

August 26, 2024

VIA E-MAIL

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

Re: Comments on Notice of Application for Scotts Valley Band of Pomo Indians

Regional Director Dutschke:

The following comments are respectfully submitted on behalf of the Yocha Dehe Wintun Nation (the "Tribe" or "Yocha Dehe") to the Bureau of Indian Affairs ("BIA" or "Bureau") on an undated Notice of Gaming Lands Acquisition Application ("NOA") regarding a request by the Scotts Valley Band of Pomo Indians ("Scotts Valley" of "Band") to have four parcels in Vallejo, California (the "Vallejo Property") accepted in trust.

As explained in detail below, the record (as provided to us by your office) is woefully inadequate to permit approval of Scotts Valley's request: it is missing information and documents required by law; to the extent evidence has been provided, it weighs against approval; and the NOA itself is procedurally infirm.

I. Brief Summary of Relevant Background

The NOA states the Vallejo Property consists of a 128-acre parcel adjacent to Interstate-80, along with three other parcels together consisting of roughly 32 acres immediately to the east, for a total of approximately 160 acres.

The Vallejo Property is within the ancestral lands of our Patwin people, between the historic villages of *Aguasto* and *Suskol*. The California Native American Heritage Commission has identified Yocha Dehe as the most likely descendant of Native American human remains found in Vallejo and Solano County. Indeed, Yocha Dehe is party to a cultural easement agreement with the City of Vallejo to protect Patwin cultural sites in Vallejo parks. Over the years, Yocha Dehe has worked with property owners, developers, and regulatory agencies to protect Patwin cultural resources at hundreds of sites throughout Solano County and its surrounds.

In fact, Patwin cultural resources are known to exist on the Vallejo Property itself. And, consistent with its obligations under state law, the City of Vallejo has previously consulted with Yocha Dehe as a culturally affiliated tribe regarding a development known as “Solano Ranch” which has been proposed (by a non-tribal developer) for the 32-acre eastern parcels.

Consistent with the strict gaming eligibility requirements of the Indian Gaming Regulatory Act (“IGRA”), Yocha Dehe operates the Cache Creek Casino Resort on its own tribal trust lands. Cache Creek primarily draws its customers from the San Francisco Bay Area, via Interstate Highway 80 – a thoroughfare that passes immediately adjacent to the Vallejo Site. Revenues generated by Cache Creek are used to fund Yocha Dehe’s government, including education, employment, housing, and health care programs and services for Tribal citizens, as well as cultural resource protection programs such as (but not limited to) those described above. Experts confirm that approval of Scotts Valley’s request would result in steep cuts to Yocha Dehe’s tribal programs and services.¹

¹ In connection with Scotts Valley’s original 2016 Application and 2017 Supplement concerning the 128-acre parcel (briefly summarized in the text below), a group of gaming industry experts evaluated the fiscal and economic impacts of Scotts Valley’s request. *See Scotts Valley Band of Pomo Indians v. United States*, Case No. 19-cv-1544-ABJ, ECF 17-2, 19-1. Among other things, they found that approving Scotts Valley’s request would reduce Yocha Dehe’s revenues by 43%, forcing the Tribe to implement significant reductions in Tribal programs and services. *Id.* No party disputed these figures or conclusions. In response to the (much larger) proposed action in BIA’s 2024 Environmental Assessment on Scotts Valley’s Casino and Tribal Housing Project (also discussed in the text below), experts again found that Yocha Dehe would suffer significant decreases in governmental revenues, with steep reductions in Tribal programs and services. *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Part IX and Exhibit E.

Scotts Valley submitted a Fee-to-Trust Application for the 128-acre western parcel in the fall of 2016. The 2016 Application proposed development of the 128-acre parcel, including a 113,000 square-foot casino, a 104,335 square-foot hotel, and various casino-related restaurants and retail establishments. In a sworn declaration submitted with the 2016 Application, Scotts Valley's tribal secretary stated that the development would also include "homes to house most, if not all, of [Scotts Valley's] members." The 2016 Application did not include or otherwise address the 32-acre eastern parcels.

