No. 21-___

IN THE

Supreme Court of the United States

STAND UP FOR CALIFORNIA!, ET AL.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.,

Respondents,

AND

WILTON RANCHERIA, CALIFORNIA,

Intervenor-Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The California Rancheria Termination Act of 1958 directed the Secretary of the Interior to distribute the land and assets of 41 rancherias to resident Indians. Pub. L. No. 85-671, 72 Stat. 619. The Indians who received a distribution of rancheria property ceased to be eligible for services provided to Indians, and federal statutes affecting Indians no longer applied to them. § 10(b), 72 Stat. 621.

The Indians living on the Wilton Rancheria voted to be included in the Act, and federal supervision over them was terminated. Decades later, the Secretary declared that the Wilton Indians were once again entitled to Indian services. The Secretary then acquired land in trust on their behalf under Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. § 5108, which authorizes the Secretary to acquire land "for the purpose of providing land for Indians."

The question presented is:

Whether the Secretary can acquire land in trust on behalf of Indians whose federal supervision was terminated by Congress.

PARTIES TO THE PROCEEDING

Petitioners are Stand Up for California!, an entity registered with the California Secretary of State as a nonprofit, public service corporation; and individuals Patty Johnson, Joe Teixeira, and Lynn Wheat.

Respondents who were defendants and appellees below are the Department of the Interior; Debra A. Haaland, in her official capacity as Secretary of the Department of the Interior; Bryan Newland, in his official capacity as Assistant Secretary–Indian Affairs of the Department of the Interior; the Bureau of Indian Affairs of the Department of the Interior; and Amy Dutchske, in her official capacity as Pacific Regional Director, Bureau of Indian Affairs.*

The Wilton Rancheria was an intervenor and appellee below and is a respondent here.

RULE 29.6 STATEMENT

Stand Up for California! represents that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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* In the court of appeals, Secretary Haaland was automatically substituted for her predecessor under Federal Rule of Appellate Procedure 43(c)(2). In the courts below, defendants-appellants included David L. Bernhardt, Ryan K. Zinke, and Sally Jewell.

Secretary Newland was automatically substituted for his predecessor under Federal Rule of Appellate Procedure 43(c)(2). In the courts below, defendants-appellants included John Tahsuda III, Tara Sweeney, Michael S. Black, and Lawrence S. Roberts.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are related to this case:

Stand Up for California! v. U.S. Dep't of the Interior, No. 1:17-cv-00058, 298 F. Supp. 3d 136 (D.D.C. Feb. 28, 2018) (granting summary judgment on Counts I and II in favor of defendants).

Stand Up for California! v. U.S. Dep't of the Interior, No. 1:17-cv-00058, 410 F. Supp. 3d 39 (D.D.C. Oct. 7, 2019) (granting summary judgment on Counts III through V in favor of federal defendants).

Stand Up for California! v. U.S. Dep't of the Interior, No. 19-5285, 994 F.3d 616 (D.C. Cir. Apr. 16, 2021) (affirming summary judgment for defendants; denying petition for rehearing en banc on June 11, 2021).

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Stand Up for California!, Patty Johnson, Joe Teixeira, and Lynn Wheat respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 3a–30a) and order denying rehearing en banc (App., *infra*, 1a–2a) are reported at 994 F.3d 616. The opinion of the district court (App., *infra*, 31a–74a) is reported at 410 F. Supp. 3d 39.

JURISDICTION

The court of appeals issued its opinion on April 16, 2021, and denied rehearing en banc on June 11, 2021. On March 19, 2020, this Court issued an order extending the filing deadline for all petitions for certiorari to 150 days from the date of the lower court's order denying discretionary review. On July 19, 2021, this Court rescinded that order, but only for petitions for certiorari from judgments issued after that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The California Rancheria Termination Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, 621 (App., *infra*, 147a–154a) provides in pertinent part:

> That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be

> distributed in accordance with the provisions of this Act: . . .
>
> * * *
>
> After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them. . . .

The Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (App., *infra*, 155a–158a) provides in pertinent part:

> Congress finds that—
>
> * * *
>
> (3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;" or by a decision of a United States court;
>
> * * *
>
> (5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated; . . .

INTRODUCTION

In 1958, Congress directed the Secretary of the Interior to distribute the property and assets of 41 California rancherias whose members voted to terminate federal supervision and obtain fee title to rancheria lands. California Rancheria Termination Act of 1958, Pub. L. No. 85-671, 72 Stat. 619. The Indians who received a distribution under the Termination Act are ineligible for Indian services, and "all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them." § 10(b), 72 Stat. 621 (App., *infra*, 153a).

The Indian Reorganization Act of 1934 (IRA), ch. 576, 48 Stat. 984 (25 U.S.C. 5101, *et seq*.), is one such statute. Section 5 of the IRA authorizes the Secretary to acquire land in trust, but only "for the purpose of providing land for Indians." 25 U.S.C. § 5108; *Carcieri v. Salazar*, 555 U.S. 379, 393 (2009). As a result, any Indians who received rancheria assets under the Termination Act cannot qualify for trust land because Section 5 of the IRA is inapplicable to them.

The Wilton Indians received fee title to rancheria property under the Termination Act in 1961, and the Secretary terminated federal supervision in 1964. Yet the Secretary acquired trust land on their behalf decades later, citing a 2009 court-approved settlement purporting to relieve the Wilton Indians from the effects of the Termination Act.

The court of appeals agreed and held that "a court-approved settlement agreement is sufficient to restore recognition of a tribe *and* to restore Indian status for members of that tribe . . . ." App., *infra*, 22a. That decision conflicts with the plain language of the

Termination Act and ignores authority requiring a consent decree to further the objectives of the statute on which it is based. *See Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 525 (1986).

Acquiring land in trust disrupts the jurisdictional balance among the federal government, the states, and tribes. This disruption is felt acutely in California, where the Secretary acquires land in trust on behalf of 109 federally recognized tribes, including dozens that were terminated under the same circumstances as Wilton. Whether the Secretary has such power is the same fundamental question that this Court deemed worthy of review in *Carcieri*.

As the Court recently observed, "[i]f Congress wishes to withdraw its promises, it must say so." *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2482 (2020). Here, it did—in unequivocal terms. Whether the Secretary can undo Congress's work warrants review by this Court.

STATEMENT

1. Between 1893 and 1929, Congress passed a series of appropriations acts to provide funds to purchase small tracts of land for homeless Indians living in central and northern California. *See, e.g.*, Act of Jun. 21, 1906, Pub. L. No. 257, 34 Stat. 325, 333; Act of Aug. 1, 1914, Pub. L. No. 160, 38 Stat. 582, 589. Using appropriated funds, the Secretary purchased approximately 54 "rancherias."[1]

Congress passed the IRA in 1934 to repudiate the allotment policies of the late 19th century, provide

[1] *See* https://libguides.sdsu.edu/c.php?g=494769&p=3389018.

for the health and welfare of Indians, and encourage the reestablishment of tribal organization. *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 650 n.1 (2001); *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 254–56 (1992). The Indians living on many of the rancherias chose to organize under the Act.[2] Still, the Act had assimilationist underpinnings, and the expectation was that Indians would transition away from federal supervision. *See* Charles F. Wilkinson & Eric R. Biggs, *The Evolution of the Termination Policy*, 5 AM. INDIAN L. REV. 139, 145 (1977). By the 1940s, frustration with the slow progress of assimilation under the IRA grew, and Congress began to debate bills providing for the emancipation of Indians. *Id.* at 145–148.

After almost a decade of hearings and investigations, Congress adopted termination as official congressional policy. *See* House Concurrent Resolution 108, 67 Stat. B132, 150 (1953) (H.R. 108) (declaring it "to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California . . . should be freed from Federal supervision and control").

2. Congress enacted the Termination Act in furtherance of H.R. 108. *See Hearings before the Subcommittee on Indian Affairs on H.R. 2576 [and other] bills to provide for the distribution of the land and*

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[2] *See* Theodore H. Haas, *Ten Years of Tribal Government Under the I.R.A.*, U.S. Indian Service (1947), https://www.doi.gov/sites/doi.gov/files/migrated/library/internet/subject/upload/Haas-TenYears.pdf.

assets of certain Indian rancherias and reservations in California, and for other purposes, 85th Cong. 11 (1957) (*Hearings*) (Statement of Hatfield Chilson, Acting Secretary of the Interior). Only those rancheria groups that, by a majority vote, sought "immediate termination of Federal trust responsibilities without waiting for the enactment of a bill of statewide applicability" were included in the Act. *Id.*

The Termination Act provides that "the lands, including minerals, water rights, and improvements located on the lands, and other assets of the [enumerated rancherias] shall be distributed" under a distribution plan jointly developed and approved by the Secretary and resident Indians. Termination Act §§ 1, 2, 72 Stat. 619 (App., *infra*, 147a–148a). Indians who receive "any part" of rancheria assets (and their dependents) cease to be eligible for Indian services and "all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them." *Id.* at 153a, § 10(b).

3. The Wilton Rancheria is one of the 41 rancherias named in the Termination Act. *Id.* at 147a, § 1. In 1955, the Indians living on the rancheria requested by formal resolution that they be given fee title to their assignments. *Hearings* 19. The Wilton Indians and the Secretary then developed a distribution plan in 1958 that was formally noticed and approved in 1959. App., *infra*, 6a, 128a–139a. The Secretary transferred fee title to rancheria lands to the Wilton Indians in 1961. *Id.* at 144a–146a. Later, the Department installed sanitation facilities at the Indians' request. *Id.* at 142a–143a.

