parcels 1 and 2 shall entail equalization of cut and fill within the same floodplain as described in the preliminary grading and drainage plan (Appendix C of Final EA).
- Construction activities pertaining to proposed underground utilities, pipeline improvements, detention basins, house pads, roads, etc. shall entail balance of cut and fill material so that post-construction areas shall emulate pre-construction conditions (Appendix C of Final EA).
- The Tribe shall monitor recycled water application areas to ensure off-site runoff does not occur. Provisions included within monitoring requirements to reduce the potential for off-site flow shall include:
  - The Tribe shall apply recycled water to confined areas (such as landscaped areas) only during periods of dry weather. The Tribe shall not apply recycled water 24

hours prior to a forecasted rain event and shall wait 24 hours after the rain event to apply recycled water.

- Recycled water shall not be applied during periods of winds exceeding 30 miles per hour (mph).
- Recycled water shall not be applied within 100 feet of a water of the U.S.

### ***Air Quality and Climate Change***

- The Tribe shall plant trees and other carbon-sequestering vegetation on site. The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO<sub>2</sub>) because plants use CO<sub>2</sub> for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the buildings, reducing heat absorption and the need for air conditioning.
- The Tribe shall use materials with minimal impact to the environment to the extent practical for construction of facilities. These materials may include low volatile organic compound paints and sealants and sustainable and recyclable building materials.
- The Tribe shall use energy efficient lighting, which would reduce the project's energy usage, thereby reducing indirect greenhouse gas (GHG) emissions.
- The Tribe shall provide recycling bins in accessible areas on the project site. Recycling reduces GHG emissions from indirect energy use, landfills, and manufacturing of raw materials.
- The Tribe shall incorporate advanced lighting design, including daylighting, where feasible. Advanced lighting design and daylighting would reduce project-related GHG emissions by reducing electrical energy usage.

### ***Biological Resources***

#### **Habitat Types**

- Any riparian woodland habitat temporarily disturbed by construction activities associated with the road crossing improvements shall be restored back to its natural state immediately following completion of construction.

#### **Waters of the U.S.**

- Any proposed construction activities that would occur within the vicinity of potentially jurisdictional waters of the U.S. will be conducted during the dry season (i.e., April 15 through October 15) to further reduce the quantity of potential sedimentation within the watershed.
- For the proposed improvements to the roadway crossings, stock pond's outfall structure, and proposed modification of the stock pond to also function as a detention pond on

Parcel 9, authorization from the United States Army Corps of Engineers (USACE) is required. A wetland delineation would be conducted, a jurisdictional determination would be acquired, and a Section 404 CWA permit shall be obtained from the USACE if necessary. If a permit is necessary, mitigation ratios defined within the permit conditions shall be implemented. A CWA Section 401 Water Quality Certification from the EPA would also be required. Any impacts would be mitigated by following the joint regulations of the USACE and the EPA for mitigation to waters of the U.S. as they pertain to Section 404 permits published in the Federal Register Volume 73 Number 70 (USACE and EPA, 2008). Consistent with Section 404 of the CWA, impacts to jurisdictional features shall be avoided to the maximum extent practicable through design and construction techniques. If impacts to jurisdictional features cannot be avoided, then the project shall comply with the USACE's no net loss policy. Consistent with 33 CFR Chapter 11 Part 332, compensatory mitigation shall be obtained for each prorated acre of jurisdictional features impacted. The USACE and the EPA require in Part 332.8 that mitigation credits be obtained from a USACE-approved mitigation bank. If mitigation credits are not available, then the Tribe shall coordinate with the USACE during the Section 404 CWA permitting process to create in-kind jurisdictional features either on or off-site and shall be preserved in perpetuity with a conservation grant deed easement or similar legal vehicle.

### **Special-Status Plants**

As discussed in the Final EA, no federally listed plants occur within the project site; therefore, such plants would not be affected by the Proposed Project. Although federal agencies are only required to consider and not mitigate for non-federally listed special-status species, the Tribe has agreed to mitigate for them regardless. The following mitigation measures are required for the Proposed Project to avoid and/or reduce impacts to the following potentially occurring California Native Plant Society (CNPS)-listed special-status plant species within the annual grassland of Parcel 9 where the residences and school buildings construction and road improvements are anticipated:

- A botanical survey shall be conducted within the evident and identifiable blooming period (between May and July) for Brewer's western flax and green jewel-flower prior to any ground breaking construction activities.
- If Brewer's western flax and/or green jewel-flower is observed within the project site, then the California Department of Fish and Game (CDFG) will be contacted at least ten days prior to commencement of construction activities to provide them with the opportunity to salvage and relocate these plants.
- If Brewer's western flax and/or green jewel-flower is found within the project footprint and should the CDFG decide not to initiate relocation, then under the Tribe's guidance a

biologist will relocate either of these plants to similar, suitable habitat outside of the construction areas.

### **Special Status Animals**

The Tribe shall comply with the terms of the Section 7 Informal Consultation concurrence letter issued by the U.S. Fish and Wildlife Service (USFWS) under the federal ESA for the Proposed Project (see **Attachment C**).

The Tribe shall comply with all avoidance measures including protective measures identified in the *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (Guidelines) (USFWS, 1999), to the maximum extent feasible. A copy of the Guidelines is provided with the Biological Assessment in Appendix E of Final EA. Pre-construction surveys for VELB will be conducted by a biologist prior to the start of construction activities within the proposed drainage crossing areas of Parcel 9.

As stated in the Guidelines, complete avoidance (i.e. no adverse effects) may be assumed when a 100-foot buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. Firebreaks shall not be included in the buffer zone. In buffer areas, construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The USFWS must be consulted before any disturbances within the buffer area are considered. In addition, the USFWS must be provided with a map identifying the avoidance area and written details describing avoidance measures (USFWS, 1999).

Included below is a list of Protective Measures (USFWS, 1999) and additional mitigation measures for preventing adverse effects to VELB under the Proposed Project.

- All areas to be avoided shall be fenced and flagged during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the USFWS, a minimum setback of at least 20 feet from the drip line of each elderberry shall be implemented. USFWS guidelines will be followed, and consultation will occur, for work within the 100 foot buffer to prevent impacts to VELB.
- Signs shall be erected every 50 feet along the edge of avoidance areas with the following information: “This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Federal Endangered Species Act (FESA), as amended. Violators are subject to prosecution, fines, and imprisonment.” The signs shall be clearly readable from a distance of 20 feet and shall be maintained for the duration of construction.

- Work crews shall be instructed on the status of the VELB and the need to protect its elderberry host plant.
- Equipment operators shall access the project site via existing roads. The operators shall minimize access on existing roads in the vicinity of the elderberry shrubs to the maximum extent feasible.
- Staging areas shall be located at least 100 feet from elderberry shrubs containing stems at least one inch in diameter at ground level. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used onsite or disposed of at a regional landfill or other appropriate facility.
- Standard precautions shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials.
- A litter control program shall be instituted within the project site. The contractor shall provide closed garbage containers for the disposal of all food-related trash items (e.g., wrappers, cans, bottles, food scraps). All garbage shall be removed daily from the project site.

If work is to be done within the buffer area (within 100 feet of elderberry plants with stem(s) 1.0 inch or greater in diameter), upon the prior discretion and approval of USFWS, then the following list of Restoration and Maintenance measures as well as any additional mitigation required by USFWS will be applicable under the Proposed Project (USFWS, 1999).

- Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.
- Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.
- No insecticides, herbicides, fertilizers, or other chemicals that might harm the VELB or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.
- The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.
- Mowing of grasses/ground cover may occur from July through April to reduce fire hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g.

stripping away bark through careless use of moving/trimming equipment).

The following mitigation measures identified below are required for the Proposed Project to reduce the potential of significant impacts to the federally threatened California tiger salamander (CTS) and the state-listed western pond turtle and western spadefoot toad:

- A pre-construction survey shall be conducted by a qualified biologist within two weeks of any work near the stock pond or on the annual grassland on Parcel 9 to ensure that no CTS, western pond turtle, or western spadefoot toad are present.
- Worker awareness training for CTS, western pond turtle, and western spadefoot toad shall be conducted by the qualified biologist for all construction crew members. The training shall include the following: a description and an identification of these species and their habitat needs; an explanation of the status of the species and their protection under the FESA and/or the California Endangered Species Act (CESA); and a list of measures being taken to reduce impacts to these species during project construction. A fact sheet conveying this information should be prepared for distribution to the crew members and anyone else who may enter the project site.
- A qualified biologist shall be present during all construction activities conducted in the vicinity of the stock pond.
- While it is not anticipated that they will be present, if at any time a CTS is observed within the project site, then all work shall stop until the USFWS is consulted. Should western pond turtle or western spade foot toad be observed within the construction area, then these activities shall be halted until the individual exits the project site or until the qualified biologist relocates it away from the construction site.

#### **Nesting Migratory Birds and Special Status Birds**

- If any construction activities (e.g., building, grading, ground disturbance, removal of vegetation) are scheduled to occur during the nesting season (March 1 – August 15), pre-construction bird surveys shall be conducted. Pre-construction surveys for any nesting bird species shall be conducted by a qualified wildlife biologist throughout all areas of suitable habitat that are within 500 feet of any proposed construction activity. The surveys shall occur no more than 14 days prior to the scheduled onset of construction activities. If construction is delayed or halted for more than 14 days, another pre-construction survey for nesting bird species shall be conducted. If no nesting birds are detected during the pre-construction surveys, no additional surveys or mitigation measures are required.
- If nesting bird species are observed within 500 feet of construction areas during the surveys, appropriate avoidance setbacks shall be established. The size and scale of

nesting bird avoidance setbacks shall be determined by a qualified wildlife biologist and shall be dependent upon the species observed and the location of the nest. Avoidance setbacks shall be established around all active nest locations via stakes and high visibility fencing. The nesting bird setbacks shall be completely avoided during construction activities and the fencing must remain intact. The qualified wildlife biologist shall also determine an appropriate monitoring plan and decide if construction monitoring is necessary during construction activities. Again, monitoring requirements are dependent upon the species observed, the location of the nests, and the number of nests observed. The setback fencing may be removed when the qualified wildlife biologist confirms that the nest(s) is no longer occupied and all birds have fledged.

- If impacts (i.e., take) to migratory nesting bird species are unavoidable, consultation with USFWS shall be initiated. Through consultation, an appropriate and acceptable course of action shall be established.

### ***Cultural Resources***

The Proposed Project will not impact cultural resources since all cultural resources identified within the proposed trust parcels will be avoided by all project construction. The BIA's no effect determination is currently pending Section 106 concurrence with the State Historic Preservation Officer (SHPO) office. The Tribal Historic Preservation Officer (THPO) has provided concurrence with this no effect determination for the Proposed Project. The following mitigation measures are provided below from the Final EA and are adopted herein.

- In the event that any prehistoric or historic cultural resources, or paleontological resources, are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and the Tribal Historic Preservation Officer (THPO) and the Bureau of Indian Affairs (BIA) archaeologist shall be consulted to assess the significance of the find. If any find is determined to be significant by the qualified professionals, then appropriate agency and Tribal representatives shall meet to determine the appropriate course of action.
- If human remains are encountered, work shall halt in the vicinity of the find and BIA, the Tribe, and the Yolo County Coroner shall be notified immediately. Pursuant to 36 Code of Federal Regulations (C.F.R.) Part 800.13 of the National Historic Preservation Act (NHPA): Post-Review Discoveries, and 43 C.F.R. § 10.4 (2006) of the Native American Graves Protection and Repatriation Act (NAGPRA): Inadvertent Discoveries, the THPO and BIA archaeologist will also be contacted immediately. No further ground disturbance shall occur in the vicinity of the find until the County Coroner, THPO, and BIA archaeologist have examined the find and agreed on an appropriate course of action. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for

recommending the appropriate disposition of the remains and any grave goods.

***Socioeconomic Conditions/Environmental Justice***

No mitigation is necessary.

***Transportation and Circulation***

No mitigation is necessary.

***Land Use***

No mitigation is necessary.