In 2017, Scotts Valley submitted a "Supplement" to the 2016 Application. The 2017 Supplement provided additional information about Scotts Valley demographics and addressed several regulatory issues. In a sworn declaration accompanying the 2017 Supplement, Scotts Valley's tribal secretary stated that the 128-acre parcel would be developed with a casino, a hotel, and "a minimum of 100 housing units."² In a sworn declaration of his own, Scotts Valley's Chairman stated that the 128-acre parcel would be built out with a casino, resort, government center, community center, and 100-125 tribal houses.³ The 2017 Supplement did not include or otherwise address the 32-acre eastern parcels.

In 2019, the Department of the Interior issued an Indian Lands Opinion finding the 128-acre parcel did not satisfy the Indian Gaming Regulatory Act's "Restored Lands" exception because Scotts Valley lacks a significant historical connection to that property. Scotts Valley later challenged the Indian Lands Opinion and several years of litigation ensued.

Meanwhile, in early 2020, the City of Vallejo notified Yocha Dehe of a large commercial and retail mixed-use project known as "Solano Ranch" which had been proposed by a non-tribal developer just east of the 128-acre parcel. The notice was issued pursuant to the City's obligation to consult with culturally affiliated tribes under California law. Over the next two years, the City, the Solano Ranch developer, and Yocha Dehe continued to exchange information about the Solano Ranch site and the significant likelihood that Patwin cultural resources could be found there.

² Declaration of Gabriel Ray, Tribal Secretary (Nov. 29, 2017).

³ Declaration of Shawn Davis, Tribal Chairman (Nov. 29, 2017).

On May 1, 2024, the City of Vallejo issued a formal Notice of Preparation (“NOP”) for an Environmental Impact Report (“EIR”) on the Solano Ranch Project pursuant to the California Environmental Quality Act (“CEQA”).⁴ The Solano Ranch Project is described as 21.34 acres of residential and commercial development, including 32,725 square feet of retail use and 264 multi-family residential units, all within the eastern parcels of the Vallejo Property. The NOP explains that a full EIR (the most comprehensive level of environmental review under CEQA) is needed due to the Solano Ranch Project’s potentially significant environmental effects – including potentially significant effects on tribal cultural resources.⁵ The NOP identifies the developer of the Solano Ranch Project as GTL Properties, LLC; Scotts Valley is not mentioned or referenced in any way, and the NOP’s site plans do not identify the 128-acre parcel as being within the same “project site.”

In a letter dated June 4, 2024, Scotts Valley’s Chairman requested that the 32-acre eastern parcels be added to the 2016 fee-to-trust Application for the 128-acre western parcel. The letter argued that it was “critical” to add the eastern parcels to ensure access to the 128-acre parcel. The letter did not disclose any other development plans for the eastern parcels. The letter enclosed Scotts Valley Tribal Council resolutions reciting that the band had an opportunity to enter a “letter of intent” to subsequently purchase the eastern parcels from GTL Properties, LLC; however, neither the letter of intent nor GTL’s ownership information for the eastern parcels was attached to the letter.

Over the July 4 holiday weekend, without prior notice to affected tribes, local or state agencies, or other interested parties, BIA released a National Environmental Policy Act (“NEPA”) Environmental Assessment (“EA”) addressing Scotts Valley’s fee-to-trust request. The EA’s “proposed action” involved development of a 600,000 square-foot casino and 24 units of housing for Scotts Valley members. The EA did not disclose or address Scotts Valley’s plans to also develop a large hotel and more than 100 housing units on the 128-acre parcel. Nor did it evaluate the alternative of building a smaller casino, as the 2016 Application had proposed. Nor, for that matter, did the EA disclose or address the Solano Ranch Project proposal on the 32-acre eastern parcels; instead, the

⁴ The Notice of Preparation and related documents are available at <https://ceqanet.opr.ca.gov/2024050033>.

⁵ See note 4.

EA shows the eastern parcels as containing only an access road. A 45-day comment period was provided for comments on the EA.