In September 1964, the Secretary published notice that the distributees and their dependents were no

longer "entitled to any of the services performed by the United States for Indians because of their status as Indians." *Termination of Federal Supervision*, 29 Fed. Reg. 13,146 (Sept. 15, 1964).

4. More than 40 years after termination, the Wilton Indians sued the Department seeking restoration. Compl., *Wilton Miwok Rancheria v. Kempthorne*, No. 07-02681 (N.D. Cal., May 21, 2007), ECF No. 1. They alleged that the Department had failed to provide adequate road, water, and sanitation improvements and had breached its fiduciary duties in formulating the 1958 distribution plan. *Id.* ¶ 1. After extended negotiations, the parties stipulated that Wilton had not been lawfully terminated and that the Department would restore them and acquire land in trust on their behalf. App., *infra*, 108a–127a. The California district court entered judgment. *Id.* at 111a–112a.

In 2017, the Secretary acquired 35.92 acres of land in Elk Grove, California in trust for the Tribe. *Land Acquisitions; Wilton Rancheria*, 86 Fed. Reg. 32,974 (June 23, 2021). The Secretary reasoned that the trust acquisition was not contrary to the Termination Act because the United States is bound by the stipulated judgment, and the petitioners "have no standing to challenge it, more than seven years later." App., *infra*, 92a. In her view, "the List Act confirms that a court-approved settlement agreement . . . is a 'decision of a United States court' that can restore" Wilton's status. *Id.* at 97a–98a.

5. The petitioners challenged the trust decision in the United States District Court for the District of Columbia, invoking that court's jurisdiction under 28 U.S.C. § 1331. Wilton Rancheria intervened. The

district court granted summary judgment for respondents. App., *infra*, 73a–74a. Although the court acknowledged that the "stark language" of the Termination Act supported petitioners' argument, it held that the stipulated settlement relieved the Wilton Indians from the Termination Act's effects. *Id.* at 39a, 40a. The court also cited the "Findings" section in the List Act, which it reasoned "specifically authorized the restoration of terminated tribes to their pre-[Termination Act] status." *Id.* at 41a.

The court of appeals affirmed, also concluding that "a court-approved settlement agreement is sufficient to restore recognition of a tribe *and* to restore Indian status for members of that tribe notwithstanding the [Termination] Act." *Id.* at 22a. The court acknowledged that the List Act does not "expressly authorize the recognition of tribes through court decisions," but read the Act as confirming that courts can recognize tribes in the circumstances presented here. *Id.* at 23a.

Rehearing en banc was denied on June 11, 2021. *Id.* at 1a–2a.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari to clarify that the Secretary cannot acquire land in trust for Indians whose federal supervision was terminated by Congress.

The Secretary cannot circumvent an act of Congress. U.S. Const. art. II, § 3 (requiring the Executive to "take care that the Laws be faithfully executed"). The decision below departs from this fundamental principle, warranting this Court's review.

A. Congress passed the Termination Act to end federal supervision over the enumerated rancherias and resident Indians.

Congress directed the Secretary to terminate 41 rancherias in unambiguous terms. The Termination Act states "[t]hat the lands, including minerals, water rights, and improvements located on the lands, and other assets" of 41 rancherias "*shall be distributed* in accordance with" the Act. App., *infra*, 147a, § 1 (emphasis added). The Secretary and the rancheria Indians "shall prepare" a distribution plan, which "shall be carried out" upon approval. *Id.* at 148a, § 2(a),(b). Those receiving rancheria assets "shall not be entitled" to Indian services, and Indian statutes "shall be inapplicable to them." *Id.* at 153a, § 10(b).

The statutory language leaves no doubt as to Congress's intent. The wisdom of its termination policy aside, Congress was clear that it intended to terminate the enumerated rancherias, consistent with its statement of congressional policy in H.R. 108. The Termination Act cannot plausibly be read differently.[3]

[3] Following H.R. 108, Congress terminated approximately 109 tribes in specific termination acts. Wilkinson & Briggs, 5 AM. INDIAN L. REV. at 151. With respect to California tribes, Congress enacted legislation terminating federal supervision over the Indians living on rancherias, but did not terminate other tribes.

B. The stipulated settlement purporting to "restore" the Wilton Indians contravenes the Termination Act and is contrary to this Court's decisions.

Agency power is circumscribed by the authority granted it by Congress. *See, e.g.*, *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power . . . is limited to the authority delegated by Congress."); *Stark v. Wickard*, 321 U.S. 288, 309 (1944). That is just as true when an agency is compromising litigation.

1. A consent decree is a contract that can be enforced as a judicial order. "[I]t is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Local No. 93*, 478 U.S. at 522. Its validity thus depends on the parties' authority to give consent. *See United States v. Beebe*, 180 U.S. 343, 351–55 (1901). For that reason, the parties to a consent decree cannot "agree to take action that conflicts with or violates the statute upon which the complaint was based." *Local No. 93*, 478 U.S. at 526. But that is exactly what the Secretary did in the stipulated settlement.

The Attorney General's role in compromising *Wilton Miwok Rancheria* does not alter the inherent limits on the Secretary's authority. The Fourth Circuit has explained that the Attorney General's broad power to settle cases "does not include license to agree to settlement terms that would violate the civil laws governing the agency." *Exec. Bus. Media, Inc. v. U.S. Dep't of Def.*, 3 F.3d 759, 762 (4th Cir. 1993). That is because "the Attorney General in

representing a government agency is bound by the same laws that control the agency." *Id.*; *accord United States v. Carpenter*, 526 F.3d 1237, 1242 (9th Cir. 2008) ("[w]e think it alien to our concept of law to allow the chief legal officer of the country to violate its laws under the cover of settling litigation") (alternation in original). The court below acknowledged this limitation in other cases, but it failed to apply it here. *See Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1481 (D.C. Cir. 1995) (citing *Exec. Bus. Media*, 3 F.3d at 761).

2. In affirming the Secretary's trust decision, the court of appeals understood the California district court to have "made clear that the Rancheria Act did not apply to Wilton because the Tribe's assets were not distributed pursuant to the law." App., *infra*, 22a. The court found it "irrelevant that some Wilton members may have received assets because those assets were not distributed pursuant to the statute." *Id.*

Even if there had been some deficiency in the distribution of rancheria property, the Secretary still lacked power to "restore" federal supervision via stipulated settlement. A consent decree must (1) "spring from and serve to resolve a dispute within the court's subject-matter jurisdiction"; (2) "'com[e] within the general scope of the case made by the pleadings'"; and (3) "further the objectives of the law upon which the complaint was based." *Local No. 93*, 478 U.S. at 525 (alterations in original) (citations omitted). Here, it did not. The objective of the Termination Act was the termination of federal supervision over rancheria Indians in exchange for fee title to rancheria property. Restoration and new trust acquisitions achieve the opposite.

Adherence to this Court's rules for consent decrees is critical to protect constitutional separation of powers. As Judge Easterbrook observed, those rules "are designed to limit the authority of public officeholders, to make them return to other branches of government or to the voters for permission to engage in certain acts." *Dunn v. Carey*, 808 F.2d 555, 560 (7th Cir. 1986). There, the court allowed a state court challenge to the collection of taxes that local governments agreed to assess under a federal consent decree. In so holding, Judge Easterbrook stressed that courts "must be alert to the possibility that the consent decree is a ploy in some other struggle," such as when parties "have been frustrated by their ability to win political approval" for certain actions. *Id.*

The same concerns are present here. Although Congress has now repudiated its termination policy, and has restored many tribes it terminated, it has not restored the Wilton Indians. In fact, it has not restored most of the rancherias it terminated.[4] Instead, dozens of rancherias have been restored through court-approved settlements. And in each case, the parties have been aligned, agreeing on the statements of facts and the appropriate remedy—restoration.[5] A friendly suit does not support federal

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[4] Congress has restored a handful of rancherias. *See* Auburn Indian Restoration Act, Pub. L. No. 103-434, § 202, 108 Stat. 4533 (1994); Paskenta Rancheria Restoration Act, Pub. L. No. 103-454, § 303, 108 Stat. 4793 (1994); Graton Rancheria Restoration Act, Pub. L. No. 106–568, § 1404, 114 Stat. 2939 (2000).

[5] In *Duncan v. Andrus*, the court restored the Robinson Rancheria, based on an "Agreed Statement of Facts" and the parties' agreement that the rancheria must be "'unterminated.'" 517 F. Supp. 1, 6 (N.D. Cal. 1977). The Hopland Rancheria was restored a year later, under the same circumstances. *See Smith*

jurisdiction. *See Chicago & Grand Trunk Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892).

3. Not only does the stipulated settlement fail to further the objectives of the Termination Act, it is binding only on those two parties. The court of appeals treated the stipulated settlement as precluding petitioners' claims, but a consent decree cannot "conclude the rights of strangers to those proceedings." *Martin v. Wilks*, 490 U.S. 755, 762 (1989); *see* App., *infra*, 40a. "[T]he fact that the parties have consented to the relief contained in a decree does not render their action immune from attack on" other grounds. *Local No. 93*, 478 U.S. at 525–26.

The stipulated settlement does not preclude petitioners' challenge to the Secretary's trust acquisition because "the central characteristic of a consent judgment is that the court has not actually resolved the substance of the issues presented." 18A C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4443 (3d ed. 2021 Update). The court below has recognized in other cases that the issues addressed in stipulated judgments are not "actually litigated" for the purpose of issue preclusion. *See Otherson v. Dep't of Justice, INS*, 711 F.2d 267, 274 (D.C. Cir. 1983). Yet here, it failed to apply its own precedent, as well as that of this Court.