***Public Services***

- To minimize the risk of fire and the need for fire protection services during construction, any construction equipment that normally includes a spark arrester shall be equipped with a spark arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws.
- During construction, staging areas, welding areas, and areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.
- Fire extinguishers shall be maintained onsite and inspected on a regular basis.
- An evacuation plan shall be developed for the Proposed Project in the event of a fire emergency.

***Noise***

- The Tribe shall develop a Construction Noise Mitigation Plan that shall include construction schedules developed in consultation with the Wintun Academy Administration and Tribal Administrators.
- The Tribe shall ensure that construction equipment used at the project site is equipped with the best available noise reduction technology feasible.

***Hazardous Materials***

- Potentially hazardous materials, including fuels, shall be stored away from drainages and secondary containment shall be provided for all hazardous materials during construction.
- A spill prevention and countermeasure plan shall be developed which shall identify proper storage, collection, and disposal measures for potential pollutants (such as fuel storage tanks) used onsite, as well as the proper procedures for cleaning up and reporting spills.
- Vehicles and equipment used during construction shall be provided proper and timely



maintenance to reduce the potential for mechanical breakdowns leading to a spill. Maintenance and fueling shall be conducted in an area that meets the criteria set forth in the spill prevention plan.

- Before the fee-to-trust acquisition of the project parcels, the three 55-gallon drums and the contents of the debris pile on Parcels 1 and 4, respectively, shall be removed from the site and properly disposed of or recycled at a permitted disposal facility.
- A hazardous materials storage and disposal plan shall be prepared. The plan shall provide a detailed inventory of hazardous materials to be stored and used onsite, provide appropriate procedures for disposal of unused hazardous materials, and detail training requirements for employees that handle hazardous materials as a normal part of their employment. The plan shall also include emergency response procedures in the event of an accidental release of hazardous materials.

***Visual Resources***

No mitigation is necessary.

**RESPONSE TO COMMENTS ON THE EA:**

The BIA received 9 comment letters on the EA. These comment letters are provided within as **Attachment A**. Responses to each comment letter are provided within as **Attachment B**.

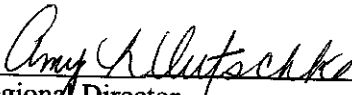
**PUBLIC AVAILABILITY:**

This FONSI will be distributed to all persons and agencies known to be interested in the Proposed Action as indicated by their comments on the EA. Additionally, all persons and agencies on the initial Notice of Availability of the EA mailing list will receive a copy. The Final EA and this FONSI can be viewed at [www.yochadeheea.com](http://www.yochadeheea.com).

**DETERMINATION:**

After review and independent evaluation, the BIA has determined that the proposed federal action, to approve the Yocha Dehe Wintun Nation of California's request to acquire the proposed 853± acres into trust for the purpose of developing Tribal housing, cultural/educational facilities, a tribal school, a domestic water storage tank, a wastewater treatment plant, and associated facilities, does not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of NEPA. This conclusion is based on the analysis contained in the Final EA, public comments received on the EA, the response to those comments, and the mitigation imposed. The mitigation measures outlined in the Final EA as stated in this FONSI are herein adopted for the Proposed Action. Therefore, an Environmental Impact Statement is not required and the BIA is issuing this FONSI.

Issued in Sacramento, California this 25<sup>th</sup> day of October, 2012.

  
Regional Director  
Bureau of Indian Affairs  
U.S. Department of the Interior

# ***ATTACHMENT A***

---

***COMMENT LETTERS RECEIVED ON THE EA***

**DEPARTMENT OF TRANSPORTATION**  
 DISTRICT 3—SACRAMENTO AREA OFFICE  
 2379 GATEWAY OAKS DRIVE, SUITE 150  
 PHONE (916) 274-0635  
 FAX (916) 274-0602  
 TTY 711  
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July 14, 2011

0311YOL0019  
 03-YOL-16 PM 17.720  
 Yocha Dehe Housing Project  
 Environmental Assessment

John Rydzik  
 Principal Planner  
 United States Bureau of Indian Affairs, Pacific Regional Office  
 2800 Cottage Way Room, W-280  
 Sacramento, CA 95825

Dear Mr. Rydzik,

Thank you for the opportunity to review and comment on the proposed Yocha Dehe Housing project Environmental Assessment (EA). The proposed project is a request submitted by the Yocha Dehe Wintun Nation (Tribe), to the U.S. Bureau of Indian Affairs to obtain approximately 853 acres of land currently owned in fee title by the Tribe. The land to be acquired in trust by the federal government on behalf of the Tribe will subsequently undergo construction of several infrastructure projects including: Tribal housing, cultural educational facilities, a water storage tank, a wastewater treatment plant, and other developments that will support infrastructure. The land proposed for trust acquisition and subsequent development is located approximately one mile north of the town of Brooks within the Capay Valley portion of Yolo County. The mid-point of the southern border of the proposed acquisition is at the intersection of County Road (CR) 76 and State Route (SR) 16; and the mid-point of the northern border is near the intersection of SR 16 and CR 71. The project area's east and west borders are approximately 2.5 miles apart. Our comments are as follows:

**Traffic and Circulation:**

- Please note that on page 3-66 of the proposed project's EA, in the text of the fifth paragraph, Table 3.16- SR 16 Traffic Counts on the Project Area is referred to as Table 3-17. 1-1
- Page 3-66, Table 3.16 indicates peak-hour traffic counts of 101 on SR 16 at Puhkum Rd. (formerly CR75A). Based on data from the Caltrans Traffic and Vehicle Data Systems Unit, the peak ADT is higher than 101. 2009 traffic volumes can be found at: <http://www.dot.ca.gov/hq/traffops/saferesr/trafdata/2009all/2009TrafficVolumes.htm> . Please provide the correct peak hour traffic counts. 1-2

**Hydrology/Hydraulics:**

- Water Resources Mitigation Measures have been discussed briefly in the EA, but it does not include a discussion of hydrology and/or hydraulics. Section 5.2 includes a statement referring to construction within floodplains but does not discuss any impacts on the flood plain. If structures are constructed within a floodplain, please state the impacts on water surface elevations on nearby SR 16. 1-3
- Please provide water surface model(s) to Caltrans Hydraulics for review to ensure that there is no impact to SR 16. 1-4
- Hydrology has not been addressed in the assessment. The addition of impervious surfaces will create a net increase in run-off and the collection and discharge of this run-off needs to be addressed. Please state whether there is there any redirection or concentration of flows on the proposed development that could be directed toward SR 16. 1-5
- Figure 2-1 Alternative A Site Plan on page 2-3, and Figure 2.2 Alternative B Site Plan on page 2-8 indicate a 6 acre detention pond to be constructed within 0.5 miles east of SR 16. However, there does not appear to be a detention basin that will be constructed to handle excess runoff. This needs to be addressed. 1-6
- The drainage information requested above should be sent to Mr. Gurdeep Bhattal in the District 3 Hydraulics Branch at: Caltrans District 3, 703 B Street, Marysville, CA 95901. Mr. Bhattal can be reached at (530) 741-4056. 1-7

Please provide our office with copies of any further actions regarding this development. If you have any questions regarding these comments please contact Arthur Murray, Yolo County IGR Coordinator, at (916) 274-0616.

Sincerely,



Eric Fredericks, Chief  
Office of Transportation Planning—South





# COUNTY OF YOLO

Board of Supervisors

625 Court Street, Room 204 • Woodland, CA 95695  
(530) 666-8195 • FAX (530) 666-8193  
www.yolocounty.org

PACIFIC REGIONAL  
OFFICE

District 1, Michael H. McGowan  
District 2, Don Saylor  
District 3, Matt Rexroad  
District 4, Jim Provenza  
District 5, Duane Chamberlain

County Administrator, Patrick S. Blacklock  
Deputy Clerk of the Board, Julie Dachtler

July 12, 2011

Amy Dutschke  
Regional Director  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

Reg Dir	_____
Dep Reg Dir	_____ <i>T. Paul</i>
Reg Adm Ofcr	_____
Route	_____ <i>Deem</i>
Response Required	_____ <i>No</i>
Due Date	_____
Memo	_____ Ltr _____
Tele	_____ Other _____
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_____	_____

**RE: Comments on the Environmental Assessment for the Proposed Trust Acquisition of Fifteen Fee Parcels for the Yocha Dehe Wintun Nation**

Dear Ms. Dutschke:

The Yolo County Board of Supervisors appreciates the opportunity to provide comments on the Environmental Assessment (EA) for the Yocha Dehe Housing Project. These comments identify issues that should be considered by the Bureau of Indian Affairs (BIA) prior to considering approval of this proposed project.

The mission of the elected officials and staff of Yolo County is to maintain and protect the quality of life for our residents. Our review of potential projects strives to ensure the safety of Yolo County residents; maintain the quality of life of Yolo County residents by protecting our infrastructure, environment, agriculture, historical integrity, and open space areas; improve the business climate within the County; and ensure the cost effective operation of County services without undue and unfair financial burdens on County residents. This mission underscores the importance of the environmental review process.

The 2002 Intergovernmental Agreement between the Yocha Dehe Wintun Nation and the County of Yolo requires that the two parties negotiate in good faith over any application for the United States to take additional land into Trust for the Tribe. The Board of Supervisors has appreciated the opportunity for County and Tribal staff to meet and discuss many of the key issues mentioned in this letter. We hope to continue these positive and productive discussions.

The County has prepared the detailed comments described below by resource topic for consideration by the BIA in determining whether to prepare either a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS).

### Project Description

*Preference for Alternative A Versus Alternative B* - The EA evaluates two separate development alternatives with the sole difference being the size of the area proposed to be taken into trust. Based on the project's purpose and need, it is unclear why the larger of these two alternatives is being considered for adoption. Alternative A includes 15 parcels covering a total of 853 acres. Nine of these

SCAW > AES > 7/14/11

parcels do not include any change in use with project implementation. The Tribe's purpose for taking land into trust is to provide housing and expanded governmental, educational, and cultural facilities/services under the direct control of the Tribal government to accommodate the Tribe's current members and anticipated growth. Because the development proposed with Alternative B at 751 acres is exactly the same as Alternative A, Alternative B would achieve the project's purpose and need without requiring additional acreage being taken into trust. Alternative B would also reduce the adverse financial effects on the County and other local governments associated with taking additional land off of the property tax roles. The EA estimates that \$48,843 annually in property tax revenue would be lost with implementation of Alternative A.

2-1  
Cont.

*EA Should Consider Other Development Alternatives* - The County questions why only one development alternative was considered in the EA. Without the consideration of feasible development alternatives in the EA, the BIA is unable to compare the environmental impacts associated with alternative development scenarios. For instance, as stated on page 2-10 of the EA, the proposed development of cultural/educational uses on Parcels 1 and 2 would be consistent with permitted and conditionally permitted uses identified in the County's Agricultural Preserve zoning for these parcels. Therefore, these parcels would not need to be taken into trust in order to implement these uses. The EA should include an alternative that considers achieving the project purpose and need without the Tribe taking additional land into trust.

2-2

*Project Unnecessary to Maintain Agricultural Operations* - The EA states on page 1-5 that the Proposed Action would allow the Tribe to maintain its agricultural operations under full Tribal governance, thereby allowing the Tribe to continue to build economic self sufficiency. However, as the owner of agriculturally-designated lands, the Tribe currently has control over the agricultural management of their lands and they have proven to be quite adept at managing these lands successfully and sustainably. Therefore, it is unnecessary to take these lands into trust to meet the proposed project's purpose and need.

2-3

*EA Should Strengthen Protective Measures* - The EA identifies protective measures and Best Management Practices commencing on page 2-6. However, many of these protective measures include the caveats "to the extent feasible," "where possible," or "to the extent practicable." These caveats diminish the protective nature of these measures and should be removed.

2-4

*Project Description Conflict* - The statement on page 3-80 that residences will be constructed on Parcel 1 appears to be in error, as it contradicts the project description included in Chapter 2. Being located almost entirely within a 100-year flood zone, the construction of residences on Parcel 1 would be of concern to the County due to their potential to increase adverse flood effects downstream.