On July 11, 2024, Yocha Dehe received the NOA by mail. (You appear to have executed the document on July 5, 2024, but the document itself is undated.) The NOA vaguely noted that the Vallejo Property would be used for development of a casino resort complex, tribal housing, and government headquarters; no specifics were provided, and the Solano Ranch Project was not mentioned. The NOA set a 30-day comment period, running from the date of receipt – a period overlapping with the EA comment period referenced above. The NOA also promised that a copy of the Scotts Valley fee-to-trust application would be available for review at BIA’s Pacific Regional Office and directed interested parties to contact the Pacific Region’s Deputy Realty Officer to make arrangements.

Yocha Dehe promptly contacted the Pacific Region’s Deputy Realty Officer. There was no substantive response until July 29, 2024, when she stated that the application file could be made available digitally. Portions of the application file were finally provided on August 2, 2024, but several others were withheld. Yocha Dehe further followed up, seeking clarity on which files had been withheld and why. Finally, on August 19, 2024, the Deputy Realty Officer finally provided an additional document from the applicationfile, identified the documents she had withheld, and confirmed that Scotts Valley had submitted nothing else.⁶

In the meantime, on July 22, 2024, Yocha Dehe requested a 45-day extension of the NOA comment period. Among other things, the extension request explained that substantial additional time was needed because (i) Yocha Dehe had not received any response to its request to review the application file; and (ii) the NOA comment period overlapped almost completely with the EA comment period, and it was not possible to meaningfully review and comment on both documents simultaneously. Yocha Dehe also noted that requests for extension of fee-to-trust comment periods are routinely granted – particularly to tribal requesters.

On August 1, 2024, the Pacific Regional Office denied Yocha Dehe’s request for a 45-day extension, providing just 15 days (to August 26) instead. As noted above, BIA’s failure

⁶ For avoidance of ambiguity, we have attached a list of the documents BIA confirmed to be “in the file” as of August 19, 2024.

to provide timely access to – and responses regarding – the fee-to-trust application meant that Yocha Dehe did not have confirmation of the scope and contents of the application file until August 19. In other words, Yocha Dehe has been given just seven days to comment following BIA’s disclosure of the full scope of the application file.

II. Comments on Application

BIA’s review of Scotts Valley’s fee-to-trust application is governed by 25 C.F.R. Part 151 and the agency’s own *Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)* (the “BIA Handbook”),⁷ which establishes “standard procedures used by the [BIA] for the transfer of fee land into trust or restricted status.”⁸ Together, they provide tribal applicants, BIA, and other interested parties with clear, step-by-step directions on what must be included in a fee-to-trust application, the process by which that information is to be reviewed, and how the BIA will reach a final determination.

The BIA Handbook provides that most of the agency’s review and analysis should take place before an NOA is issued.⁹ This makes good sense. Among other things, it helps ensure interested parties have an opportunity to review and comment on a complete application, with all relevant information provided. Thus, between Step 1 (Encoding the Fee-to-Trust System of Record), and Steps 6 (Preparing Notice of Application) and 7 (Environmental Compliance Review there are numerous, detailed requirements the agency must complete.¹⁰

Here, in what appears to be a politically-motivated rush toward a pre-determined outcome, the BIA seems to have skipped most of those intermediate steps. This is deeply problematic in multiple respects. First, it denies parties interested in Scotts Valley’s application – including Yocha Dehe and several other federally recognized

⁷ Release # 16-27, Version IV (rev. 1), Issued 6/28/16.

⁸ BIA Handbook at 4.

⁹ In fact, to complement the BIA Handbook, the BIA has also issued a flow chart (“Quick Reference Guide”) found at https://www.bia.gov/sites/default/files/dup/assets/bia/ots/pdf/Fee-to-Trust_Quick_Reference_Guide.pdf, which states that certain steps “must first” be completed in order to move on to others.