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v. United States, 515 F. Supp. 56, 59 (N.D. Cal. 1978) (same); *Table Bluff Band of Indians v. Andrus*, 532 F. Supp. 255, 258, 259–61, 265 (N.D. Cal. 1981) (same). Nineteen rancherias were restored under *Tillie Hardwick v. United States*, No. 79-cv-1710 (N.D. Cal. Nov. 13, 2020), ECF No. 391.

C. The List Act does not confirm the stipulated settlement or grant the Secretary power to acquire trust land for the Wilton Indians.

The court of appeals supplemented its reliance on the stipulated settlement by pointing to Section 103 of the List Act, which states that "Indian tribes presently may be recognized . . . by a decision of a United States court." App., *infra*, 23a; *id.* at 157a. In the court's view, Section 103 "confirm[s]" that tribes can be recognized by court decisions, such that the stipulated settlement comports with the List Act. *Id.* at 23a. Neither assertion is correct.

1. Section 103 is the "Findings" section. *Id.* at 156a–157a. As such, it does not "confirm" anything—let alone that federal courts can restore congressionally terminated tribes.[6] *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 217 (2012) (quoting Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 255 (2d ed. 1911) (noting that a statute's "statements of facts are neither infallible nor conclusive")). It is true that the Department entered similar settlements in *Tillie Hardwick, Table Bluff Band of Indians*, *Smith*, and *Duncan*. But that does not resolve anything. "Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law." *McGirt*, 140 S. Ct. at 2482.

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[6] The only substantive provision of the List Act merely requires the Secretary to publish a list of all federally recognized tribes in the Federal Register every year. List Act, § 104 (App., *infra*, 158a).

2. By its own terms, Section 103 does not contemplate that congressionally terminated tribes can be judicially restored. Section 103(3) states that tribes "may be recognized" in one of three ways: by an act of Congress, the Department's acknowledgment regulations in 25 C.F.R. part 83, and court decisions. App., *infra*, 157a. But tribal *recognition* is different from tribal *restoration*. "Recognition" is a term of art that refers to the "formal political act confirming the tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government." 1 F. Cohen, Handbook of Federal Indian Law § 3.02[3], at 133–134 (N. Newton ed. 2012).

None of the List Act's three avenues to tribal recognition is surprising. The Court accepted Congress's power to recognize Indian tribes long ago. *See United States v. Sandoval*, 231 U.S. 28, 46 (1913) (noting that Congress can recognize but not create tribes). Courts have historically resolved whether a group of Indians constitutes a tribe under various statutes using the test from *Montoya v. United States*, 180 U.S. 261, 266 (1901). *See, e.g.*, *United States v. Candelaria*, 271 U.S. 432, 443–44 (1926); *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370, 377 n.8 (1st Cir. 1975).

And in 1978, the Bureau of Indian Affairs promulgated *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*, 43 Fed. Reg. 39,361 (Sept. 5, 1978), now codified in 25 C.F.R. part 83. Those regulations, then and now, make clear that terminated tribes cannot seek acknowledgment. *See* 25 C.F.R. § 83.4(c); *see also* 43 Fed. Reg. at 39,361 (explaining that part 83 is unavailable to terminated

tribes because "the Department cannot administratively reverse legislation enacted by Congress").

"Restoration," by contrast, is the act of restoring terminated tribes to federal recognition—as the List Act itself makes clear. "Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated." § 103(5), 108 Stat. 4791 (App., *infra*, 157a). In fact, Congress has restored many tribes on a case-by-case basis. *See* p. 14, *supra*. The List Act does not suggest that *courts* can restore terminated tribes; it confirms that only Congress can.

II. Given the jurisdictional significance of trust decisions, this case raises an important question of federal law that this Court should resolve.

Fifteen years ago, this Court granted Rhode Island's petition for a writ of certiorari in *Carcieri*, which explained that the case presented "jurisdictional issues of enormous import . . . because the future allocation of civil and criminal jurisdiction between states and tribes over a potentially unlimited amount of land hangs in the balance." *Carcieri v. Salazar*, 555 U.S. 379, *petition for cert. filed*, at 2 (U.S. Oct. 18, 2007) (No. 07-526). The *Carcieri* petition was right: acquiring land in trust upends the balance of civil and criminal jurisdiction among states, tribes, and the federal government. *See, e.g.*, 25 U.S.C. § 5108 (exempting trust land from state and local taxation); 25 C.F.R. § 1.4 (state and local laws controlling property inapplicable); *De Coteau v. Dist. Cnty. Court for Tenth Jud. Dist.*, 420 U.S. 425, 428 (1975).

The question in *Carcieri* was whether Congress limited the Secretary's trust authority to Indians "who are members of any recognized Indian tribe" that was "under Federal jurisdiction" in 1934. *Carcieri*, 555 U.S. at 382. The question here is whether the Secretary can ignore clear statutory language making the IRA inapplicable to certain Indians. But the underlying concerns are the same. As in *Carcieri*, the question "[w]hether the Secretary can reallocate territorial sovereignty from a state to a tribe through trust conversions, in the face of congressional [terminations] is a question of obvious importance to" California and other states. Petition for cert. at 25, *Carcieri*, 555 U.S. 379. This Court's review is similarly warranted.

A. The decision below expands the Secretary's power to take land into trust.

Congress terminated federal supervision over more than 100 tribes between 1953 and 1964. *See* p. 12 & note 4, *supra*. In repudiating its termination policy, Congress could have passed blanket legislation that restored federal supervision over terminated Indians, but it has not.

Instead, Congress has restored certain tribes through individualized restoration acts that address the specific rights restored, including the Secretary's trust authority and the terms under which lands may be acquired. *See, e.g.*, Menominee Restoration Act, Pub. L. No. 93-197, 87 Stat. 770 (1973); Siletz Indian Tribe Restoration Act, Pub. L. No. 95-195, 91 Stat. 1415 (1977); Paiute Indian Tribe of Utah Restoration Act, Pub. L. No. 96-227, 94 Stat. 317 (1980); Klamath Indian Tribe Restoration Act, Pub. L. No. 99-398, 100 Stat. 849 (1986); Ysleta del Sur Pueblo and Alabama

and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, 101 Stat. 666 (1987). Congress has taken the same approach to restoring rancherias. *See* note 5, *supra*.

The decision below gives the Secretary carte blanche to act where Congress has chosen not to. That usurpation allows the Secretary, instead of Congress, to choose which tribes will be restored without any apparent rationale. For example, when the Mishewal Wappo who lived at the Alexander Valley Rancheria sued for restoration in 2009, the Secretary successfully asserted a statute of limitations defense that was just as applicable to Wilton's claims. *See Mishewal Wappo Tribe of Alexander Valley v. Jewell*, 84 F. Supp. 3d 930 (N.D. Cal. 2015), *aff'd* 688 Fed. App'x 480 (9th Cir. 2017); *see also Nisenan Tribe of Nevada City Rancheria v. Jewell*, 650 Fed. App'x 497 (9th Cir. 2016) (same).

Apart from the potential for inconsistent application, the court of appeals' decision ensures that the Secretary can continue to acquire land in trust for dozens of Congressionally terminated tribes. Many of these acquisitions have contributed to the proliferation of gaming in California. *See* Cal. Gambling Control Comm. Tribal Casino Locations (as of Sept. 28, 2021) http://www.cgcc.ca.gov/documents/Tribal/2020/List_of-Casinos_alpha_by_tribe_name.pdf. Litigation challenging these decisions is commonplace. *See, e.g.*, Congressional Research Service, RL34325, *Indian Gaming Regulatory Act (IGRA): Gaming on Newly Acquired Lands* (Aug. 23, 2016), https://crsreports.congress.gov/product/pdf/RL/RL34325 (discussing trust land litigation). Clarifying the Secretary's authority will help reduce these disputes.

B. By reading the List Act to confirm the Secretary's power to recognize new tribes by stipulated settlement, the court of appeals vastly expanded the Secretary's power.

The court of appeal's reading of the List Act also warrants review. By interpreting the List Act to "confirm" that courts can recognize or restore tribes through stipulated settlements, the court of appeals opened the door to the Secretary acquiring trust land for other tribes that have not satisfied the acknowledgment regulations under 25 C.F.R. part 83 or the *Montoya* criteria. This is not an abstract concern. Along with restoring dozens of rancherias, the Secretary has recognized tribes outside of normal processes, such as through "reaffirmation."[7] By treating the court entry of a stipulated settlement as conclusive, the Secretary can circumvent the time-consuming process of tribal acknowledgment under 25 C.F.R. part 83, the appeal rights of interested parties, the *Montoya* criteria, and other limits on the Secretary's trust authority. The judiciary, too, must only act within "its proper constitutional sphere." *Raines v. Byrd*, 521 U.S. 811, 820 (1997); *see also*

[7] For example, the Secretary "reaffirmed" the Tejon Tribe in 2012 without following agency regulations or considering historical, genealogical, and ancestral claims. *See* U.S. Dep't. of the Interior, *Investigative Report of the Tejon Indian Tribe* (Jan. 9, 2013), https://www.doioig.gov/sites/default/files/2021-migration/Tejon_ROI_FINAL_PUBLIC.pdf. The Department is now considering its application to have 306 acres acquired in trust. *See* Tejon Indian Tribe Environmental Impact Statement (Oct. 2020), https://www.tejoneis.com/final-eis/. Tribes have objected that the Secretary unfairly invokes extralegal processes. *See, e.g.*, *Agua Caliente Tribe of Cupeño Indians of Pala Reservation v. Sweeney*, 932 F.3d 1207 (9th Cir. 2019).