2-5

*EA Does Not Examine Potential Future Changes in Land Use* - The County is concerned that once the lands are taken into trust, no restrictions would remain in place regarding development on the trust properties. Future land use decisions could result in higher-density development that could be inconsistent with surrounding land uses and the rural agricultural character of the Capay Valley. Of particular concern to the County is the potential for highway commercial development on the parcels adjacent to State Route 16, which could draw additional traffic to the already congested State Route 16 corridor. The BIA should considered establishing specific development controls associated with approval of the proposed action that would ensure that unrestricted development on trust lands does not occur in the future.

2-6

## **Water Resources**

*Substantial Creek Disturbance Anticipated* - The project includes the development of residential homes of up to 5,200 square feet directly adjacent to creeks that drain a relatively large watershed. These creeks can produce large storm water flows as is evident by their 100-year flood footprint. The County is concerned that the extend of the development footprint and associated land disturbance proposed on

2-7



Parcels 9 and 10 could substantially alter the drainage characteristics of these creeks and increase the potential for downstream sedimentation and water quality degradation. This area drains directly into Cache Creek. The BIA is encouraged to consider expanding the building setbacks from the creeks and reducing the development footprint to better match the local topography and hydrologic constraints.

2-7  
Cont.

*Wastewater Treatment Plant Could Adversely Affect Public Health* - The construction of a wastewater treatment plant and associated 6-acre pond could have adverse health effects on local residents including the generation of nuisance odors and the attraction of mosquitoes. The BIA is encouraged to consider all appropriate measures necessary to ensure the local community is not adversely affected by the operation of the proposed wastewater treatment plant.

2-8

*Inaccurate Table Data* - The percent area identified as Potential Seasonal Wetland in Table 3-10 is incorrectly identified as  $3.8 E^{-4}$ . The percentage wetland should be identified as 0.038 percent.

2-9

### Biological Resources

*Riparian Woodland Loss Should be Appropriately Mitigated* - The mitigation measures for the loss of riparian woodland habitat require the habitat to be restored to its natural state. However, no information or detail is provided identifying what constitutes the habitat's natural state or when it needs to be restored. The mitigation measures should specify the timing and location of restoration efforts, specific success criteria that need to be achieved, how new plantings will be irrigated and protected from foraging, and long-term monitoring to ensure mitigation success. These measures should be identified in a detailed restoration plan that would be reviewed and approved by the United States Fish and Wildlife Service.

2-10

*Extent of Wetland Disturbance Undocumented* - The EA concludes that wetland resources will be lost with project implementation. However, a wetland delineation has not been completed for the proposed project. Therefore, the precise extent of jurisdictional wetlands that would be filled with project implementation is unclear. The BIA should prepare a wetland delineation, have it verified by the U.S. Army Corps of Engineers, and publicly circulate it prior to approving the proposed project.

2-11

*California Tiger Salamander Mitigation Inadequate* - The mitigation measure for California Tiger Salamander states that if it is observed, all work shall stop until the USFWS is consulted. No additional mitigation is identified. Therefore, it is difficult to conclude that this mitigation actually addresses the impact. A more detailed strategy for mitigating for potential project impacts on California Tiger Salamander should be integrated into the EA.

2-12

### Transportation and Circulation

*Cumulative Traffic Analysis Conclusions Unsupported* - The discussion of cumulative traffic impacts in the EA states that the proposed project and other relevant projects would increase traffic on local roadways, thereby increasing potential safety hazards and adverse level of service effects. The analysis then concludes that the proposed project would not result in any cumulative impacts based on the CCCR Event Center Project Traffic Impact Study completed by Kimley-Horn in 2010. The Kimley-Horn traffic report is not included as an appendix to the EA and it is unclear whether the proposed project was even considered in the Kimley-Horn study. Because the EA clearly states that the project would increase adverse level of service effects on local roads, it is unclear how the analysis can then make the opposite statement. Without a clear rational and supporting data for the conclusion that the project will not cause adverse effects on local roadways, the EA does not describe the proposed project's environmental impacts. This should be corrected in the EA prior to the consideration of project approval.

2-13



## Land Use

*Loss of Agricultural Land* – Although the loss of agricultural land associated with project implementation is relatively small, the County is concerned with any loss of agricultural land and is particularly concerned that future development within the expanded trust lands will result in additional long-term losses of agricultural land. As discussed above, the County encourages BIA to consider establishing specific development controls associated with approval of the proposed action that would ensure that unrestricted development on trust lands does not occur in the future.

2-14

## Visual Resources

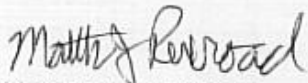
*Project Site Would Alter Views from State Route 16* - The Capay Valley within the project vicinity contains unique visual resources associated with its rural agricultural character. The construction of the proposed cultural centers adjacent to State Route 16, which is designated as a Local Scenic Highway in Policy CC-1.13 of the 2009 Yolo County General Plan Update, and the construction of the wastewater treatment plan to the west, would alter the visual character of the local area. No visual mitigation measures are proposed in Chapter 5 of the EA and the protective measures identified on page 2-7 only address lighting and signage. A detailed vegetative screening/landscape plan should be included as mitigation in the EA to minimize the adverse visual changes that would be expected with the project construction.

2-15

## Conclusion

The Board of Supervisors is committed to ensuring that the quality of life within the Capay Valley is maintained. We look forward to working collaboratively with the BIA and the Yocha Dehe Wintun Nation in resolving the issues identified in this letter. Thank you again for the opportunity to provide these comments. If you have any questions regarding the issues raised in this letter, please contact Christopher Lee, County-Tribe Coordinator at (530) 666-8150 or [clee@yolocounty.org](mailto:clee@yolocounty.org).

Respectfully,



Matt Rexroad, Chair  
Yolo County Board of Supervisors



13757 Highway 16 – P.O.Box 17, Brooks, CA 95606  
ph (530) 796-4110 – (530) 796-3788 fax  
[info@capayvalleyvineyards.com](mailto:info@capayvalleyvineyards.com)

By email & U.S.P.S.

July 13, 2011

Amy Dutschke, Regional Director  
Bureau of Indian Affairs-Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

Comments on Yocha Dehe Fee to Trust Application and Environmental Assessment

We join in and incorporate the comments expressed by the Yolo County Board of Supervisors on the Environmental Assessment. In addition we offer additional comments:

3-1

The magnitude of this project calls for a full Environmental Impact Statement. The proposed waste water treatment plant alone demonstrates the capability of adding significant future developments and accelerating growth on the entire 800+ acres.

3-2

The Tribe, through open market purchase, already has control over these lands. Transferring from fee to trust creates a disruptive and impractical mix of state and tribal jurisdictions which burden the administration of state and local government and adversely affect landowners neighboring the proposed trust lands.

3-3

Trust status bestows on the tribe a lack of legal accountability - especially to their surrounding neighbors. Trust status removes all protections for any persons or parcels of land that could be adversely affected by actions taken on the trust land. Trust status essentially takes away the First Amendment rights from non-tribal citizens of the United States.

3-4

All new trust acquisitions, nationwide, must address this serious problem.

Sincerely,

Tom Frederick  
Pam Welch

cc: Legal Counsel – Dept of the Interior

Recd Of \_\_\_\_\_  
 Date \_\_\_\_\_  
 Recd Ad \_\_\_\_\_  
 Route Decem \_\_\_\_\_  
 Response \_\_\_\_\_  
 Due Date \_\_\_\_\_  
 Memo \_\_\_\_\_ Ltr \_\_\_\_\_  
 Tele \_\_\_\_\_ Other \_\_\_\_\_

**Ann F. Scheuring**  
 15274 Road 42  
 Rumsey, CA 95679  
 T 530-796-2166  
[ascheuring@gvni.com](mailto:ascheuring@gvni.com)

RECEIVED  
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 OFFICE

July 12, 2011

Amy Dutschke  
 Regional Director  
 Bureau of Indian Affairs, Pacific Regional Office  
 2800 Cottage Way, Room W-2820  
 Sacramento, CA 95825

Re: *Environmental Assessment for the Trust Application of the Yocha Dehe Wintun Tribe*

Dear Ms. Dutschke,

As a long-time resident of the Capay Valley, I wish to express my concern about the proposed trust acquisition for the Yocha Dehe housing project.

I fully understand the Tribe's wish to plan for its future, and I also think that in general the Tribe has tried to be both responsible and sensitive to neighbors' concerns in its land use thus far. However, I do not believe that the current proposed tribal trust land acquisition should be so large. The Capay Valley is a small valley, and the 63 members of the Tribe already exercise a disproportionate influence over what goes on here. To take an additional nearly 900 acres out of any kind of local control seems to me to be unfair to the several thousand other residents.

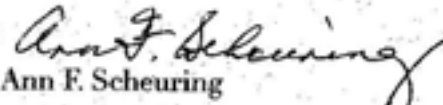
4-1

The Tribe can continue to pursue its agricultural operations under current county jurisdiction, and can also develop some housing and educational or cultural facilities under current permitted uses in Yolo County's zoning regulations. However, if hundreds of acres are taken into trust, the Tribe could decide at any time to undertake various kinds of commercial development that might be incompatible with the county's General Plan and the local Capay Valley Plan. Neighbors would be powerless to object, traffic along the already impacted two-lane Highway 16 would increase, and the rural character of this scenic valley would be steadily diminished.

4-2

Thus I recommend that the land taken into trust be kept to a minimum. The Tribe does not need to take nearly 900 acres into trust; this is far too large an acquisition.

Sincerely yours,

  
 Ann F. Scheuring

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

August 22, 2011

Amy Dutschke, Regional Director  
Bureau of Indian Affairs-Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

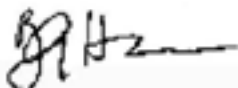
Comments on Yocha Dehe Fee to Trust Application and Environmental Assessment

This letter is written on behalf of the Capay Valley Coalition, to express our concern with the request of the Rumsey Tribe of Wintun Indians to convert a further 800+ acres of fee land into trust status in Capay Valley

It is necessary that a full Environmental Impact Statement be done on this project. The scope and size of the project, its location, and the implications of trust status to the community all require an EIS.

5-1

Sincerely,



Barbara Herren  
Capay Valley Coalition



210  
PROCESSION

Amy Dutschke  
Regional Director  
The Bureau of Indian Affairs  
Pacific Region Office  
2800 Cottage Way  
Room W-2820  
Sacramento, CA 95825

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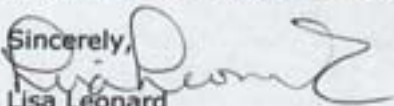
Subject: Yocha Dehe Wintun Nation Environmental Assessment for proposed trust acquisition

Dear Ms. Dutschke,

I would like to provide comments on the proposed Yocha Dehe Fee-to-Trust Environmental Assessment and project to take 853 acres in the Capay Valley into trust. As a landowner in the Capay Valley and US citizen I am very much against placing any more land into trust. I have several reasons:

- Removing the land from Yolo county jurisdiction will create an even bigger divide between the people of the Wintun Nation and their neighbors in the Capay Valley. The members of the Tribe already have privilege, special rights, and influence which they have used to their advantage at the expense of other Capay Valley residents. 6-1
- If Yolo County has restrictions on land use, restrictions on housing development, and restrictions on business development then those restrictions should apply to everyone who has land in the area. We should not have a "special class" of people who can do whatever they please while the rest of the landowners are restricted. 6-2
- Removing the land from Yolo county tax rolls will diminish tax revenue that our County desperately needs. Mitigation funds will not make up the difference as our recent history with the Wintun Nation has proven. 6-3
- The Yocha Dehe Casino, Hotel, Restaurants, and Golf Course were built over the objections of the residents in this very rural community. During the last phase of the Casino expansion and then again when the Tribe wanted to build the Golf Course the local residents were told that would be all the Tribe wanted to build. In other words the Tribe would not ask for further expansion. The community took them at their word but it has proven to be a broken promise. This application to put land into trust is just the latest example. 6-4
- I am very concerned about water use and feel that all landowners should be operating against the same set of rules regarding water. 6-5
- I see no need for the identified parcels to go into trust. The Wintun Nation owns this land and can effectively use it within the jurisdiction of the United States, California, and Yolo County governments. This application appears to be made to skirt Yolo county restrictions on housing development and to subvert the Williamson Act. That leads me to believe they have much greater plans in the future which they would announce after Yolo County has lost jurisdiction. 6-6

Yolo County and the Bureau of Indian Affairs need to say "NO" to the trust acquisition. We need to be one county and one citizenry abiding by one set of rules.