¹⁰ In fact, the Quick Reference Guide states that Steps 1, 2, 3, and 4 “must first” be completed “before moving to Steps 6 & 7”.

tribes who have expressed interest and concern – a meaningful opportunity to review and comment on all relevant information. Second, and more fundamentally, land restoration is a priority for all federally recognized tribes. Everyone should play by the same rules.

a. The Application Fails to Provide Required Information

As an initial matter, Scotts Valley’s application file fails lacks information required by Part 151. This failure is particularly acute for the 32-acre eastern parcels. Although Scotts Valley provided BIA with a letter requesting that those parcels be added to its 2016 Application, the Band did not submit a full application package. As a result, the file lacks necessary and important information:

- There is no description of the purposes for which the eastern parcels will be used. 25 C.F.R §§ 151.10(c), 151.11(a). This is a particularly important omission given ongoing uncertainty about the status of the Solano Ranch Project, which is proposed for those very same parcels.
- There is no tax information for the eastern parcels. 25 C.F.R §§ 151.10(e), 151.11(a).
- There is no discussion about whether BIA is equipped to discharge additional responsibilities associated with the eastern parcels. 25 C.F.R §§ 151.10(e), 151.11(a). This is significant given (i) the uncertain status of the Solano Ranch project; (ii) the fact that access and utilities for the 128-acre parcel may need to cross through the eastern parcels for connection off-site; and (iii) evidence of landslides and other geotechnical issues on the eastern parcels.
- There is no business plan for the eastern parcels. 25 C.F.R §§ 151.11(c).¹¹
- There does not appear to be any title information for the eastern parcels. 25 C.F.R §§ 151.13(a). In fact, Scotts Valley’s 2024 “application letter” appears to confirm that it lacked title, had no clear legal right to acquire it, and had not received updated title commitments.

¹¹ It is worth noting that the absence of a business plan should also weigh against Scotts Valley for purposes of the balancing analysis described in Part II.f, below. See 63 IBIA 75, 88-89 (May 25, 2016).

- There is no Phase I Environmental Site Assessment for the eastern parcels. *See also* Part II.e, below.

In short, the application file lacks substantial information that is required by law.

b. The NOA Was Procedurally Improper

In light of the above, the NOA was procedurally improper. Each of the items referenced above in Part 1.a must be provided by Scotts Valley, the fee-to-trust applicant. BIA is not authorized to fill in the gaps. In the absence of necessary information, BIA must provide a written notice to that effect.¹² No such notice appears to have been issued here. Instead, BIA issued the NOA – a step that is only supposed to occur after an application is complete. For that reason alone, the NOA was procedurally improper.

In that regard, it is worth repeating the timing of BIA's actions. Scotts Valley's fee-to-trust application had been pending since 2016, without meaningful BIA action of any kind. On June 4, 2024, Scotts Valley submitted a facially inadequate request for a material addition to the 2016 application. And, within the space of a few short weeks, BIA rushed out an NOA. No reasonable person would believe BIA carefully complied with the steps required in the interim – and certainly the application file provides no evidence of such compliance. We are not aware of any other circumstance in which BIA has proceeded so quickly, with such flagrant disregard for its own procedures and processes.

BIA's handling of the NOA comment period was particularly unreasonable as it relates to Yocha Dehe, which (as noted above) has been given just seven days to comment following BIA's disclosure of the full scope of the application file.

¹² *See* BIA Handbook, pp. 10-15 (Steps 2 (outlining all required information) and 3 (outlining BIA's response to an incomplete application)).

c. BIA Failed to Follow the Title Review Process

It is clear that the title review process required under 25 C.F.R. § 151.13(b) has not been followed here. A positive Preliminary Title Opinion (PTO) has not and cannot be issued. Indeed, title appears to be unmarketable in contravention of § 151.13(b):