Chicago & Grand Trunk Ry., 143 U.S. at 345 (requiring "honest and actual antagonistic assertion of rights" to protect integrity of judicial process). The protection and restoration of tribal homelands is understandably a top priority for the Secretary. *See* Assistant Secretary–Indian Affairs, U.S. Dep't of the Interior, Letter to Tribal Leader (Sept. 10, 2021).[8] But policy priority and legal authority are two different things.

This Court made clear in *Carcieri* that the Secretary's legal authority to acquire trust land on behalf of Indians is limited. 555 U.S. at 395. Yet little has changed as a result.[9] The Secretary has actually accelerated the acquisition of land in trust over the last 15 years.[10] At the same time, the Secretary has *reduced* the procedural safeguards associated with trust acquisitions by requiring the immediate transfer of land into trust after a final decision and eliminating the application of the federal title standards that govern all other federal land acquisitions. *See Land Acquisitions: Appeals of Land Acquisition Decisions*, 78 Fed. Reg. 67,928 (Nov. 13, 2013); *Title*

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[8] Available at https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/DTLL%20Protection%20and%20Restoration%20of%20Tribal%20Homelands_wlinks.pdf.

[9] On only one occasion has the Secretary concluded that she lacks the authority to acquire land in trust since *Carcieri*, and that decision has been remanded. *See Mashpee Wampanoag Tribe v. Bernhardt*, 466 F. Supp. 3d 199 (D.D.C. 2020).

[10] U.S. Dep't of the Interior, *Obama Administration Exceeds Ambitious Goal to Restore 500,000 Acres of Tribal Homelands* (Oct. 12, 2016), https://www.doi.gov/pressreleases/obama-administration-exceeds-ambitious-goal-restore-500000-acres-tribal-homelands.

Evidence for Trust Land Acquisitions, 81 Fed. Reg. 10,477 (Mar. 1, 2016).

The ramifications of the Secretary's trust acquisition policies were underscored by the Court's decision in *McGirt*. While ostensibly limited to state criminal jurisdiction within eastern Oklahoma, *McGirt* has generated significant disputes over taxation authority, application of zoning and environmental laws, and family law. *See Oklahoma v. Bosse*, 141 S.Ct. 2891 (2021), *petition for cert. filed*, (U.S. Aug. 6, 2021) (No. 21-186). These disputes are commonplace with trust land, particularly when located in more urban areas. *See, e.g.*, *Agua Caliente Band of Cahuilla Indians v. Riverside Cnty.*, 749 Fed. App'x 650 (9th Cir. 2019); *Confederated Tribes of Chehalis Reservation v. Thurston Cnty. Bd. of Equalization*, 724 F.3d 1153 (9th Cir. 2013); *New York v. Shinnecock Indian Nation*, 686 F.3d 133 (2d Cir. 2012). The more land the Secretary acquires in trust, the greater the potential for similar disputes in other places.

This Court should grant review to confine the Secretary to the exercise of the limited authority granted by Congress in the IRA and as limited by Section 10(b) of the Termination Act.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 8, 2021

APPENDIX

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APPENDIX A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5285 **September Term, 2020**

1:17-cv-00058-TNM

Filed On: June 11, 2021

Stand Up For California!, et al.,

Appellants

v.

United States Department of the Interior, et al.,

Appellees

BEFORE: Srinivasan, Chief Judge; and Henderson, Rogers, Tatel, Millett, Pillard, Wilkins, Katsas, Rao, and Walker, Circuit Judges

O R D E R

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Kathryn D. Lovett
Deputy Clerk

APPENDIX B

OPINION

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 9, 2020 Decided April 16, 2021

No. 19-5285

STAND UP FOR CALIFORNIA!, ET AL.,

APPELLANTS

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-00058)

Jennifer A. MacLean argued the cause for appellants. With her on the briefs was *Benjamin S. Sharp*.

Brian C. Toth, Attorney, U.S. Department of Justice, argued the cause for federal appellees. With him on the brief were *Jeffrey Bossert Clark*, Assistant Attorney General, *Eric Grant*, Deputy Assistant Attorney General, and *Mary Gabrielle Sprague*, Attorney.

Jessica L. Ellsworth argued the cause for appellee Wilton Rancheria, California. With her on the brief was *Benjamin A. Field*. *Neal K. Katyal* entered an appearance.

Before: GARLAND*, PILLARD and WILKINS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

WILKINS, *Circuit Judge*: This appeal comes after a seven-year effort by the Department of the Interior ("Department") to acquire land in trust on behalf of the Wilton Rancheria ("Wilton" or "Tribe") to build a casino. After the Department finalized the acquisition of a parcel of land in Elk Grove, California, Stand Up for California! ("Stand Up"), Patty Johnson, Joe Teixeira, and Lynn Wheat (collectively "Appellants") sued the Department. They brought a litany of claims, including claims that the Department (1) impermissibly delegated the authority to make a final agency action to acquire the land to an official who could not wield this authority, (2) was barred from

* Judge Garland was a member of the panel at the time this case was submitted but did not participate in the final disposition of the case.

acquiring land in trust on behalf of Wilton's members, and (3) failed to adhere to its National Environmental Protection Act obligations when it selected the Elk Grove location. Appellants and the Department cross-moved for summary judgment, and the District Court granted the Department's motions on all counts. For the reasons set forth below, we affirm the District Court.

I.

The Wilton Rancheria is an Indian tribe based in the Sacramento area.[1] Wilton's members are descendants of Miwok and Niensen speakers. As with its general policy regarding tribal sovereignty, the federal government's approach to Wilton has gone through "drastic fits and starts," vacillating "between coercing assimilation and encouraging tribal self-government." Philip P. Frickey, *Congressional Intent, Practical Reasoning, and the Dynamic Nature of Federal Indian Law*, 78 CALIF. L. REV. 1137, 1138 (1990). Wilton was first federally recognized in 1927, when Congress initiated a program that provided land to Indians who were not on reservations. After Congress passed the Indian Reorganization Act in 1934, Wilton adopted a constitution.

In 1958, however, Congress disestablished Wilton and forty other reservations through the California

[1] A rancheria is a small Indian settlement in California. *See Stand Up for California! v. U.S. Dep't of Interior*, 879 F.3d 1177, 1179 (D.C. Cir. 2018); William Wood, *The Trajectory of Indian Country in California: Rancherías, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias*, 44 TULSA L. REV. 317, 319 (2008).

Rancheria Act ("Rancheria Act"). Pub. L. No. 85–671, 72 Stat. 619 (1958). The Rancheria Act directed the Secretary of the Interior ("Secretary") to dissolve the trusts in which the Secretary held land for forty-one rancherias and tribes, including Wilton, and to distribute the assets. The Secretary was directed to consult with the affected tribes and prepare a plan to distribute the assets or to sell the assets and distribute the profits to the affected tribes' members. Pursuant to this mandate, the Secretary terminated the government-to-government relationship with Wilton and began consultations with the Tribe's members to transfer federal land trust ownership to individual fee ownership. In 1959, the Department approved a distribution plan that would terminate the federal trusteeship of the Tribe, distribute the assets to the Tribe's members, and revoke the Tribe's constitution and bylaws. Once the Tribe's assets had been distributed, the distribution agreement stipulated that the Tribe's members were no longer entitled to the federal government's services because of their status as Indians. In 1964, the Department announced in the *Federal Register* that the Wilton Tribe's members were no longer entitled to services reserved for Indians. *Termination of Federal Supervision*, 29 Fed. Reg. 13,146 (Sept. 15, 1964).

In 1979, members of several California rancherias, including Wilton members, brought a class action against the Department for unlawfully terminating the federal government's trust relationship with their tribes. Four years later, the government settled and "agree[d] to 'restore[] and confirm[]' Indian status for some who had lost it" pursuant to the Rancheria Act, including seventeen tribes that had lost their tribal

status under the Act. *Stand Up for California! v. U.S. Dep't of Interior*, 879 F.3d 1177, 1184 (D.C. Cir. 2017) (quoting Stipulation for Entry of Judgment, *Hardwick*, No. C-79-1710-SW, ¶¶ 2–4 (Aug. 3, 1983)). But Wilton was excluded from the settlement agreement because the district court mistakenly concluded that "[n]o class member from [Wilton] currently owns property within the original rancheria boundaries." *Wilton Miwok Rancheria v. Salazar*, 2010 WL 693420, at *2 (N.D. Cal. Feb. 23, 2010) (quoting Certificate of Counsel re Hearing on Approval of Settlement of Class Actions, *Hardwick*, No. C-79-1710-SW (Nov. 16, 1983)).

Almost forty years later, members of the Tribe sued the Department, seeking federal recognition of the Wilton Rancheria and the acquisition of certain land into trust by the government on the Tribe's behalf. *Id.* at *3. Two years later, the Tribe and the government entered into a settlement agreement. The Department acknowledged that "the United States failed to comply with the Rancheria Act in terminating the Wilton Rancheria and distributing its assets." *Id.* The Department thus recognized that the Tribe was not lawfully terminated. The Department also agreed to restore federal recognition of the Tribe and to "accept in trust certain lands formerly belonging to" Wilton. *Id.* at *3. In June 2009, the district court in California entered the settlement agreement as a stipulated judgment. After the case settled, the Department published notice of the restoration of Wilton's status as a federally recognized tribe. Since then, the Wilton Rancheria has been listed on the Department's annual list of federally recognized tribes.