Sincerely,  
  
Lisa Leonard  
Brooks, Ca

August 24, 2011

Amy Dutschke, Regional Director  
Bureau of Indian Affairs-Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

Reg Dir \_\_\_\_\_ *aul ✓*  
 Dir. Reg. Dir. \_\_\_\_\_  
 Reg. Adm. Serv. \_\_\_\_\_  
 Memo: *DECRM*  
 Response Required: *No*  
 Date: \_\_\_\_\_  
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 PACIFIC REGIONAL OFFICE

Re: Yocha Dehe Fee to Trust Application

Dear Ms. Dutschke

This letter is in comment to the proposed Yocha Dehe Fee to Trust Application. I strongly believe it is not necessary for any amount of land to be taken into Trust for the purposes stated in the Fee to Trust Application because the Tribe already has more than enough land in Trust for this project. Let me explain.

The stated purpose for taking 853 acres of land into Trust is to provide housing and expanded government and cultural facilities for current Tribe members and to prepare for anticipated growth. The Tribe has defined the project to include:

- 25 residential units ranging in size from 2,500 to 5,200 square feet per unit
- 1 Tribal school
- Up to 3 cultural/educational facilities
- A new domestic well and water storage capacity
- Development of a wastewater treatment facility

A project of this magnitude does not need 853 acres and can, by the Tribe's own admission, fit within land the Tribe already has in Trust. The Tribe recently decided not to pursue an expansion project for their existing casino and resort. This expansion was to be on land they already have in Trust and included:

- An additional 467 hotel rooms representing an increase of 392,250 square feet
- 27 new Casitas totaling 40,500 square feet
- New event and conference center totaling 62,480 square feet
- Additional gaming, dining, retail, operational, and public space representing 308,017 square feet
- Water development and wastewater treatment increases to support the above capacity which in total would be nearly three times the current casino operations

The development proposed in the Fee to Trust proposal is of smaller impact and footprint than the abandoned expansion project. The Tribe must believe this too as it is using some of the studies created for the expansion project to support their conclusions regarding the impact of the Fee to Trust project. In a letter dated August 4, 2011 Robert Willis, Director of Development for the Yocha Dehe Wintun Nation, wrote:

7-1

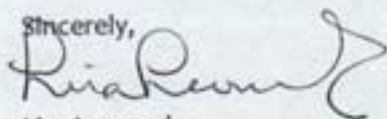


The studies at issue were originally prepared in connection with proposals to expand the Tribe's existing casino and resort. While the Tribe decided not to pursue either expansion proposal, the traffic studies themselves continue to provide accurate information about — and analysis of — traffic conditions in the area of the Project. For that reason, and consistent with federal regulations providing that environmental analyses be "concise," that they "cut down on bulk," and that they "reduce excessive paperwork," the Environmental Assessment for the Project presents a brief description of the contents of each study rather than reprinting the studies in their entirety. See 40 C.F.R. §§ 1500.4, 1502.21, 1508.9.

7-1  
Cont.

The proposed Fee to Trust development can be accommodated on the existing Trust land that was going to be used by the now abandoned expansion project. So there is no good reason to take any more land into Trust. I urge the Bureau of Indian Affairs to reject this Fee to Trust Application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa Leonard", with a large, sweeping flourish at the end.

Lisa Leonard

Gordon Farms, Inc.  
19341 County Road 76  
Brooks, California 95606  
July 4, 2011

R ✓  
DEC RMS  
NO 7-1  
Cont.

Att: Amy Dutschke  
Bureau of Indian Affairs  
Pacific Region Office  
2800 Cottage Way  
Room W-2820  
Sacramento, CA. 95825

Re: Yocha Dehe Fee to Trust Environmental Assessment.

Dear Amy Dutschke,

We are very concerned that this assessment has understated the total amount of water needed for the project. Twenty-five additional homes is a tremendous amount of new consumptive use, especially when they are grouped together and drawing from the same underground source; not to mention the several other facilities planned to be constructed.

8-1

This new water demand will be tapped into the same source of underground aquifer that not only supplies our agricultural needs but many other agricultural acres adjoining this proposal, even their own within the project.

8-2

We are very concerned about the overdraft of this precious resource, especially during drought years.

Another hindrance to our farming operation that would be caused by this proposal would be the location of their Cultural Resource Center and the Outdoor Cultural Activity Center. These two facilities are located on the southern boarder of parcel #2 of the project. Our walnut orchard land adjoins this parcel on the south. Therefore, when we need to spray for cultural reasons we will have to provide a large buffer zone between us and their two new facilities. Consequently this buffer zone becomes a sanctuary for unwanted diseases and non-beneficial insects in our otherwise healthy orchard. Moving these two facilities to parcel #1 in the project would considerably lessen the effect they would have on our farming operation.

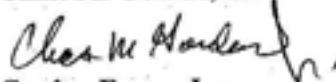
8-3

Perhaps, other than the water issue, the most damaging effect of this land transition is the taking of these prime agricultural acres out of the Williamson Act. There will no longer be any limitations as to the type of extent of development that will occur on these acres.

8-4

Thank you for the opportunity to voice our concerns.

Chas. M. Gordon, Jr.



Gordon Farms, Inc.  
Brooks, Ca.

c.c. Yolo County Board of Supervisors  
Bureau of Indian Affairs Pacific Region Office







**KAMALA D. HARRIS**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

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July 22, 2011

Department of the Interior  
Bureau of Indian Affairs  
2800 Cottage Way, Room W-2820  
Sacramento, California 95825

Via: [John.Rydzik@bia.gov](mailto:John.Rydzik@bia.gov),  
original by U.S. mail.

Attention: John Rydzik, Chief, Division of Environmental

RE: Request for Time to Review the Environmental Assessment for Proposed Trust Acquisition of Fifteen Parcels (853 acres) Yocha DeHe Wintun Nation

Dear Mr. Rydzik:

This letter is written on behalf of the Governor's Office to request time to review the above referred Environmental Assessment ("EA") for any comments. As you know, the EA was circulated for comment starting June 15, however, the Notice of Availability and document were not delivered to our office and the posted comment period has passed. At this time, we would like to request that the comment period remain open until August 26, 2011, for the Governor's Office to properly review the EA and provide any comments. At this time, since the EA still has not been received by our office, there is no decision whether any comments will be made after the review.

Thank you for your cooperation and immediate response to this request.

Sincerely,

PATTY BRANDT  
Senior Legal Analyst

For: KAMALA D. HARRIS  
Attorney General



United States Department of the Interior

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

AUG 7 - 2011

Ms. Patty Brandt, Senior Legal Analyst  
Attorney General's Office  
Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, California 94244-2550

Dear Ms. Brandt:

The Bureau of Indian Affairs (BIA) is in receipt of your letter dated July 22, 2011, requesting additional time to review the Environmental Assessment (EA) for the proposed fee-to-trust acquisition and subsequent housing development on 853-acres by the Yocha DeHe Wintun Nation. Due to a misunderstanding in our distribution procedures, your office was erroneously left out. The Bureau of Indian Affairs (BIA) apologizes for the delay and thereby grants your office an extension until August 26, 2011.

All comments must be received at the above address by the by close of business August 26, 2011.

You may submit your written comments to the attention of our Regional Director, Amy Dutschke, 2800 Cottage Way, Sacramento, CA, 95825 or via electronic mail to: [patrick.omallan@bia.gov](mailto:patrick.omallan@bia.gov).

Should you have any questions, please feel free to contact Patrick O'Mallan, EPS, at (916)-978-6044 or John Rydzik, Chief DECRMS at (916)-978-6051.

Sincerely:

Regional Director  
Pacific Region

Cc: Chairperson, Yocha DeHe Wintun Nation  
AES, Analytical Environmental Services



Christopher Lee  
County-Tribe Coordinator  
County of Yolo  
County Administrator's Office  
625 Court Street, Room 202  
Woodland, CA 95695

August 4, 2011

Re: Environmental Assessment for the Yocha Dehe Housing Project

Dear Mr. Lee:

On behalf of the Yocha Dehe Wintun Nation, I am following up with respect to the County of Yolo's expressed concern about having access to certain studies upon which the Bureau of Indian Affairs relied in preparing the Environmental Assessment for the Tribe's Yocha Dehe Housing Project (the "Project"). In that regard, I wanted to ensure the County was aware that the comment period has been extended for 30 days. The BIA will accept comments on the Environmental Assessment through August 26.

The studies at issue were originally prepared in connection with proposals to expand the Tribe's existing casino and resort. While the Tribe decided not to pursue either expansion proposal, the traffic studies themselves continue to provide accurate information about — and analysis of — traffic conditions in the area of the Project. For that reason, and consistent with federal regulations providing that environmental analyses be "concise," that they "cut down on bulk," and that they "reduce excessive paperwork," the Environmental Assessment for the Project presents a brief description of the contents of each study rather than reprinting the studies in their entirety. See 40 C.F.R. §§ 1500.4, 1502.21, 1508.9.

Both traffic studies were provided to the County at the time of their initial preparation, and the County has previously reviewed and commented on each of them (in connection with the Tribe's previous proposals). I also understand that the environmental consultant charged with preparing the Environmental Assessment for the Project provided the County with additional copies of the studies on July 14.

Nevertheless, in the spirit of the National Environmental Policy Act's procedures encouraging public participation, please feel free to contact me if you need more copies of the studies or if there is any other way in which the Tribe can help facilitate discussion and resolution of any traffic-related comments you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Robt Willis".

Robert A. Willis  
Director of Development – Yocha Dehe Wintun Nation

cc: John Rydzik – Bureau of Indian Affairs

# ***ATTACHMENT B***

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***RESPONSES TO COMMENT LETTERS RECEIVED ON THE EA***

# ATTACHMENT B

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## RESPONSES TO COMMENTS

### COMMENT LETTER 1

DEPARTMENT OF TRANSPORTATION (CALTRANS), DISTRICT 3

1-1 ***Table Reference.***

The reference in the text on page 3-66 should say “Table 3-16.” This change has been made.

1-2 ***Table 3-16 needs to be updated to include data from the 2009 Caltrans Traffic and Vehicle Data Systems Unit.***

Since the 2009 Caltrans data on the website provided in this comment did not contain traffic counts for the intersection of SR-16 and Puhkum Road, the Tribe consulted with Arthur Murray, Yolo County IGR Coordinator, who recommended using the “ahead peak hour traffic counts” for the “Mossy Creek Bridge” (within one mile of the subject intersection) (A. Murray, pers. comm., 2011). The 2009 ahead peak hour traffic count for Mossy Creek Bridge equals 260. Mossy Creek Bridge is located 0.7 miles south of Puhkum Road on SR-16. This change has been made.

Additionally, 260 ahead peak hour trips is far less than the 748 vehicles per peak hour that would comprise a LOS C on SR-16 [page 4-21 of the Environmental Assessment (EA)]. Therefore, implementation of the Proposed Project in consideration of this Caltrans recommended revision in the number of peak hour trips would not result in significant effects to traffic flow on SR-16.

1-3 ***The EA does not discuss the impacts of construction within the floodplain.***

This topic is discussed in depth in Section 4.1.2 of the EA. The EA accounts for the total anticipated impervious surfaces for a total build out of the Proposed Project and fully addresses the flood impacts of the project including potential impacts to SR-16. No construction will occur within the floodplain, as shown in Figure 3-4 of the EA, except for the proposed outdoor cultural education center on Parcel 2. This outdoor learning center will include a few temporary structures associated with a historic tribal village site for which this space will be modeled after.