- The 128-acre parcel is subject to an easement for a City of Vallejo water line (the “Water Line Easement”) which, among other things, grants perpetual access and prohibits the construction of any building in the easement area. The easement allows “laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using, as the Grantee may see fit, for pumping, transmission and distribution facilities, a pipe or pipelines and... all necessary appurtenances under, across, and along... the parcels of land...” It also grants the right of ingress and egress to the easement holder across the adjacent lands of the owner of the servient tenement, by any practical means suitable for vehicle passage and the “right to extend outs and fills necessary for the construction, maintenance and/or repair of said water facilities outside of, but along and adjacent to, said perpetual easement and right of way.” And it provides that the landowner “**shall not erect or construct any building or other structure or improvements**” or “perform any change in ground elevation which will reduce the earth cover less than 2 ½ feet above the top of the pipe nor increase the earth cover more than 5 feet above the top of the pipe without prior approval of the City of Vallejo” or “drill or operate any sort of well within the boundaries of said easement and right-of-way.” Instead, use of the parcel is limited to: “cattle grazing, crop cultivation, or such other use as shall not interfere with the rights of the Grantee herein recited” a result of this easement. Scotts Valley’s proposed use of the 128-acre parcel cannot be reconciled with the terms of the Water Line Easement. In fact, the grading and site plans presented in the EA appear to contemplate building a portion of Scotts Valley’s proposed casino structure within the easement area. Should the United States acquire the land in trust, and Scotts Valley proceed with the proposed development, the United States would be in contravention of its obligations under the Water Line Easement, subjecting the United States to liability, not to mention calling into question the feasibility of the project, as proposed.
- The 128-acre parcel is also subject to multiple easements for high-voltage transmission lines (the “Power Line Easements”). Both Power Line Easements

allow third parties access to the 128-acre parcel and prohibit building within the easement area. With respect to the Power Line Easement along the west side of the 128-acre parcel, the grading and site plans presented in the EA appear to call for grading a (substandard) fill slope that would bury one of the transmission towers to a depth of roughly 20 feet – an impermissible encroachment that could subject the United to very significant liability. As for the Power Line Easement along the northern and eastern portion of the 128-acre parcel, it runs through an area that the EA proposes to set aside as a “preserve” for endangered species, is immediately adjacent to proposed tribal housing, and is located within a landslide zone. Approval of Scotts Valley’s proposed action would involve extensive grading of the landslide area, exposing the United States to liability for any resulting damage to the power lines located within the same landslide. It would also create liability arising from the irreconcilable tension between the legal obligation to avoid “take” of endangered plant and animal species (on one hand) and the legal obligation to allow third-party maintenance, repair, and replacement of the power lines (on the other) within the same portion of the 128-acre parcel.

- The 128-acre parcel is subject to title exceptions providing that “ownership of said land does not include rights of access to or from the street, highway, or freeway abutting such land, such rights having been relinquished...”¹³ In other words, the 128-acre parcel lacks access to public road infrastructure and appears to be landlocked.
- As noted above, Scotts Valley does not appear to have provided – and BIA does not appear to have reviewed – title evidence for the 32-acre eastern parcels, a fundamental defect in and of itself. Moreover, a preliminary title report on those parcels reveals several exceptions that may significantly limit their use and development, exposing the United States to substantial liability:
 - At least one of the eastern parcels appears to be subject to an easement (held by the City of Vallejo) for utility purposes exclusive road construction (and maintenance) purposes.

¹³ Instrument No. 6389, Book 479, Page 245 of Official Records; Instrument No. 6978, Book 1072, Page 15 of Official Records; Instrument No. 6079, Book 1072, Page 20, of Official Records; Instrument No. 6679, Book 1189, Page 609; Instrument No. 8056, Book 1744, Page 151 of Official Records.

- The eastern parcels appear to be subject to an additional water line easement.
- The eastern parcels also appear to be subject to an additional power line easement.

A comprehensive title review may reveal additional issues.

In a similar vein, it is also worth noting that the application file lacks clear evidence that BIA conducted a proper Legal Land Description survey and analysis, as required by the BIA Handbook. This is a critical step in the Part 151 process, as it verifies both the acreage proposed to be acquired in trust and the locations of any easements, right-of-way, etc. Without this information, neither the BIA nor interested parties can meaningfully review the extent to which title may limit permissible land uses or expose the United States to liability.

d. Granting the Application Would Cause Serious Jurisdictional Problems and Land Use Conflicts

The Part 151 regulations require BIA to carefully evaluate “jurisdictional conflicts” and “potential conflicts of land use which may arise.” 25 C.F.R. §§ 151.10(f), 151.11(a),(d). The application file lacks the information necessary for this essential analysis.