In 2013, Wilton petitioned the Department to acquire land in trust on the Tribe's behalf so that it could build a casino. The Tribe proposed a 282-acre plot near Galt, California. Pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–4347, the Department began the process to assess the environmental effect a casino would have. After soliciting public comment, the Department published a scoping report for its environmental impact statement ("EIS"). The scoping report identified seven alternatives for the land acquisition, including a 30-acre parcel in Elk Grove and the Galt site, which the report described as Wilton's "proposed action," *see* 40 C.F.R. § 1502.14; 43 C.F.R. § 46.30, but it did not identify a preferred alternative. *See* 43 C.F.R. § 46.420(d) (defining the "preferred alternative" as the alternative that the agency "believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors"). Two years later, the Department published the draft EIS, where it considered the alternatives in detail. It then held a public hearing on the draft EIS. At the hearing, multiple parties—including one of the plaintiffs in this litigation—spoke in favor of the Elk Grove location. Following the hearing, Wilton changed its preference and submitted a request that the Department acquire the Elk Grove location rather than the Galt location.

In November 2016, the Department requested comment from interested parties about a potential casino in the Elk Grove location. The list of notified parties included the State of California, the City of Elk Grove, and Stand Up. Stand Up responded that

transferring title to the Elk Grove location would moot multiple pending state-court challenges seeking to prevent the acquisition and urged the Department to delay title transfer. The Department denied Stand Up's request. The Department then published its final EIS, which identified the Elk Grove location as the preferred alternative.

On January 19, 2017, the Department issued a Record of Decision ("ROD") that constituted the final agency action to acquire the Elk Grove location in trust on Wilton's behalf. Lawrence Roberts—the Principal Deputy Assistant Secretary—Indian Affairs—signed the ROD pursuant to delegated authority. Roberts had served as Acting Assistant Secretary—Indian Affairs ("AS–IA"), but after his acting status lapsed pursuant to the Federal Vacancies Reform Act ("FVRA"), Roberts continued to exercise the non-exclusive functions and duties of the AS–IA. The same day Roberts issued the ROD, then-Deputy Secretary Michael Connor had issued a memorandum ("Connor Memorandum") that sought to clarify that Roberts was exercising non-exclusive functions and duties of the AS–IA. On February 10, the Department acquired title to the Elk Grove location. Michael Black, who had assumed the role of Acting AS–IA in the new presidential administration, signed off on this acquisition after denying Stand Up's administrative appeal for a stay pending judicial review.

Appellants brought this lawsuit prior to the issuance of the Department's ROD and sought a temporary restraining order, which the District Court denied. Appellants' lawsuit alleged, *inter alia*, that (1)

the FVRA and Department regulations precluded the Principal Deputy from exercising the authority to sign off on the ROD acquiring the Elk Grove land in trust; (2) Principal Deputy Roberts was acting without authority when he acquired the title in trust for the Tribe; (3) the Department could not acquire land in trust on behalf of Wilton's members pursuant to the Rancheria Act; and (4) the Department violated NEPA and the APA by failing to prepare a supplemental or new EIS after it selected the Elk Grove location as its preferred alternative. Wilton intervened on behalf of the Department. After the parties cross-moved for summary judgment, the District Court granted the Department's summary judgment motions. This appeal followed.

We review the District Court's grant of summary judgment *de novo*. *W. Surety Co. v. U.S. Eng'g Constr., LLC*, 955 F.3d 100, 104 (D.C. Cir. 2020). We "evaluat[e] the administrative record directly and invalidat[e] the Department's actions only if, based on that record, they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." *Stand Up!*, 879 F.3d at 1181 (internal quotation omitted).

II.

We begin with Appellants' challenge to the Department's redelegation of final decision-making authority to the Principal Deputy. First, Appellants claim that the regulation in question prohibits redelegation beyond the AS–IA. Second, Appellants argue that even if the regulation permitted

redelegation, the Department failed to properly redelegate this power to Principal Deputy Roberts.

We reject both of Appellants' challenges. First, the text, structure, and purpose of the regulation confirm that the Department has the power to redelegate final decision-making authority. Second, the Department properly redelegated the final decision-making authority to Principal Deputy Roberts. We therefore affirm the District Court's grant of summary judgment to the government on these claims.

A.

The Bureau of Indian Affairs ("BIA") has promulgated regulations governing who can make land acquisitions on behalf of Indian tribes. The regulations define "Secretary" as "the Secretary of the Interior or authorized representative." 25 C.F.R. § 151.2. The Secretary must review each request for the acquisition of land. 25 C.F.R. § 151.12(a). Section 151.12(c) states that "[a] decision made by the Secretary, or the [AS–IA] pursuant to delegated authority, is a final agency action." 25 C.F.R. § 151.12(c). In contrast, Section 151.12(d) provides that "[a] decision made by a [BIA] official pursuant to delegated authority is not a final agency action of the Department . . . until administrative remedies are exhausted." *Id.* § 151.12(d).

To determine whether redelegation of final decision-making authority is permissible, we must first assess whether the power is an exclusive function or duty of the Secretary or the AS–IA. The FVRA forecloses the delegation of exclusive duties and

authorities to a successor official after expiration of the statutorily authorized 210-day period of acting-capacity service. The FVRA also establishes that a function or duty is exclusive when it is either "established by statute, and . . . required by statute to be performed by the applicable officer (and only that officer)" or when it "is established by regulation and . . . is required by such regulation to be performed by the applicable officer (and only that officer)." 5 U.S.C. § 3348(a)(2)(A)–(B).[2] If Congress wants to make clear that a function or duty is exclusive, it may do so through clear statutory mandates. *See, e.g.*, 25 U.S.C. § 3407(a) ("The Secretary shall have *exclusive authority* to approve or disapprove a plan submitted by an Indian tribe . . . ." (emphasis added)). Alternatively, as the Supreme Court recognized in *United States v. Giordano*, a statute may foreclose redelegation when its text, "fairly read" in light of the statutory purpose, evinces a congressional desire to render a function or duty exclusive and non-redelegable. 416 U.S. 505, 514 (1974). Should Congress remain silent on the issue, however, the FVRA provides the Executive Branch with leeway to set out which functions or duties are exclusive and which are not. *See* 5 U.S.C. § 3348(a)(2)(A)–(B); *see also* FEDERAL VACANCIES REFORM ACT OF 1998, S. Rep.

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[2] Although Appellants have not raised their FVRA claims on appeal, the statute still provides guideposts to which we should adhere in analyzing the challenge to delegated authority. *Cf. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) ("[C]onstruction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.").

No. 105–250, at 31 ("We must be clear that the non-delegable duties we intend to have performed only by the agency head in the event of a vacancy . . . are only those expressly vested by law or regulation exclusively in the vacant position. In this regard, we acknowledge and appreciate the Majority's statement that 'all the normal functions of government thus could still be performed.'"). Appellants do not argue that any statute vests exclusive authority with the Secretary or the AS–IA, and we are unaware of any such statute. We must therefore determine whether the Department itself has cabined this authority.

Relying on the text of Section 151.12, Appellants argue that the Department has restricted final decision-making authority to the Secretary or to the AS–IA. Appellants contend that because Section 151.12(c) provides that final decisions can be made by the AS–IA "pursuant to delegated authority," while Section 151.12(d) sets out the procedures for non-final decisions made by BIA officials, the Department has made final decision-making authority an exclusive function. We disagree. While Section 151.12 certainly contemplates that the actions of the Secretary and the AS–IA will constitute final agency action, when fairly read, it does not foreclose redelegation of these duties.

To begin, we hold that, contrary to Appellants' assertions, the presumption in favor of redelegability applies to regulations. We have previously recognized that "[w]hen a statute delegates authority to a federal officer or agency, subdelegation to a subordinate federal officer . . . is presumptively permissible absent affirmative evidence of a contrary congressional intent." *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565

(D.C. Cir. 2004); *see also Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1190 (10th Cir. 2014) ("[C]ircuits that have spoken on this issue are unanimous in permitting subdelegations to subordinates, even where the enabling statute is silent, so long as the enabling statute and its legislative history do not indicate a prohibition on subdelegation."). And while we have never held that this presumption applies to regulations, we conclude that it does so today. Indeed, the presumption in favor of redelegability may be more appropriate for regulations than it is for statutes because an agency has many tools to quickly reverse an unintended redelegation. Should any lower-ranking official exceed his or her powers and attempt to exercise an exclusive function or duty pursuant to a redelegation, the Secretary or the Deputy Secretary could simply invalidate any action taken pursuant to the claimed authority. In contrast, as a practical matter it is harder for Congress to claw back any function or duty that a lower-ranking official exercises contrary to Congress's intent to reserve it for the Secretary. And while an agency could amend its regulations to change which functions or duties are exclusive, Congress ensured that an agency cannot suddenly render an exclusive function or duty non-exclusive by requiring the regulation to be in effect during the 180 days preceding any vacancy. 5 U.S.C. § 3348(a)(2)(B)(ii). An agency thus cannot amend its regulations to render an exclusive function non-exclusive as an end-run around the restrictions Congress set for acting officers in the FVRA. Given these considerations, we hold that the presumption in favor of redelegability applies to regulations.

With this presumption in mind, we turn to the text. As with statutes, regulations must be construed holistically. *See Am. Paper Inst., Inc. v. EPA*, 996 F.2d 346, 356 n.10 (D.C. Cir. 1993); *see also Carlson v. Postal Regulatory Comm'n*, 938 F.3d 337, 349 (D.C. Cir. 2019) ("[I]n expounding a statute, we must not be guided by a single sentence . . . but look to the provisions of the whole law." (quoting *Del. Dep't of Nat. Res. & Envtl. Control v. EPA*, 895 F.3d 90, 97 (D.C. Cir. 2018))). Here, the regulatory text provides two methods by which the Department can acquire land in trust. Section 151.12(d) contemplates that the decision to take land into trust may be delegated to a BIA official, but the BIA official's decision would be subject to administrative review. 25 C.F.R. § 151.12(d). Alternatively, the Department may acquire the land in trust through "[a] decision made by the Secretary, or the [AS–IA] pursuant to delegated authority," which "is a final agency action" and not subject to the administrative review process. *Id.* § 151.12(c). But the regulation also defines "Secretary" to include any "authorized representative." *Id.* § 151.2(a). Because of this inclusive definition, we conclude that the regulation's text, when fairly read, contemplates redelegation of the Section 151.12(c) authority by the Secretary.