Implementation of the recommended drainage facilities in the Grading and Drainage Feasibility Study for the Proposed Project (Appendix B) would address potential water quality and stormwater runoff impacts for downstream properties including SR-16. Page 3-17 of Appendix B states:

*“The minimal impacts due to the increase in storm water runoff do not necessarily require a detention pond to be built for this [proposed] development; however, the conversion of the stock pond to a detention pond to reduce existing peak flows that enter the property and reduce them significantly for the downstream conveyance system will offset any development impacts.”* In fact, *“all downstream property along the creek frontage will benefit from the reduced peak flows from larger storm events. The check dams within the road ditches will also reduce impacts due to the locally increased runoff. No import or export of material is anticipated for this project”* (page 3-17 of Appendix B).

1-4 ***The water surface model(s) should be sent to Caltrans Hydraulics for review to ensure no impact will be made to SR-16.***

The water surface models that were used are identified in the Grading and Drainage Feasibility Study (Appendix B of the EA). As stated in this study, the Soils Conservation Service (SCS) Type II Hydrograph method developed by the Natural Resources Conservation Service was used in the hydrologic analysis for the Proposed Project (page 1-2 of Appendix B). The modeling software used was version 3.4 of the Hydrologic Engineering Corps-Hydrologic Modeling System (HEC-HMS) developed by the U.S. Army Corps of Engineers (USACE).

Using the information from these two federal sources as the basis for calculation, the Grading and Drainage Feasibility Study concludes that no impacts to downstream properties would result from the development of the three cultural education centers on Parcels 1 and 2 or the development of the wastewater treatment plant (WWTP) and recycled water storage pond on Parcels 7 and 8. For Parcels 9 and 10, where the proposed housing and Tribal school will be located:

*“the increase of peak flows for the post-development hydrology shows a less than 3 percent increase, almost no change in volume. The only difference between pre- and post- characteristics are the reduced time-of-concentration for a post-developed [water] shed. With that said, however, reductions in existing flow rates as they enter Parcel 9 are being proposed to reduce over peak loading for the project and downstream properties”* (page 3-5 of Appendix B).

In summary, with implementation of the drainage infrastructure recommended in Appendix B, there will be no adverse impacts to SR-16.

It should be noted that the total acreage of proposed impermeable surfaces is minimal compared to the overall acreage of the project parcels to the west of SR-16. Based on the information in the Grading and Drainage Feasibility Study, no increased flood flows are anticipated and there will likely be an improvement to conditions in downstream areas, such as SR-16 (Appendix B).

The requested water surface model and an additional copy of Appendix B were sent to the identified contact person, Mr. Gurdeep Bhattal, at Caltrans on September 28, 2011, and September 15, 2011, respectfully, per the request for an independent review by Caltrans.

- 1-5 ***The EA does not address hydrology, including impacts of increased run-off to SR-16 and matters of collection and redirection of flows on the proposed development.***

Refer to the response to Comments 1-3 and 1-4 above.

- 1-6 ***A detention basin to handle excess runoff should be constructed in addition to the proposed six-acre detention pond.***

This issue is adequately addressed on page 4-4 of the EA, which states:

*“A recycled water reservoir would be sized to ensure adequate storage is available during the winter months, including storage capacity for precipitation. The reservoir would be located near the WWTP on Parcel 8 and would occupy roughly 6 acres with approximately six feet of water depth. With implementation of stormwater drainage improvements recommended in Appendix B and the protective measures and BMPs [(best management practices)] discussed in Section 2.1.9, stormwater flows would equal pre-existing runoff rates.”*

Further, page 4-2 of the Grading and Drainage Feasibility Study (Appendix B of the EA), states:

*“The development of a wastewater treatment facility on EA Parcel 8 would require minor drainage improvements depending on the final design layout of the wastewater treatment plant. All drainage improvements would be designed to allow proper setbacks from wastewater facilities. Furthermore, reduction in post-developed imperviousness is anticipated as a result of self-containment of the recycled water pond.”*

Therefore, according to the analysis presented in the EA and in Appendix B, the proposed drainage infrastructure and BMPs would lessen potential impacts to stormwater runoff on- and off-site.

- 1-7 ***Drainage information should be sent to Mr. Gurdeep Bhattal, Caltrans District 3 Hydraulics Branch.***

Refer to the response to Comment 1-4. A copy of the requested information has been provided to Mr. Gurdeep Bhattal.

## COMMENT LETTER 2

### COUNTY OF YOLO BOARD OF SUPERVISORS

- 2-1 ***Alternative B would achieve the project's purpose and need without requiring additional acreage placed into trust.***

Commenter expresses a preference for Alternative B in this statement. See the response to Comment 2-2 below for a discussion on the Tribe's purpose and need and the range of alternatives selected for the Proposed Project.

- 2-2 ***The EA should consider other development alternatives that would achieve the project purpose without the Tribe taking additional land into trust.***

As stated on page 1-5 of the EA, the Tribe's purpose and need for taking the 853± acres of land into trust is to provide housing and expanded governmental, educational, and cultural facilities and services under the direct control of the Tribal government to accommodate the Tribe's current members and anticipated growth. The proposed expansion of the Tribe's reservation would ensure that the Tribe can continue to provide housing for its existing and future members and the space necessary to conduct the governmental, educational, and cultural functions of Tribal government (page 1-5 of EA). The proposed wastewater treatment plant would allow the Tribe to discontinue the use of septic tanks on its existing reservation and would produce recycled wastewater suitable for irrigation of crops on expanded trust land (page 1-5 of EA).

Currently, the Tribe's existing reservation is fully built out and there is no available space for needed housing, Tribal education, and cultural facilities as well as expansion of Tribal administration/government functions. The need for housing for the Tribe's members is clearly demonstrated based on the Tribe's anticipated population growth over the coming years (Section 1.0 of the EA). The Tribe needs housing for its members and the proposed housing would be on trust land under Tribal sovereignty and governance. The placement of the proposed housing on Parcels 9 and 10 would: 1) not be visible from SR-16; 2) be generally consistent with the intent of the County's housing cluster ordinance; and 3) be consistent with maintaining the rural character of the Capay Valley as called for in the County's General Plan and the Capay Valley Area Plan.

Furthermore, the Proposed Project 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. The areas that are not proposed for the development of Tribal housing, Tribal school, and cultural/education facilities would remain in agricultural production. As stated in Section 2.0, the anticipated total acreage for lands remaining in agricultural production under the Proposed Project equals approximately 754 acres or roughly 88 percent of the entire 853± acres proposed for trust. Under the Proposed Action, the Tribal government would be able to fully exercise its sovereignty over its own future growth and expand the diversity of the its economic base fully



under Tribal control all while helping to largely preserve the rural/agricultural character of the Capay Valley consistent with surrounding land uses.

The range of alternatives considered in the EA satisfies the legal requirements for the analysis of alternatives in an EA. The section of the CEQ regulations that prescribes the requirement for consideration of alternatives in an EA is found in the definition of “environmental assessment,” 40 C.F.R. § 1508.9, which in subsection (b) says:

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2) E, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

The reference to section 102(2)(E) means that section of the statute, i.e., the National Environmental Policy Act (NEPA), which states:

The Congress authorizes and directs that, to the fullest extent possible:...(2) all agencies of the Federal Government shall –

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources; 42 U.S.C. §4332(2)(E)

Regulations issued by the Secretary of the Interior supplementing the CEQ regulations for bureaus and offices with the Department of Interior (DOI), 43 C.F.R. Part 46.310 (b), clarify that this statutory language makes it permissible, in some cases, for the alternatives analysis in an EA be limited to the proposed action and no-action alternative.

(b) When the Responsible Official (Bureau of Indian Affairs) determines that there are no unresolved conflicts about the proposed action with respect to alternative uses of available resources, the EA need only to consider the proposed action and does not need to consider additional alternatives, including the no action alternative (see section 102(2)(E) of NEPA).

As the EA analyzes three alternatives, consisting of Alternative A (Proposed Project), Alternative B (Reduced Acreage), and Alternative C (No Action), it complies with the provisions of NEPA and associated guidance. All alternatives were vetted through the CEQ process and described in detail in the EA.

2-3 ***It is unnecessary for the Tribe to take land into trust to maintain its agricultural operations.***

Since the Tribe is federally recognized as a sovereign government, through the fee to trust process, the Tribe proposes: 1) to expand its governance to the land that it currently manages for agricultural uses; and 2) to unify existing agricultural operations fully under Tribal governmental authority within its historic homeland. This Proposed Action will enhance the Tribe's ability to manage its agricultural operations under full Tribal governance.

2-4 ***The protective measures and BMPs include caveats that diminish the projective nature of these measures.***

The BMPs and protective measures stated in the EA will be implemented by the Tribe; however, consistent with the EA, the final design of some measures will be determined at the building plan and/or implementation stage. The Tribe is committed to the goals and purposes of the BMPs which, as described in the EA, are designed to enhance, rather than diminish, the protective nature of, the implementation of these measures under the Proposed Action. Finally, it is worth noting that NEPA does not require lead agencies or project proponents to implement mitigation measures which are infeasible.

2-5 ***Text reference in Chapter 2.0 of the EA. The construction of residences on Parcel 1 would be of concern due to their potential to increase adverse flood effects downstream.***

The sentence at the bottom of page 3-80 should read "Proposed residential units would be constructed on Parcel 9, approximately 3,900 feet from the existing Wintun Academy and residences on the Tribe's existing trust parcel." This change has been made.

Refer to the response to Comment 1-3 in regards to implementation of the recommended drainage facilities in the Grading and Drainage Feasibility Study for the Proposed Project (Appendix B) to address potential water quality and stormwater runoff impacts.

2-6 ***The EA does not examine potential future changes in land use that could affect the agricultural character of the Capay Valley and increase traffic on SR-16.***

Sections 3.1 (Land Resources), 3.6 (Socioeconomic Conditions), and 3.12 (Visual Resources) of the EA each address aspects of the existing agricultural character of the Capay Valley. Sections 4.1, 4.2, 4.3, 4.4, and 4.5 of the EA each address the potential consequences of the Proposed Project (and alternatives thereto) on the agricultural character of the Capay Valley. Those analyses demonstrate that neither the Proposed Project nor any of the other alternatives would significantly affect the agricultural character of the Capay Valley.

Sections 3.7, 4.1, 4.2, 4.3, 4.4, and 4.5 of the EA address traffic and growth issues. Those analyses demonstrate that neither the Proposed Project nor any of the other alternatives would significantly increase traffic (or significantly decrease levels of service) on SR-16.

The EA addresses the Proposed Action, alternatives to the Proposed Action, and all planned, proposed, and/or otherwise reasonably foreseeable development. Further development is not reasonably foreseeable. Moreover, all land held in trust for the Tribe will be subject to federal environmental laws, including NEPA (which requires environmental analyses for any major federal actions proposed in the future).

2-7 ***The development on Parcels 9 and 10 could negatively affect the drainage pattern, water quality, and sedimentation rates of the watershed that drains into Cache Creek.***

The proposed developments on Parcels 9 and 10 are designed to be set back from onsite creeks (see Figure 3.4 of the EA). All proposed buildings are designed to be constructed outside of the Federal Emergency Management Agency (FEMA)-designated 100-year flood zone for Cache Creek or its tributaries (refer to Figure 3.4; Section 4.1.2 of the EA). As stated in the Grading and Drainage Study for the Proposed Project, the proposed development on Parcels 9 and 10 represents a three percent increase in imperviousness (Section 3.5.4 in Appendix B). This change is minimal and the increase in peak flows on Parcel 9 would be insignificant (Section 3.5.4 in Appendix B). Although peak flow attenuation and detention is not required for this minimal increase, the preliminary grading and drainage assessment for the Proposed Project identifies the utilization of the existing stock pond as a detention pond on Parcel 9 to reduce peak flows (Section 3.5.4 in Appendix B). This would offset any increased peak flow due to the development (Section 3.5.4 in Appendix B). In addition, culverts (including culverts, bottomless culverts, or bridges) would be constructed to assure that drainage is not impeded at sites where the proposed access road crosses existing drainage courses. Due to the large watersheds with watercourses traversing Parcels 9 and 10, culvert crossings would be sized to allow a 200-year, 24-hour storm event to drain without creating backwater or overtopping of existing and proposed roads (Section 3.6 in Appendix B). These measures would ensure that the Proposed Project would not significantly alter the drainage pattern.