- Scotts Valley has provided no information or analysis of jurisdictional problems or land use conflicts for the eastern parcels. As noted elsewhere, this is a critical issue because the Solano Ranch Project, for which the City of Vallejo currently serves as the lead agency for permitting and environmental review, is proposed for those very same parcels.
- The portion of the 128-acre parcel on which Scotts Valley has proposed to develop a 600,000 square-foot casino is currently set aside as open space (under both the Vallejo General Plan and applicable zoning) in recognition of its sensitive ecological features. Scotts Valley’s 2016 representation to the contrary¹⁴ is inaccurate.

¹⁴ See 2016 Application at 27.

- The EA purports to mitigate significant environmental issues by imposing a host of restrictions on Scotts Valley’s activities on the 128-acre parcel, many of which relate specifically to proposed Scotts Valley tribal member housing. Neither the EA nor the application file meaningfully addresses the jurisdictional conflicts inherent in the purported enforceability (if any) of such measures.
- Scotts Valley’s application threatens to strip Yocha Dehe of its current rights under state laws governing appropriate treatment of tribal cultural resources. The Vallejo Property is currently subject to state laws which effectively provide that when Native American human remains and associated cultural resources are found within Patwin ancestral territory, Patwin tribes like Yocha Dehe are entitled to play a primary role in determining the most appropriate treatment. *See* Cal. Health & Safety Code §§ 5097.9-5097.98, 7050.5. Approving the Project would place the land into trust, at which point the Native American Graves and Repatriation Act (“NAGPRA”) would apply. Unlike state law, NAGPRA prioritizes proximity over ancestral affiliation. *See* 43 C.F.R. § 10.7. As a result, Yocha Dehe would be deprived of its current right to determine proper treatment of its Patwin ancestors.
- In a similar vein, approval of the proposed fee-to-trust transfer would present another irreconcilable land use conflict: Scotts Valley is proposing to bulldoze a known Patwin cultural site in order to build its casino.¹⁵
- Scotts Valley’s proposed use of the Vallejo Property is infeasible without water and wastewater service from local agencies.¹⁶ Non-tribal fire protection and law enforcement also appears to be necessary. The application file contains no information meaningfully addressing this issue.

Additional land use and environmental conflicts are identified in Yocha Dehe’s comments on the EA.¹⁷

¹⁵ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Parts VI, VII, and Exhibits A, D, and C.

¹⁶ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Parts VI, VII, and Exhibits A, D, and C.

¹⁷ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024).

e. The Application Does Not Permit Compliance With NEPA or Hazardous Substances Policy

Part 151 also requires a fee-to-trust applicant to provide information allowing BIA to comply with (i) NEPA and (ii) agency policy concerning hazardous substances liability and determinations. *See* 25 C.F.R. § 151.10.10(h), 151.11(a). Here, again, the application file is lacking:

- To comply with NEPA, BIA must identify, disclose, evaluate, and consider alternatives to any reasonably foreseeable actions planned or proposed for the trust properties. Here, the application file and the EA cannot be reconciled.
 - The Solano Ranch Project is proposed for three of the four parcels within Scotts Valley's application. But the application file is silent as to Solano Ranch. And so, too, is the EA – a critical defect.¹⁸
 - The application states that a 113,000 square-foot casino will be developed on the 128-acre parcel. The proposed action in the EA calls for a 600,000 square-foot casino on that same parcel. The EA claims nothing smaller would be feasible, contrary to the application.¹⁹
 - The application and supporting declarations state that Scotts Valley plans to build a 104,355 square-foot hotel on the 128-acre parcel. The EA fails to evaluate a hotel development.²⁰
 - The application and supporting declarations state that Scotts Valley plans to build at least 100 units of housing on the 128-acre parcel. The EA only evaluates 24.²¹

¹⁸ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Part I.A.

¹⁹ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Part XV and Exhibits D and E.

²⁰ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Part I.A.

²¹ *See* Letter from Chairman Anthony Roberts to Chad Broussard (Aug. 22, 2024), Part I.A.