The Department's other regulations confirm our reading of Section 151.12. As other regulations make clear, the Department knows how to use language that renders a function or duty exclusive to a particular official. *See, e.g.*, 25 C.F.R. § 33.3 ("The administrative and programmatic authorities of the Assistant Secretary–Indian Affairs pertaining to Indian education functions shall not be delegated to other

than the Director, Office of Indian Education Programs."); *id.* § 262.5(a) ("Area Directors may delegate this authority to Agency Superintendents, but only . . . to those who have adequate professional support available."); 43 C.F.R. § 20.202(b)(1) ("Each Ethics Counselor shall . . . [o]rder disciplinary or remedial action . . . . This authority may not be redelegated."). But in promulgating Section 151.12, the Department refrained from using any similar language. Appellants argue that the Department shut the door on redelegation in providing that the AS–IA will act "pursuant to delegated authority." 25 C.F.R. § 151.12(c). But this language pales in comparison to the language the Department typically uses to bar redelegation. The Department's decision not to use such prohibitory language thus supports our conclusion that a fair reading of the regulation permits redelegation beyond the AS–IA.

Appellants invoke the *expressio unius* canon to argue that the regulation's explicit mention of the AS–IA forecloses redelegation beyond the AS–IA. But as we have made clear, the *expressio unius* canon "is often misused" because drafters include duplicative language to ensure "that the mentioned item is covered—without meaning to exclude the unmentioned ones." *Shook v. D.C. Fin. Resp. & Mgmt. Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998). Moreover, as the Second Circuit has recognized, the *expressio unius* canon carries even less weight in the redelegation context, where the statute or regulation "may mention a specific official only to make it clear that this official has a particular power rather than to exclude delegation to other officials." *United States v. Mango*, 199 F.3d 85, 90 (2d Cir. 1999). Section

151.12(c) is emblematic of the shortcomings of the *expressio unius* canon in the redelegation context. Although the regulation explicitly mentions the AS–IA, it incorporates the definition of "Secretary" from Section 151.2(a) which includes any "authorized representative." Nothing else in the regulation's text suggests that the Department intended to limit the redelegation to the AS–IA, and invoking the *expressio unius* canon would require us to ignore the regulation's definition of "Secretary." Instead, we believe it a fairer reading of the regulation that the Department was merely making clear that the AS–IA had been delegated the authority of final decisionmaking, not that the AS–IA alone could exercise this authority. We therefore decline to apply the *expressio unius* canon to Section 151.12.

Section 151.12's purpose also supports our reading of the regulation. As with statutes, we may look to the purpose and drafting history of the regulation to confirm whether our interpretation of the text comports with the Department's intent in promulgating Section 151.12. *See U.S. Telecom Ass'n*, 359 F.3d at 565; *Giordano*, 416 U.S. at 514. Here, the Department's goal in amending Section 151.12 affirms our understanding that the Department did not intend to prohibit redelegation of this function. Section 151.12 was amended in 2013 to "[p]rovide clarification and transparency to the process for issuing decisions by the Department, whether the decision is made by the Secretary, [AS–IA], or a [BIA] official." *Land Acquisitions: Appeals of Land Acquisition Decisions*, 78 Fed. Reg. 67,928, 67,929 (Nov. 13, 2013). The Department was not focused on who could wield the authority to make final decisions.

Rather, the Department sought to clarify whether an acquisition of land was final and what means of review were available to aggrieved parties: The decisions of the Secretary and AS–IA are final and appealable, it explained, and the decisions of BIA officials are not. In adopting that rule of finality, the Department said nothing of the authority of other Department officials, such as the Deputy AS–IA, to act. And in any event, finality is a benefit as well as a limitation. Instead of being required to proceed through the administrative appeals process, a decision made under Section 151.12(c) permits aggrieved parties to immediately seek judicial review before an Article III court.[3] The Department's purpose in promulgating Section 151.12 thus confirms that the Department did not seek to foreclose redelegation of final decisions to acquire land into trust.

Appellants' reliance on *Giordano* is misplaced. There, the Supreme Court interpreted a statute where Congress provided that "[t]he Attorney General, or any Assistant Attorney General specially designated by the Attorney General" could authorize a wiretap, *Giordano*, 416 U.S. at 513 (quoting 18 U.S.C. § 2516(1)), but the challenged decision was made by the Attorney General's Executive Assistant. *Id.* Although the Court concluded that the statute's text, when "fairly read, was intended to limit the power to authorize wiretap applications," *id.* at 514, it reached

[3] It is also noteworthy that the Department has maintained its position that this function is redelegable over three presidential administrations. Appellants stress the breakneck speed that the Obama administration undertook to finalize the acquisition, but over four years later, two administrations never wavered from the position that this authority is redelegable.

this conclusion after contrasting the narrow delegation of Section 2516(1) with 28 U.S.C. § 510, which granted the Attorney General broad authority to delegate his power. Thus, because the statute in question used narrower language than the broader delegation, the Court determined that the Attorney General was restricted in his ability to delegate his wiretapping authority. In the present case, however, other regulations show that when the Department intends to render a function or duty exclusive, it says so clearly. And unlike the statute at issue in *Giordano, see id*. at 514–21, the history of Section 151.12 does not evince an intent by the drafters to restrict who could wield final decision-making authority, 78 Fed. Reg. at 67,929. We therefore hold that Section 151.12 permits redelegation beyond the AS–IA.

B.

We next turn to Appellants' argument that the Department failed to properly redelegate the final decision-making authority to Principal Deputy Roberts. Appellants contend that because the Department did not adhere to the redelegation procedures set forth in the Departmental Manual, the redelegation—either through automatic redelegation or through the Connor Memorandum—was impermissible. We reject Appellants' challenge.

Even if violation of the Departmental Manual supported a third-party claim—which we doubt, *see Schweiker v. Hansen*, 450 U.S. 785, 789–90 (1981); *Chiron Corp. & PerSeptive Biosystems, Inc. v. NTSB*, 198 F.3d 935, 944 (D.C. Cir. 1999)—Appellants' challenge still fails on its merits. Principal Deputy

Roberts began serving as the Acting AS–IA in January 2016. After his term as AS–IA lapsed pursuant to the FVRA, Roberts reverted to his position as Principal Deputy. But under the Departmental Manual, the Principal Deputy "may exercise the [non-exclusive] authority delegated" to the AS–IA "[i]n the [AS–IA's] absence." 209 DM 8.4A. Appellants attempt to distinguish an "absence" from a "vacancy," but they forfeited this argument by failing to raise it in the District Court. *See Weinstein v. Islamic Republic of Iran*, 831 F.3d 470, 483 (D.C. Cir. 2016) ("To preserve an argument on appeal a party must raise it both in district court and before us."). Regardless, for purposes of delegation under this regulation, a vacancy may be treated as a type of absence. Appellants' reliance on other provisions of the Departmental Manual where the Department uses the term "vacancy" is misplaced, as those provisions deal specifically with succession, not redelegation. *See* 302 DM 1.1. As discussed above, final decision-making authority pursuant to Section 151.12 is a non-exclusive function, so this is not an issue of a succession, but rather an issue of redelegation. Thus, "absence" can certainly include a "vacancy" in office, particularly when the functions at issue are non-exclusive. Therefore, the Department did not violate any of the provisions by automatically redelegating the AS–IA's non-exclusive functions and duties to the Principal Deputy.

In any event, any failure to automatically redelegate this non-exclusive function was corrected when the Department issued the Connor Memorandum. The Departmental Manual acknowledges that it can be superseded by any "appropriate authority," including but expressly not

limited to "a Secretary's order." J.A. 248 (listing permissible appropriate authority, "e.g., a change in statute, regulation, or Executive order; a Secretary's Order or a court decision; *etc*." (emphasis added)). As the Connor Memorandum explained, the Department intended for Principal Deputy Roberts to exercise the nonexclusive functions and duties of the AS–IA, but the succession order incorrectly identified Roberts's position. So, although "[t]he Department typically uses succession orders to delegate authority," the Department issued the Connor Memorandum to "confirm [Roberts's] authority to exercise the functions and duties of the AS–IA that are not required by law or regulation to be performed only by the AS–IA." J.A. 276. And given that the Departmental Manual permits deviation from the procedures by any appropriate authority, the Connor Memorandum, issued by the Deputy Secretary of the Interior, permissibly redelegated final decision-making authority to Roberts.[4] Thus, to the extent that the delegation was not automatically made, it was correctly done through the Connor Memorandum.

III.

Appellants also appeal the District Court's grant of summary judgment to the Department on Appellants' Rancheria Act claim. Appellants claim that they do not challenge the court-approved settlement agreement that reestablished federal recognition of Wilton.

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[4] Appellants also secondarily argue that Deputy Secretary Connor was not properly delegated the authority to redelegate final decisionmaking authority to Principal Deputy Roberts. But Appellants forfeited this argument by failing to raise it before the District Court. *Weinstein*, 831 F.3d at 483.

Instead, Appellants argue that because the Department distributed assets to Wilton members pursuant to the Rancheria Act, Wilton members are no longer entitled to the federal government's services on account of their status as Indians. We reject this argument as specious.