As stated in the EA, to reduce the effects of increased surface runoff volume and associated pollutants, the Tribe will comply with the terms of the U.S. Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) Construction General Permit and ensure that BMPs, such as those listed in Section 2.1.9 and Section 5.2 are used to reduce the risk of soil erosion and polluted discharge. Construction activities could increase the potential for erosion to occur, which could increase silt loads to Cache Creek and could also comprise soil integrity increasing the potential for transport of surface contaminants to groundwater resources. The identified BMPs would significantly reduce erosion and minimize off-site pollutant transport.

The Tribe will prepare and implement an EPA Stormwater Pollution Prevention Plan (SWPPP) that will include practices that reduce potential surface water contamination during storm events and minimize groundwater contamination. As discussed in Sections 5.1 and 5.2, BMPs would be implemented through the SWPPP to reduce potential construction-related adverse impacts to surface and ground waters to a minimal level. Additionally, roadways will be designed with adjacent vegetated swales to reduce adverse impacts to less-than-significant levels. The parking areas will be designed to divert stormwater to the vegetated swales to reduce operational adverse surface water quality impacts to less-than-significant levels. Therefore, these measures would ensure that the Proposed Project would not significantly impact water quality or sedimentation rates.

2-8 ***The development of a wastewater treatment plant and six-acre pond could generate nuisance odors and attract mosquitoes, thereby negatively impacting local residents.***

Once the land is taken into trust, federal requirements would continue to apply during construction and operation of the proposed wastewater treatment plant, such as those of the EPA and federal Clean Water Act (CWA) to ensure no significant impacts would occur to the surrounding environment or local residents. The location of the WWTP near the center of the proposed trust lands would be far from any local residents. Since the new wastewater treatment facility would include the latest modern technology, any odors generated at the facility would be contained and would not significantly impact local residents. Vector control measures would be employed at the wastewater treatment plant to prevent the proposed detention pond from becoming a source of mosquitoes and other pests, in accordance with the EPA. These measures would ensure that no impacts would occur to local residents.

The Tribe currently employs high quality standards for wastewater treatment such as low-odor and vector control measures at its present WWTP that serves its casino on trust land.

2-9 ***Table Reference.***

The percentage should be 0.038 percent; this change has been made.

2-10 ***The EA does not effectively describe the existing riparian woodland habitat or specific success criteria to achieve mitigation.***

Riparian areas impacted by the Proposed Project would be restored to their “natural state” and would reflect the existing (pre-project) descriptions for riparian habitat provided in Section 3.4 *Affected Environment: Biological Resources* on page 3-33 as well as the photographs of riparian habitat on the project site shown in Figure 3-8 of the EA. Once the land is taken into trust, a detailed restoration plan would be devised according to the actual degree of impacts caused to

riparian habitat due to the Proposed Project and would be prepared consistent with existing Tribal environmental ordinances and any required federal laws such as Section 404 of the Clean Water Act (CWA), if applicable. If required by federal law, the U.S. Fish and Wildlife Service (USFWS) will be consulted. This represents a reasonable plan for mitigation.

Further, as explained on page 4-14 of the Draft EA, the Proposed Project has been designed to avoid riparian woodland vegetation:

*“to the maximum extent possible, the Proposed Project has incorporated avoidance of the riparian woodland into the site design to minimize impacts. Potential impacts to riparian woodland would be limited to improvements to the three existing road crossings on Parcel 9. By using the existing crossings, the removal of native trees [in the riparian zone] can be fully avoided at these locations and no native elderberry (Sambucus sp.) trees/shrubs would be removed.”*

**2-11 A wetland delineation that has been approved by the USACE has not been publicly circulated.**

A preliminary wetland delineation was performed during the biological field surveys to identify potential wetlands or waters of the U.S. for the purpose of designing the project footprint away from these areas and minimizing disturbance. The EA addresses this issue extensively in the mitigation measures in Section 5.4.2, page 5-4, which states

*“for the proposed improvements to the roadway crossings, the stock pond’s outfall structure, and proposed modification of the stock pond to also function as a detention pond on Parcel 9, authorization from the U.S. Army Corps of Engineers (USACE) is required. A wetland delineation would be conducted, a jurisdictional determination would be acquired, and a Section 404 CWA permit shall be obtained from the USACE as necessary.”*

This section of the EA continues to list the requirements if a permit is determined to be necessary, how the mitigation ratios shall be defined, and so forth. Once the land is taken into trust, these federal regulations would continue to apply.

A final wetland determination will be submitted to the USACE as part of the section 404 permit process. However, USACE regulations do not require circulation of the wetland delineation for public comment unless the impacts are greater than 0.5 acres, which is unlikely under the Proposed Project, even if the potential impacts mentioned above (page 5-4 of the EA) actually occur. In the unlikely event that circulation of a delineation is required, it will take place as part of the section 404 permitting process.

2-12 ***More mitigation measures should be in the EA to address potential impacts on the California tiger salamander.***

Section 5.4.4, page 5-8 of the EA, adequately addresses mitigation measures for California tiger salamander (*Ambystoma californiense*; CTS). These measures include a preconstruction survey for CTS, worker environmental awareness training, an on-site biological monitor during construction. If at any time CTS is observed within the project site, all work will stop and consultation with USFWS would occur. CTS is not likely to occur onsite as stated in Section 4.0 the EA:

*“the only confirmed sighting for CTS within five miles of the project site is across Cache Creek approximately one mile southeast of the project site. Cache Creek is a barrier to CTS migration between the documented California Natural Diversity Database (CNDDDB) record and the project site. Therefore, the likelihood of occurrence of CTS is minimal”* (page 4-17 of the EA).

In the unlikely event that a CTS is identified onsite, all further activities must be consistent with the direction of the USFWS. In other words, the USFWS must identify the specific measures to be taken if a CTS is identified onsite. The Tribe will comply with USFWS direction. Thus, impacts to CTS, if any, will be fully addressed.

2-13 ***The cumulative traffic analysis discussion states that the Proposed Project would increase traffic on local roadways, but the analysis concludes there would be no impacts based on the 2010 Kimley-Horn CCCR Event Center Project Traffic Impact Study. This study is not included as an appendix despite being referenced in the text.***

A response to this comment was previously provided in a letter to the County dated August 4, 2011 (refer to Table 1 in Chapter 1.0 of this document). This response noted that both traffic studies referenced in the EA (Abrams Assoc., 2008; Kimley-Horn, 2010), not just the 2010 Kimley-Horn study identified by the County in this comment, were provided to the County at the time of their initial preparation in 2008 and 2010, respectively, and that the County had previously reviewed and commented on each of these studies in connection with the Tribe’s previous proposals. The County was provided with extra copies of both of these studies on July 14, 2011. The Tribe’s August 4, 2011 letter provided the County additional time to comment, with an extended deadline of August 26, 2011. No additional comments were submitted by the County during the extended comment period ending on August 26, 2011 on this matter.

The 2010 Kimley-Horn Traffic Impact Study was cited in the EA because the study included an analysis of the addition of 25 housing units and an expanded governmental center (office space) at or near the location of the existing reservation as part of the cumulative condition. The Tribe’s

anticipated 25 housing units and office space is included in the future traffic impact analysis as indicated in Table 6 - Proposed Development Projects on page 27 of the 2010 Kimley-Horn study. The 2010 Kimley-Horn study not only anticipated this housing project (i.e. the Proposed Project) but it also looked at all planned projects and anticipated growth allowed under the County's General Plan (Table 6, page 27, of the 2010 Kimley-Horn study). Thus, the Proposed Project was effectively part of the level of service (LOS) analysis performed for cumulative effects in the 2010 Kimley-Horn study.

The 2008 Abrams Associates Study includes data on the peak hour traffic counts for SR-16 at Puhkum Road (formerly CR-75A). At the request of Caltrans, these peak hour traffic counts have been updated to reflect the 2009 Caltrans data. This change has been made, as explained in the response to Comment 1-2 above.

The LOS shown in 2010 Kimley-Horn study indicates that the estimated peak hour trips north of the casino "will not result in any cumulative impacts" (page 4-41 of the EA). Furthermore, Section 4.1.7, page 4-21, of the EA states that the Proposed Project would generate an estimated 45.25 peak hour trips. When combined with the Caltrans recommended revision (see Comment 1-2) to use 260 peak hour trips for the existing conditions on SR-16 in the vicinity of the Proposed Project, the revised estimate of peak hour trips with the Proposed Project would total 305.25 trips, which is still far less than the 748 peak hour trips that would degrade the level of service to LOS C on SR-16 (Section 4.0 of the EA). Therefore, implementation of the Proposed Project in consideration of this Caltrans recommended revision would not result in significant effects to traffic flow on SR-16. The conclusion in the EA that "implementation of the Proposed Project would not result in significant effects to traffic flow on SR-16, which would result in a LOS C" (page 4-21), stands as accurate. (Additionally, refer to the response to Comment 1-2).

As stated in the Tribe's response letter to the County on August 4, 2011, while the Tribe decided not to pursue a casino expansion, the traffic studies themselves continue to provide accurate information about - and analysis of - traffic conditions in the area of the project. For this reason, and consistent with federal regulations providing that environmental analyses be "concise," that they "cut down on bulk," and that they "reduce excessive paperwork," the EA presents a brief description of the contents of each study rather than reprinting the studies in their entirety (40 C.F.R. §§ 1500.4, 1502.21, 1508.9).

2-14 ***Development controls associated with project approval would reduce the loss of any agricultural land.***

As explained more fully in the response to Comment 2-2, the purpose and need for the Proposed Project includes providing housing and services to Tribal members while maintaining existing agricultural uses for the majority of the proposed trust lands. Under the Proposed Project, 88

percent or 754± acres out of the 853± acres proposed for trust would remain in agriculture. In total, the proposed developments would constitute 99 acres, including the wastewater treatment plant and detention pond for recycled water storage. Overall, the areas proposed for development are designed to be clustered away from prime land that is currently farmed by the Tribe. The development envelopes are primarily situated on current grazing lands and non-prime farmland.

The EA addresses the Proposed Action, alternatives to the Proposed Action, and all planned, proposed, and/or otherwise reasonably foreseeable development. Further development is not reasonably foreseeable. Moreover, all land held in trust for the Tribe will be subject to federal environmental laws, including NEPA (which requires environmental analyses for any major federal actions proposed in the future).

2-15 ***The proposed developments adjacent to SR-16 would alter the visual character of the area; a vegetative screening/landscape plan should be included.***

The concern presented in this statement regarding potential visual impacts of the Proposed Project is adequately addressed in Section 4.1.12, page 4-31 of the EA, which states the following:

*“The proposed Tribal housing community would be located near the western edge of the project site and would not lie in the view shed of SR-16. The proposed cultural education facilities, on Parcels 1 and 2, would be designed to be visually compatible with the existing Tribal buildings on trust land nearby and the surrounding rural view shed of SR-16. The proposed wastewater treatment facility and recycled water reservoir would include landscape buffers and would be similar in architectural design to similar agricultural structures in the area.”*

The landscape buffers referenced in the EA include screening vegetation. The buildings to be used primarily for the proposed cultural center near SR-16 exist today and so the character of those buildings would not change under the Proposed Action.

### **COMMENT LETTER 3**

#### **CAPAY VALLEY VINEYARDS**

3-1 ***We join in and incorporate the comments expressed by the Yolo County Board of Supervisors on the Environmental Assessment.***

Refer to the responses provided for Comment Letter 2 above.



3-2 ***The magnitude of this project calls for a full Environmental Impact Statement (EIS); the proposed water treatment plant encourages future developments and accelerated growth.***

NEPA does not require the preparation of an EIS unless a proposed project will significantly impact the environment. If a proposed project will not significantly impact the environment, a Finding of No Significant Impact (FONSI) is prepared. The Bureau of Indian Affairs (BIA) has determined, on the basis of the EA, to prepare this FONSI.