- With respect to hazardous substances, 602 DM 2 requires BIA to conduct environmental due diligence, consistent with the Environmental Protection Agency standard for All Appropriate Inquiry, on all properties proposed for acquisition in trust. The first step in this process is normally to prepare a Phase I environmental site assessment. The application file contains no Phase I for the eastern parcels. This is a significant omission given (i) the history of mercury mining at and around the Vallejo Property; and (ii) the landslide zones extending into both the 128-acre parcel and the eastern parcels.

f. The Application Does Not Withstand “Greater Scrutiny”

Under 25 C.F.R. § 151.11(b), “as the distance between the [applicant] tribe’s reservation and the land to be acquired increases, the [BIA] shall give greater scrutiny to the [applicant] tribe’s justification of anticipated benefits from the acquisition” as well as “greater weight” to concerns raised in opposition. The Vallejo Property is more than 100 miles from Scotts Valley’s former reservation near Clear Lake. “Greater scrutiny” is therefore required.

Scotts Valley’s application glosses over the distance between its former reservation and the Vallejo property. Instead, it argues that 25 Scotts Valley member residences are within a 36-mile radius of the Vallejo Property. That statistic is not nearly as compelling as Scotts Valley may believe. A circle with a 36-mile radius covers more than 4,000 square miles. And in the Bay Area, traveling 72 miles (the diameter of Scotts Valley’s “target area”) can easily take two hours on a normal day. The fact that Scotts Valley can point to just 25 households in such a large portion of a vast metropolitan area seems to confirm that its fee-to-trust application *lacks* justification.

Scotts Valley also argues that the Vallejo Property is near its “southern governmental office.” This claim does not withstand scrutiny either. In the early 2000s, when Scotts Valley sought to “restore” a homeland in Richmond, California, the Band rented a southern governmental office in Richmond. Now that Scotts Valley has set its sights on Vallejo, it has rented a southern governmental office closer to that location. If Scotts Valley had been able to find a potential development site in Napa or Berkeley or Oakland or Hayward, it would have rented a “southern governmental office” in one of those locations. The location of Scotts Valley’s rented office space does not establish its entitlement to the proposed trust acquisition.

Scotts Valley further contends that the Vallejo Property is close to the Band's "Service Area." Again, even minimal scrutiny would be enough to reject the argument. A Service Area is self-designated; like the rental of office space, it provides no independent, objective justification for acquiring trust land in a particular location. That is particularly true here. The Service Area identified in Scotts Valley's application file is vast, stretching from northern Mendocino County to southern Contra Costa County – a distance of roughly 200 miles. *But it does not, in fact, include Vallejo.*

In the end, Scotts Valley's justification boils down to this: Vallejo appears to be a good gaming market, and it would be convenient to the 25 Scotts Valley households who currently reside in a 4,000 square-mile portion of the Bay Area. That is not enough to withstand the "greater scrutiny" required under Part 151.

Of course, none of this means Scotts Valley should be prohibited from restoring *any* homeland for its people. It simply means the Band cannot meet the high standard for doing so *in Vallejo*.

Indeed, Yocha Dehe is sympathetic to Scotts Valley's unfortunate history of termination, and does not seek to prevent Scotts Valley from restoring lands to support its government and its people. But many tribes throughout California share this same, tragic history. And many more tribes refused termination, fighting to maintain their sovereignty through grinding poverty during the 1960s, 1970s, and 1980s – long before tribal gaming took off.

Other tribes have not been permitted to "restore" lands so far from their original homelands simply because the market seemed bigger or the location seemed more convenient. As a matter of fundamental fairness, neither should Scotts Valley. Yocha Dehe would be pleased to support efforts to restore a homeland for Scotts Valley within the Band's ancestral territory in Clear Lake.

III. Conclusion

As explained above, Scotts Valley's fee-to-trust application is incomplete, interested parties have been precluded from meaningful comment, and the BIA lacks sufficient information to approve the proposed trust acquisition. If BIA is inclined to reach a final decision on this record, it must deny the application. Alternatively, the agency may

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issue Scotts Valley a written Notice of Incomplete Application, consistent with the BIA Handbook. If Scotts Valley subsequently provides the information required for a complete application, a second NOA should be issued to ensure interested parties have a meaningful opportunity to provide comments on the full application file.

Respectfully submitted,

A handwritten signature in blue ink that reads "Matthew Adams".

Matthew Adams

cc: Tribal Council, Yocha Dehe Wintun Nation
Sarah Choi, Yocha Dehe Wintun Nation

Enclosures