As Appellants are well aware, we have previously recognized that a court-approved settlement can invalidate the effect of the Rancheria Act. In another lawsuit brought by Stand Up, we concluded that a court-approved settlement agreement is sufficient to restore recognition of a tribe *and* to restore Indian status for members of that tribe notwithstanding the Rancheria Act. *Stand Up!*, 879 F.3d at 1184. The settlement agreement, which a federal court approved, stated that Wilton "was not lawfully terminated, and the Rancheria's assets were not distributed, in accordance with the" Rancheria Act. J.A. 901. The court made clear that the Rancheria Act did not apply to Wilton because the Tribe's assets were not distributed pursuant to the law. Pursuant to this agreement, the Department published notice in the Federal Register stating that Wilton and its members were "relieved from the application of section 10(b) of" the Rancheria Act. *Restoration of Wilton Rancheria*, 74 Fed. Reg. 33,468, 33,468 (July 13, 2009). It is therefore irrelevant that some Wilton members may have received assets because those assets were not distributed pursuant to the statute. The Rancheria Act has no force on the Department with regards to the Wilton Rancheria.

As a fallback, Appellants contend that the District Court erred by relying on the Federally Recognized

Indian Tribe List Act of 1994 ("List Act"). Pub. L. No. 103–454, 108 Stat. 4791, 4792 (Nov. 2, 1994). Appellants argue that the List Act did not authorize the restoration of congressionally-terminated tribes through court-approved settlements in its substantive provisions, so the Rancheria Act still controls. Appellants are mistaken. While it is true that the District Court relied on the "Findings" section of the List Act, the "Findings" section acknowledges that "Indian tribes presently may be recognized . . . by a decision of a United States court." *Id.* § 103(3). This finding comports with decades of court-approved settlements reestablishing federal recognition of Indian tribes. *See, e.g., Hardwick v. United States*, No. C-79-1710-SW (N.D. Cal. 1979); *Table Bluff Band of Indians v. Andrus*, 532 F. Supp. 255, 258, 259–61, 265 (N.D. Cal. 1981); *Smith v. United States*, 515 F. Supp. 56, 61–62 (N.D. Cal. 1978); *Duncan v. Andrus*, 517 F. Supp. 1, 5–6 (N.D. Cal. 1977); *see also Stand Up!*, 879 F.3d at 1185 (discussing validity of the *Hardwick* settlement). It is therefore irrelevant that the List Act failed to expressly authorize the recognition of tribes through court decisions because it confirmed that courts could do so. And that is precisely what the court did when it approved the settlement agreement. Therefore, the court-approved settlement agreement recognizing Wilton and invalidating the Rancheria Act's application to Wilton comports with the List Act.

Because a court-approved settlement agreement reversed the termination of the Wilton Rancheria pursuant to the Rancheria Act, we affirm the District Court's grant of summary judgment to the Department.

IV.

Finally, Appellants challenge the District Court's grant of summary judgment to the Department on their NEPA claims. Appellants argue that, at a minimum, the Department should have prepared either a supplemental EIS or a new EIS after it selected the Elk Grove location as the site for the casino. This contention also has no merit.

Congress enacted NEPA in 1970. 42 U.S.C. §§ 4321–4347. When an agency takes a "major Federal action[]," NEPA requires the responsible official to prepare a "detailed statement . . . on (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided . . . , (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses . . . and . . . longterm productivity, and (v) any irreversible and irretrievable commitments of resources." 42 U.S.C. § 4332(C). This "detailed statement" has become known as an EIS.

An EIS goes through two stages: the draft EIS and the final EIS. 40 C.F.R. § 1502.9. *Id.* The principal agency—here, the Department of the Interior—prepares the draft EIS in conjunction with cooperating agencies and obtain comments regarding the proposed federal action. 40 C.F.R. § 1502.9(a). In the draft EIS, the principal agency must "[i]dentify the agency's preferred alternative . . . , if one or more exists." 40 C.F.R. § 1502.14(e). The final EIS must address all comments and discuss responsive opposing views it did not discuss adequately in the draft statement. 40 C.F.R. § 1502.9(b); *id.* § 1503.4(a). In responding to

comments in the final EIS, the agency is permitted to (1) "[m]odify alternatives including the proposed action," (2) "[d]evelop and evaluate alternatives not previously given serious consideration," (3) modify or supplement its analyses, (4) make factual corrections, or (5) explain why the comments do not merit further agency response. 40 C.F.R. § 1503.4(a)(1)–(4). The agency must also identify preferred alternatives in the final EIS unless prohibited by law. 40 C.F.R. § 1502.14(e).

Where necessary, an agency must also prepare a supplemental EIS. An agency must prepare a supplemental EIS if (1) "[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns," or (2) "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(i)–(ii). An agency may also prepare a supplemental EIS if it determines that doing so would further NEPA's purpose. 40 C.F.R. § 1502.9(c)(2).

When we review an EIS prepared under NEPA, our "role is 'simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.'" *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1327 (D.C. Cir. 2004) (quoting *Baltimore Gas & Elec. v. NRDC*, 462 U.S. 87, 97–98 (1983)). We must "ensure that the agency took a 'hard look' at the environmental consequences of its decision to go forward with the project." *Id.* (quoting *City of Olmsted Falls v. FAA*, 292 F.3d 261, 269 (D.C. Cir. 2002)). In determining

whether an agency is required to supplement its EIS, we also apply the arbitrary-and-capricious standard. *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 376 (1989).

In *Marsh v. Oregon Natural Resources Council*, the Supreme Court evaluated whether NEPA required an agency to prepare a supplemental EIS after finalizing the EIS. 490 U.S. 360 (1989). The Court concluded that, "the decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instance." *Id.* at 374. If the federal action is pending, then the new information that comes to light must be "sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered" to require a supplemental EIS. *Id.* (internal alteration and quotation omitted). Put simply, courts must apply the rule of reason, which "turns on the value of the new information to the still pending decisionmaking process." *Id.* at 374. In turn, we have held that "[t]he overarching question is whether an EIS's deficiencies are significant enough to undermine informed public comment and informed decisionmaking." *Mayo v. Reynolds*, 875 F.3d 11, 20 (D.C. Cir. 2017) (quoting *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017)).

Under this standard, we conclude that the Department was not required to prepare a supplemental or a new EIS when it selected the Elk Grove location. As we have time and again made clear, "a [supplemental EIS] must be prepared only where new information 'provides a *seriously* different picture

of the environmental landscape.'" *Friends of Capital Crescent Trail v. FTA*, 877 F.3d 1051, 1060 (D.C. Cir. 2017) (quoting *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004)). The Department's identification in the final EIS of a preferred action among the alternatives it had assessed did not result in a serious change in the environmental landscape. Nor does the fact that the Department buttressed its analysis in the final EIS help Stand Up's argument. To support its argument that new information affecting the environmental analysis came to light, Stand Up points to the hundreds of pages of analysis that the Department included in the appendix of the final EIS, but Stand Up fails to point to anything in these pages that suggests a significant development, thereby requiring supplementation.

Moreover, nothing prohibited the Department from buttressing its analysis between the draft EIS and the final EIS. In the final EIS, the agency must "respond to comments" and "discuss . . . any responsible view which was not adequately addressed in the draft" EIS. 40 C.F.R. § 1502.9(b); *see also id.* § 1503.4(a) (permitting the agency to respond to comments by "[m]odify[ing] alternatives including the proposed action" and "[s]upplement[ing], improv[ing], or modify[ing] its analyses" in the final EIS). But this requirement does not, as Stand Up suggests, prohibit the Department from buttressing its initial analysis. And the Seventh Circuit's holding in *Habitat Education Center* does not contradict this proposition. As Stand Up acknowledges, the Seventh Circuit concluded that when "[s]trictly construed," NEPA regulations "*permit* an agency to issue a final EIS that

does no more than incorporate a previously issued draft EIS and respond to comments received." *Habitat Educ. Ctr., Inc. v. U.S. Forest Servs.*, 673 F.3d 518, 527 (7th Cir. 2012) (emphasis added). That does not mean that an agency is prohibited from going further and bolstering its analysis in the final EIS. The agency must only be sure that the new analysis is not based on new information that paints "a seriously different picture" of the impact of the project.[5]

Nor did the Department's decision to select the Elk Grove location fail to properly notify the public of its plans. "Publication of an EIS, both in draft and final form, also serves a larger informational role" and "provides a springboard for public comment." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). As such, we must review "whether an EIS's deficiencies are significant enough to undermine informed public comment and informed decisionmaking." *Mayo*, 875 F.3d at 20 (quoting *Sierra Club*, 867 F.3d at 1368). But the designation of the Elk Grove site as the preferred alternative did not deprive the public and interested parties of the opportunity to meaningfully comment on or evaluate the proposal. First, the Department listed the Elk Grove site as an alternative proposal. J.A. 968, 970. Second, the Department extensively analyzed the Elk Grove site in its draft EIS. J.A. 1191, 1271–1275, 1279–1324, 1329–1338. The Department also published the draft

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[5] And this determination is subject to considerable judicial deference. *See Friends of Capital Crescent Trail*, 877 F.3d at 1059 ("If an agency's decision not to prepare a [supplemental EIS] turns on a 'factual dispute the resolution of which implicated substantial agency expertise,' the court defers to the agency's judgment." (quoting *Marsh*, 490 U.S. at 376)).

EIS online and made it available in the Galt public library, which is only a few miles away from Elk Grove. J.A. 969. Third, the Department's inclusion of the Elk Grove site triggered public comment, including by Stand Up and Lynn Wheat, two of the plaintiffs in this litigation. Thus, not only did the Department provide enough information in its draft EIS to allow for public comment on the Elk Grove site, but it actually did lead to public participation, including by Appellants. Therefore, the Department satisfied its public notice requirements and was not required to prepare a supplemental or a new EIS.