The significance of a proposed project's environmental impacts are evaluated with reference to both context and intensity. The acreage of a proposed project may be relevant to context and/or intensity, but does not in and of itself determine the need for an EIS.

The EA provides a thorough evaluation of the potential consequences of the proposed project, including evaluations of both context and intensity. In addition, Section 5.0 of the EA provides mitigation measures to reduce potential impacts of the developments under the Proposed Project to less than significant levels.

Finally, it is worth noting that the land proposed for development represents roughly 12 percent of the entire proposed trust acquisition (99 acres out of the 853± acres proposed for trust). Refer to Table 2.2 - Proposed Tribal Modified Land Uses on page 2-10 of the EA for acreages of the proposed developments and the acreages of the land remaining in agricultural production under the Proposed Project.

Section 1.0 of the EA describes the purpose and need for a WWTP as being required to both replace the use of septic tanks on the existing reservation and to produce a recycled water supply for the irrigation of crops on expanded trust land to continue agricultural production consistent with surrounding land uses in the Capay Valley. The proposed WWTP and recycled water reservoir (to be used for irrigation of adjacent agricultural land) would be developed to support the Proposed Project and the existing housing and administration buildings on the reservation and would be sized to accommodate only these facilities under the Proposed Project. Therefore, the Proposed Project would not encourage accelerated growth other than the development identified in the EA; instead, it would be beneficial to the environment by replacing the existing septic tanks within the floodplain and by providing a source of recycled water for irrigation of existing agricultural uses, which would thereby reduce the use of groundwater.

The EA addresses the Proposed Action, alternatives to the Proposed Action, and all planned, proposed, and/or otherwise reasonably foreseeable development. Further development is not reasonably foreseeable. Moreover, all land held in trust for the Tribe will be subject to federal environmental laws, including NEPA (which requires environmental analyses for any major federal actions proposed in the future).

3-3 ***The fee to trust transfer will burden state and local governments and adversely affect neighboring landowners.***

The Proposed Action will not disrupt state and Tribal jurisdictions because after the land is taken into trust, the subject parcels will be under the jurisdiction and control of the Tribe, as a sovereign government, and the U.S. government. The existing Tribal administration and government buildings on the reservation are currently under Tribal jurisdiction and to date this has not created a burden on state or local governments. Existing federal statutes in addition to Tribal ordinances would apply to the subject parcels once the land is taken into trust, whereas only state and local regulations (with the exception of law enforcement) would no longer apply to trust lands.

There would be no additional burden to state and local government once the land is taken into trust. While the proposed development is located within the parcels proposed for trust in both Alternatives A and B, Alternative B does not meet the full terms of the Tribe's stated purpose and need: "for the Tribe to maintain its agricultural operations under full Tribal governance for the majority of the land proposed to be taken into trust" (page 1-5; Section 1.3 of the EA). The development envelopes were designed so that both Alternatives A and B would meet Tribal needs (such as housing) while minimizing impacts to the existing farming operations on land already owned by the Tribe. One of the key goals of the Proposed Project is for the Tribe to diversify its business interests under full Tribal sovereignty. By having more tribally owned land fully under the control of the Tribal government, the Tribe will be better able to guide future planning on Tribal trust lands to ensure economic stability and diversity.

Alternative B, like Alternative A, would allow the Tribe to meet its goals of expanded housing, government, and educational facilities within these limited development envelopes, but it would fail to meet one of the basic pillars of the Tribe's defined purpose and need for the project—to manage its agricultural operations under full Tribal sovereignty, systematically and sustainably, consistent with surrounding farms and County land use restrictions.

In total, the development proposed in the EA totals 99 acres, whereas, the majority of the fee to trust lands would result in no change in land use and continuance of the Tribe's existing agricultural operations. As shown in Table 2-2 - Proposed Tribal Modified Land Uses, on page 2-10 of the EA, the area not proposed for changes in land use would remain in agricultural production, which totals 754± acres out of the 853± acre fee to trust action. However, Alternative A is the preferred alternative since it fully meets the Tribe's purpose and need for the project in terms of allowing the Tribe to 1) fully control its own economic diversification through management of its existing agricultural enterprises under Tribal government, and 2) provide needed housing, educational, and expanded Tribal services to its members, while not resulting in significant impacts to the environment through implementation of the recommended mitigation measures in Section 5.0 of the EA.

In regards to fiscal impacts to the County, Section 4.1.6, page 4-20, of the EA states that the tax on the project parcels was 0.019 percent of the County's total property taxes received for the year 2008-2009. This is a very small percentage of the County's total tax revenues, which are largely used to fund public services within the County. In effect, the EA states "regardless of the minimal reduction of property taxes from the County's tax rolls...since the Tribe will continue to fund many of the existing public services such as fire protection and emergency response in the Capay Valley, this impact is considered to be less than significant" (page 4-20). Moreover, Section 4.1.9, page 4-26, states that "in the Capay Valley, law enforcement services are currently largely funded by the Tribe through the Capay Augmented Patrol (CAP) program. Under the Proposed Project, the Tribe will continue to fund the CAP program and therefore there will be no change in or impacts to these services."

The Yocha Dehe Fire Department (YDFD) is the only full time, fully trained and professionally staffed firefighting unit on the west side of Yolo County and it is currently the first responder to most accidents in the entire area west of I-505. YDFD also provides significant resources, equipment, and training to help increase the fire and emergency response capabilities for all of the fire departments in the area. In summary, the YDFD provides vital public services in fire protection and first emergency medical response to all of the residents of western Yolo County. Also, YDFD is the only whitewater responder in the area, which benefits the overall recreational use of the area and recreational-related jobs based along Cache Creek. Through the existing mutual aid agreements with other fire departments throughout the County, the total services currently provided by the Tribe more than offsets any impacts from the Proposed Project's minor loss of revenue to the County as a whole and impacts to emergency services for the citizens of the Capay Valley.

3-4 ***Trust status essentially takes away First Amendment rights from non-tribal, United States citizens. All new trust acquisitions nationwide must address this serious problem.***

Refer to the response to Comment 3-2 in regards to the continuance of federal laws and regulations on trust land and the distinction of the Tribe as a sovereign government. Further, California Highway Patrol (CHP) is the chief law enforcement agency for traffic-related issues on SR-16 and collector roads surrounding the project site. Depending on the situation (pursuant to Public Law 280), federal officials may provide support in specified situations on Tribal lands.

The First Amendment to the United States Constitution prohibits the United States Congress from making any law establishing a religion, impeding the free exercise of religion, abridging the freedom of speech, infringing the freedom of the press, interfering with the right to peaceably assemble, or prohibiting citizens from petitioning for a governmental redress of grievances. The Proposed Action would not make any new law. Nor would it interfere with any of the above-listed rights. Therefore, it would not impact the commenter's First Amendment rights.

## COMMENT LETTER 4

ANN SCHEURING

- 4-1 ***The proposed trust acquisition should not be so large; the taking of 900 acres out of local controls seems unfair.***

Refer to the response to Comment 2-2 in regards to the size, purpose, and need of the Proposed Action and the dedication of the majority of the trust land to remain in agricultural use. This response also describes the beneficial public services the Tribe already provides to local residents of the Capay Valley and will continue to provide under the Proposed Project.

It is also worth noting that Section 4 of the EA evaluates a range of reasonable alternatives, including alternatives of different sizes.

- 4-2 ***The Tribe could decide to undertake commercial development that might be incompatible with County regulations and local visual character. The Tribe does not need to take 900 acres into trust because it is too large.***

Refer to the response to Comment 2-2, in regards to the Tribe's stated purpose and need for the project and its intention to maintain the existing agricultural uses for the majority of the proposed trust lands. Also, refer to the response to Comment 2-15, which describes how the proposed developments would be constructed consistent with the existing rural aesthetics of the Capay Valley and therefore would not result in significant impacts to visual resources.

The EA addresses the Proposed Action, alternatives to the Proposed Action, and all planned, proposed, and/or otherwise reasonably foreseeable development. Further development is not reasonably foreseeable. Moreover, all land held in trust for the Tribe will be subject to federal environmental laws, including NEPA (which requires environmental analyses for any major federal actions proposed in the future).

## COMMENT LETTER 5

BARBARA HERREN, CAPAY VALLEY COALITION

This letter was received on August 22, 2011, which was outside of the designated comment period on the EA (June 15 – July 14, 2011).

- 5-1 ***An EIS should be prepared for the Proposed Action due to the scope and size of the project.***

Refer to the response to Comment 3-2, which similarly requests that an EIS be prepared.

## COMMENT LETTER 6

LISA LEONARD

- 6-1 ***The trust acquisition would create a great divide among local residents; the Tribe already has influence that they have used to their advantage at the expense of other Capay Valley residents.***

The Tribe is a sovereign, federally recognized Indian tribe. That status would not be changed by the Proposed Action.

The remainder of the comment (including allegations that the Tribe has taken advantage of other Capay Valley residents) is not relevant to the environmental consequences of the Proposed Action.

- 6-2 ***Yolo County restrictions on land use should apply to all landowners in the Capay Valley.***

The Tribe is a sovereign, federally recognized Indian tribe. That status would not be changed by the Proposed Action.

Federal laws, including environmental laws and restrictions, apply to all land held in trust for the Tribe. Local land use regulations are thoroughly discussed in Sections 3 and 4 of the EA. The Proposed Action would not have a significant effect on local land use patterns or regulations.

The remainder of the comment is not relevant to the environmental consequences of the Proposed Action.

- 6-3 ***Removing the land from Yolo County tax rolls will diminish tax revenues.***

Refer to the response to Comment 3-3 in regards to tax receipts as well as public services the Tribe provides to local residents of the Capay Valley and will continue to provide under the Proposed Project.

- 6-4 ***Past projects undertaken by the Tribe were built over the objections of local residents.***

The Proposed Action is not related to any of the projects identified by the commenter. As explained in Sections 4.4 and 4.5 of the EA, the Proposed Action will not induce further growth. The remainder of the comment is not relevant to the environmental consequences of the Proposed Action.

6-5 ***All landowners should be operating under the same rules regarding water use.***

Refer to the response to Comment 8-1, which describes how the Proposed Action's projected water demand is based on existing water use on the existing reservation. As stated in the EA in Section 4.1, the Tribe's current water system in conjunction with the proposed domestic water storage tank to serve Parcel 9 would provide adequate water supplies to meet the Proposed Project's water demands while not significantly impacting the groundwater aquifer in the region. The land is currently zoned for agriculture. Agricultural activities can often require a considerable amount of water. For example, an average vineyard in Yolo County requires two or more acre-feet of water per acre per year. Alfalfa can require double that amount. The average per acre amount of water required for the Tribe's proposed housing use is much lower than both.

6-6 ***There is no need for the proposed land to go into trust. This application appears to be made to skirt Yolo County restrictions on housing development and to subvert the Williamson Act.***

Refer to the response to Comment 2-2 above in regards to the Tribe's purpose and need for the Proposed Action. As stated in Section 3.8.2 of the EA, at present, all of the Proposed Project parcels except for Parcels 9 and 10 are under Williamson Act contracts (Yolo Co. GIS, 2010; C. Lee, pers. comm., 2010). To date, nonrenewal notices have been filed for all of the project parcels currently under Williamson Act contract (C. Lee, pers. comm., 2011). The project parcels under Williamson Act contracts represent 420± acres (0.09 percent) of the 450,000± acres under Yolo County Williamson Act contracts (SACOG, 2008). Since non-renewal notices have been filed for all the project parcels currently under Williamson Act contract, independent from the Tribe's current Fee to Trust application and consistent with the terms of the California Land Conservation Act of 1965 (Williamson Act), then the procedural guidelines for non-renewal have been met. See the response to Comment 8-4 regarding further discussion of Williamson Act.

Under the current County agricultural zoning designation, only limited cluster housing is authorized on the Tribe's fee land currently proposed for trust. The Tribal housing proposed in the EA is not located on Williamson Act lands, is clustered, is located outside of the view shed of SR-16, and is designed to enable the Tribe to exercise its jurisdiction regarding housing for its own members within its historic homeland. If the land were left under County jurisdiction and even if the County should choose to change the permitted housing authorized under its current zoning in the future, the ability of the Tribe to exercise its sovereignty over its own housing for its Tribal members, which is the purpose and need for taking the land into trust under the Proposed Action, would not be realized and therefore one of the main objectives of the Proposed Action would not be met.

## COMMENT LETTER 7

LISA LEONARD

This letter was received on August 24, 2011, which was outside of the designated comment period on the EA (June 15 – July 14, 2011).

7-1 ***The Proposed Project can be accommodated on existing trust land where the Tribe's casino is located.***

The Tribe's existing trust land containing the Tribe's casino is highly developed, largely unsuitable for additional land uses due to topography, and unbefitting for the proposed Tribal housing, Tribal school, and cultural education facilities on account of conflicting on-site and off-site land uses. For example, since the casino property is highly developed today, any additional development would cause crowding and would adversely impact traffic and emergency access/egress. Further, such crowded development is not consistent with the existing agrarian character and predominant low density residential and agricultural land uses in the vicinity. Such crowded development would conflict with the County's zoning and General Plan policies. In contrast, the development proposed in the EA is low density, small scale, and compatible with the rural, agrarian character of the Capay Valley and surrounding land uses.

Under the Proposed Project, the proposed developments are specifically designed to be placed outside of the FEMA 100-year designated floodplain and away from steep slopes. In contrast, since the casino property is located within the floodplain, additional development on the property would require extensive hydrological studies to ensure no impacts would occur to drainage patterns or water quality, especially since the site is located closer to Cache Creek than the locations proposed for development under the Proposed Project. Thus, the Proposed Project is designed to be setback from watercourses and with implementation of the mitigation measures and BMPs included in the EA, no significant impacts would occur to drainage and water quality (Section 4.1.2 of the EA).

The existing casino operations including vehicle and truck traffic from patrons, employees, and maintenance workers, would adversely impact the proposed residential units, Tribal school, and cultural facilities if they were to be placed on the casino property. If the proposed developments were to be placed on the casino property, adverse impacts to these sensitive receptors would include but are not limited to: noise impacts, traffic impacts, and visual impacts.

## COMMENT LETTER 8

CHAS M. GORDON JR.

8-1 ***We are very concerned that the EA understated the total amount of water needed for the project.***



Projections of water demand for the Proposed Project were based on existing water use on the current reservation, as noted in the Water and Wastewater Feasibility Study (Appendix C of the EA). The existing water demand data from the existing Tribal housing, school, and Tribal administration/government facilities on the reservation represents the best available data. As such, the proposed development would include similar Tribal land uses; therefore, the projections of water demand were based on current use patterns on the reservation. Further, Section 4.1 of the EA states that the Tribe's current water system on the existing trust parcel, in conjunction with the proposed domestic well and hill top domestic water storage tank to serve Parcel 9, would provide adequate water supplies to meet the Proposed Project's water demands while not significantly impacting the groundwater aquifer in the region (refer to Appendix C of the EA).

Additionally, to reduce demands on groundwater use from the Proposed Project, a recycled water system would be part of the proposed WWTP on Parcel 8, which would reduce demands for existing groundwater use for agriculture. Such a system would require recycled water to be pumped from the WWTP to the proposed onsite reservoir on Parcel 8. The reservoir would then be connected by pipes to the adjacent project parcel(s) currently in agriculture where it would interface with the irrigation system (page 3.5; Section 3.0 of the EA).

8-2 ***We are very concerned about overdraft of the aquifer, especially during drought years.***

Please refer to the response to Comment 8-1 in regards to supplementing surface and recycled water to meet agricultural water demands while jointly reducing groundwater use and recharging the aquifer for the potable water supply.

8-3 ***We are concerned about having to provide a large buffer zone between the spray pesticide applications on our property, which is adjacent to the Tribe's proposed cultural facilities on Parcel 2.***

The cultural facilities proposed, primarily the restored cultural village site near Cache Creek on Parcel 2 (adjacent to the Gordon walnut orchard), would not be occupied on a permanent basis. Pesticide sprays may be used on the Tribe's orchards on Parcels 1 and 2, but this would not occur in a manner that would endanger residents or visitors. As farmers themselves, the Tribe respects the right to farm for its neighbors and will continue to do so once the land is taken into trust. Consistent with the precautions taken during the development of the Tribe's golf course, the goals of the County's agricultural policies, and its own commitment to respecting neighboring landowners' right to farm, the Tribe will adjust the location of the cultural resource center proposed for Parcel 2 by approximately 50 feet, so as to respect a 100 foot setback from adjacent land uses. No cultural facilities will be placed within this setback. This adjustment will not result in any additional environmental impacts.

8-4 ***We are concerned that the project parcels will be removed from Williamson Act and there will no longer be any limitations as to the type or extent of development that will occur on the land.***

As stated in Section 3.8.2, page 3-73 of the EA, presently all of the project parcels except for Parcels 9 and 10 are under Williamson Act contracts and, to date, nonrenewal notices have been filed for all these parcels (C. Lee, pers. comm., 2011). Under the Proposed Project, the only development proposed on current Williamson Act lands would be up to three cultural education facilities on Parcels 1 and 2 and the wastewater treatment plant and recycled water pond on Parcels 7 and 8. The development of these facilities would be phased over future years and the EA states that this development would be consistent with the permitted and conditionally-permitted uses identified in the County's Agricultural Preserve Zoning (page 4-24). Therefore, impacts to parcels currently under Williamson Act contract would be less than significant (page 4-24).

Future uses on the proposed trust parcels would largely entail maintenance of the existing agricultural uses for the majority of the land taken into trust (approximately 88 percent), including the parcels currently subject to Williamson Act. The proposed housing units, Tribal school, and domestic water storage tank would be developed on Parcels 9 and 10, which are not under Williamson Act contract. Furthermore, maintenance of existing agricultural uses on the proposed trust parcels is one of the main pillars of the Tribe's stated purpose and need for the project and future planning goal, "to maintain its agricultural operations under full Tribal governance for the majority of the land proposed to be taken into trust," which would thereby allow the Tribe to diversify its business interests (page 1-5; Section 1.3 of the EA).

The EA addresses the Proposed Action, alternatives to the Proposed Action, and all planned, proposed, and/or otherwise reasonably foreseeable development. Further development is not reasonably foreseeable. Moreover, all land held in trust for the Tribe will be subject to federal environmental laws, including NEPA (which requires environmental analyses for any major federal actions proposed in the future).

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# ***ATTACHMENT C***

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***U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATION LETTER***



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

In reply refer to:  
08ESMF00-2012-I-0269-1

**MAR 13 2012**

## Memorandum

To: Chief, Division of Environmental and Cultural Resources Management and Safety Planning, Bureau of Indian Affairs, Pacific Regional Office, Sacramento, California

From: Assistant Field Supervisor, Endangered Species Division, Sacramento Fish and Wildlife Office, Sacramento, California

Subject: Informal Endangered Species Consultation for the Yocha Dehe Fee-to-Trust and Housing Project, Yolo County, California

This is in response to your February 6, 2012, letter and supporting documentation requesting concurrence with the determination that the proposed Yocha Dehe Fee-to-Trust and Housing Project (proposed project) in Yolo County, California, is not likely to adversely affect federally-listed species. Your request was received by the U.S. Fish and Wildlife Service (Service) on February 7, 2012. You requested consultation on the federally-threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (beetle) and the threatened California tiger salamander (*Ambystoma californiense*) (salamander). The Federal action we are consulting on is the conveyance of approximately 853 acres, containing 15 parcels, into Federal trust for the benefit of the Yocha Dehe Wintun Nation's (Tribe/applicant). The proposed project is not within critical habitat for either of the federally-listed species under the jurisdiction of the Service; therefore, none will be affected. This response is in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

We have reviewed the proposed project; including: (1) the May 2011, *Biological Assessment, Yocha Dehe Fee-to-Trust and Housing Project* (Biological Assessment), prepared by Analytical Environmental Services; (2) the February 6, 2012, initiation letter from the Bureau of Indian Affairs (BIA); and (3) other information available to the Service.

The proposed project site is located adjacent to the Tribe's existing reservation, along State Route (SR) 16 near the town of Brooks, in the Capay Valley, in an unincorporated area of Yolo County, California. In addition to the conveyance of the 15 parcels into Federal trust, the

proposed project includes the development of 25 residences, three cultural/education facilities, one tribal school, one domestic water storage tank, one wastewater treatment plant and supporting infrastructure.

Development of the approximately 853 acres will occur on only 5 of the 15 parcels (parcels 1, 2, 8, 9, and 10). Twenty-five new residential units would occur on parcels 9 and 10. The housing would consist of single-family residences of varying sizes to accommodate Tribal members and their families. Additionally, a domestic water tank, improved access roads, driveways and utilities will also be constructed to support the residences and proposed Tribal school. The existing Tribal school will be relocated to a parcel near the proposed residential community, and housed in a new facility. The development of three cultural/education facilities will occur on another two separate parcels.

A new wastewater treatment plant (WWTP) will be constructed on Parcel 8. The proposed WWTP will effectively link all existing and proposed Tribal housing and community/government buildings within one reliant, connected network of wastewater treatment infrastructure.

Existing farm roads will be improved and/or new roads constructed to provide access to the proposed residences and schools on Parcels 9 and 10. County Road (CR) 76 west of SR 16 would be improved and paved. The existing gravel road at the western terminal point of CR 76 would be upgraded, paved, and extended from its current terminus to provide access to the proposed developments on Parcels 9 and 10.

The Service concurs with your determination that the proposed action is not likely to adversely affect the salamander. Although the pond on-site may provide suitable breeding habitat, the action area of the proposed project is located outside of the species known range. The nearest California Natural Diversity Database occurrence is located greater than 3 miles to the southeast. In addition to the occurrence being located outside the dispersal distance of the salamander, there are also several potential barriers that would prevent the salamander from occurring within the action area, including lands in agriculture and major roadways.

Elderberry (*sambucus sp.*) shrubs were observed in large stands on the eastern edge of Parcels 1 and 2 adjacent to Cache Creek; in large stands along the northern boundary of Parcel 3 adjacent to a drainage; individually near the two creek crossings proposed for improvement on Parcel 9; and individually along CR-76. Elderberry shrubs are the sole host plant for the beetle and elderberry stems greater than approximately one inch in diameter are necessary for the beetle to complete its life cycle. Frequently, exit holes on stems greater than one inch in diameter are the only evidence of use by the beetle. The applicant has proposed to implement the following conservation measures to avoid impacts to the beetle and its habitat:

- The applicant shall comply with all avoidance measures including protective measures identified in the Service's *1999 Conservation Guidelines for the Valley Elderberry Longhorn Beetle*.
- All areas to be avoided shall be fenced and flagged during construction activities. In areas where encroachment of the 100-foot buffer will occur, there will be a minimum setback of at least 20 feet from the dripline of each elderberry shrub.
- Signs will be erected every 50 feet along the edge of avoidance areas with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.
- Work Crews will be instructed about the status of the beetle and the need to protect its elderberry host plant. Contractors will be briefed on the need to avoid damaging the shrubs and the possible penalties for not complying with these requirements.
- Staging areas will be located at least 100 feet from elderberry shrubs with stems at least one inch in diameter at ground level. Temporary stockpiling of excavated or imported material will occur only in designated construction staging areas. Excess excavated soil will be used on-site or disposed of at a regional landfill or other appropriate facility.

The Service concurs with your determination that the proposed project is not likely to adversely affect the beetle. The Service has determined that the above proposed conservation measures are sufficient to avoid adverse effects to the beetle. Therefore, no further action pursuant to the Act is necessary unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered; the action is subsequently modified in a manner that causes an effect to federally-listed species or critical habitat that was not considered in this determination; or a new species or critical habitat is designated that may be affected by the proposed action.

Please contact Jason Hanni, Fish and Wildlife Biologist, or Kellie Berry, Chief, Sacramento Valley Division, at (916) 414-6645 if you have questions regarding the proposed Yocha Dehe Fee-to-Trust and Housing Project.