Appellants' remaining arguments are similarly without merit. First, Appellants argue that the Department failed to follow NEPA regulations because it only made the City of Elk Grove a cooperating agency later in the process. But as the regulation that Appellants cite makes clear, the lead agency must only request "the participation of each cooperating agency in the NEPA process *at the earliest possible time*." 40 C.F.R. § 1501.6 (emphasis added). Moreover, an agency could "request the lead agency to designate it a cooperating agency," *id.*, which is what the City of Elk Grove did, and the Department granted that request. It was thus not error for the Department to fail to promptly include the City of Elk Grove as a cooperating agency.

Second, Appellants argue that the turnaround time between the close of the final EIS's comment period and the issuance of the ROD is impermissibly short. Admittedly, the two-day turnaround between the closure of the comment period and the issuance of the ROD is not typical. But Appellants offer no controlling

precedent suggesting that the quick turnaround was *per se* impermissible. And as the District Court recognized, the one case Appellants cite—a district court case from North Carolina—is inapposite. There, the agency acknowledged that it failed to respond to numerous comments and had already reopened the NEPA process. *North Carolina Alliance for Transp. Reform, Inc. v. U.S. Dep't of Transp.*, 151 F. Supp. 2d 661, 676 (M.D.N.C 2001). Here, however, Appellants have not claimed that the Department failed to respond to any comments. Thus, while it may have been unusual for the Department to have moved so quickly to issue the ROD, that short turnaround in and of itself is insufficient to invalidate the decision.

V.

Over seven years after the Department began the process of acquiring land in trust on behalf of Wilton, it has maintained its position that Wilton is a federally recognized tribe and that the officials who made the decision properly followed the Department's regulations. In acquiring this land in trust, the Department followed all of its statutory and regulatory obligations to consider the environmental impact of this acquisition. We therefore affirm.

So ordered.

APPENDIX C

MEMORANDUM OPINION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STAND UP FOR CALIFORNIA! et al.,	Case No.
Plaintiffs,	1:17-cv-00058 (TNM)
v.	
U.S. DEPARTMENT OF INTERIOR et al.,	
Defendants,	
and	
WILTON RANCHERIA, CALIFORNIA	
Intervenor-Defendant.	

MEMORANDUM OPINION

The U.S. Department of the Interior and its Bureau of Indian Affairs (collectively, "Federal Defendants" or the "Department") agreed to acquire land in trust for

the Wilton Rancheria Tribe of California ("Wilton") to build a casino in Elk Grove, California. Several Elk Grove residents and an advocacy organization, Stand Up for California! (collectively, "Stand Up"), challenge that acquisition.

In a previous ruling, the Court granted summary judgment to the Department and Intervenor-Defendant Wilton Rancheria (collectively, the "Defendants") on Counts I and II, which challenged the authority of interim decision-makers to act on Wilton Rancheria's trust application. *See Stand Up for Cal! v. U.S. Dep't of Interior*, 298 F. Supp. 3d 136 (D.D.C. 2018) ("*Stand Up I*"). Pending here are Stand Up's motion for summary judgment and cross-motions for summary judgment from the Department and Wilton on the remaining counts. Finding that the Department complied with the relevant statutes when it acquired the Elk Grove site, the Court will grant summary judgment for the Department and Wilton and deny it for the Plaintiffs.

I. BACKGROUND

In 2013, Wilton asked the Bureau of Indian Affairs ("BIA") to acquire land in trust on its behalf, identifying a 282-acre parcel near Galt, California as the proposed site. AR13431; Mem. in Opp. to Pls.' Mot. for Summ. J. and in Supp. of Wilton Rancheria, Cal.'s Cross-Mot. for Summ. J. ("Wilton's Cross-Mot. for Summ. J.") 18, ECF No. 96; *see* Am. Compl. ¶ 31, ECF No. 26.[1] The BIA examined the Galt site for three

[1] All page citations are to the page numbers generated by the Court's CM/ECF system.

years, along with six alternatives. AR16281; Mem. in Opp. to Pls.' Mot. for Summ. J. and in Supp. of Fed. Defs.' Cross-Mot. for Summ. J. ("Fed. Defs.' Cross-Mot. for Summ. J.") 12, ECF No. 98–1. The BIA published a notice of the Final Environmental Impact Statement ("Final EIS") shortly after the November 2016 presidential election, not for the Galt site (Alternative A), but for a different, 36-acre parcel of land in nearby Elk Grove (Alternative F). AR10259; *see also* FEIS and a Revised Draft Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, Cal., 81 Fed. Reg. 90379 (Dec 14, 2016).

Stand Up had expected during the years-long process that the Department would acquire land in Galt, not Elk Grove, so they immediately sought to delay the acquisition of title to the Elk Grove land by making several requests to the Secretary of the Interior (the "Secretary"). Am. Compl. ¶¶ 38, 40. When the Department denied Stand Up's requests, they sued in this District, seeking a temporary restraining order and preliminary injunction against the Department to prevent acquisition of title to the land. *Id*. ¶ 41. Another judge in this District denied the motions, after which Stand Up formally applied to the Department for a stay under 5 U.S.C. § 705. Minute Order, Jan. 13, 2017; Minute Order, Jan. 17, 2017; Am. Compl. ¶ 43.

Rather than halting the process, the Department shifted into warp speed—for a federal bureaucracy—to approve the application for the Elk Grove site. The Environmental Protection Agency ("EPA") filed a Federal Register notice of the Final EIS, which created

a 30-day waiting period that expired January 17, 2019. Environmental Impact Statements; Notice of Availability, 81 Fed. Reg. 91169 (Dec. 16, 2016); Fed. Defs.' Cross-Mot. for Summ. J. 13. Two days after the waiting period expired the Department issued a Record of Decision ("ROD") approving Wilton's application and authorizing acquisition of the Elk Grove land in trust. AR24430; Fed. Defs.' Cross-Mot. for Summ. J. 13. This was the final day of the Obama Administration.

After the Court's decision in *Stand Up I*, Counts III–V remain. *See* 298 F. Supp. 3d at 138. Count III challenges Wilton Rancheria's status as a "recognized Indian tribe now under Federal jurisdiction." Am. Compl. ¶ 87; 25 U.S.C. § 5129. Count IV alleges that the Elk Grove Site cannot be used for gaming because it does not qualify as "Indian lands." Am. Compl. ¶¶ 94, 96, 101; 25 U.S.C. § 2703(d). Count V challenges the Department's compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), (D). Am. Compl. ¶¶ 103–104. The parties' cross-motions for summary judgment are now ripe. Pls.' Mot. for Summ. J., ECF No. 91; Wilton's Cross-Mot. for Summ. J., ECF No. 96; Fed. Defs.' Cross-Mot. for Summ. J., ECF No. 98-1.[2]

II. LEGAL STANDARD

Summary judgment is usually only appropriate if there is no genuine issue as to any material fact and

[2] This Court's jurisdiction and venue are established under 28 U.S.C. §§ 1331, 1391, 2201–2202 and 5 U.S.C. §§ 702, 706.

the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56. But when a court is reviewing an administrative agency's decision, the standard set out in Federal Civil Procedure Rule 56 does not apply. *See Richards v. I.N.S.*, 554 F.2d 1173, 1177 (D.C. Cir. 1977). Instead, as the parties acknowledge, courts review an agency's decision under the APA. *See Ramaprakash v. Fed. Aviation Admin.*, 346 F.3d 1121, 1124 (D.C. Cir. 2003).

When a party challenges agency action under the APA, "the district judge sits as an appellate tribunal" and the "entire case on review is a question of law." *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077 (D.C. Cir. 2001) (cleaned up). A court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 705; *Mayo v. Reynolds*, 875 F.3d 11, 19 (D.C. Cir. 2017). "Agency action is arbitrary and capricious 'if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency.'" *Mayo*, 875 F.3d at 19 (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). A court "must not substitute its own judgment for that of the agency." *Id.* at 19–20 (cleaned up).

III. ANALYSIS

A. The Plaintiffs Have Standing to Sue

The Court begins by considering Article III standing. At least one plaintiff "must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (internal quotations omitted). Stand Up has standing "if one of its members has standing." *Safari Club Int'l v. Jewell*, 842 F.3d 1280, 1285 (D.C. Cir. 2016).

Plaintiffs Joe Teixeira, Patty Johnson, and Lynn Wheat are all residents of Elk Grove, who claim harm "by the decision to acquire land in trust and the environmental impacts of the proposed action." Am. Compl. ¶ 8. Stand Up for California! itself, meanwhile, includes Elk Grove residents who "will be affected by the environmental and economic impacts of the Rancheria's proposed trust acquisition and tribal casino." *Id.* ¶ 9. They seek declaratory and injunctive relief in the form of a court order "directing Defendants to invalidate the [Record of Decision] and record a rescission of the February 10, 2017 acceptance of the grant deed, in order to remove the Elk Grove Site from trust." *Id.* ¶¶ 1, 7. Thus, they meet

all three standing requirements. The Defendants do not argue otherwise.[3]

B. Count III: Wilton is a Federally Recognized Tribe

After granting summary judgment to the Defendants on Counts I and II in *Stand Up I*, 298 F. Supp. 3d at 138, the Court now addresses Count III, which challenges Wilton Rancheria's legal status as a federally recognized Indian tribe. Am. Compl. ¶ 87. To analyze this claim, one must retrace Wilton's history.

The historic Wilton Rancheria was in Sacramento County, on land acquired for it by the federal government. Am. Compl. ¶ 26. Then, in 1958, roughly 30 years after the government acquired the Rancheria, Congress enacted the California Rancheria Act ("CRA"), which authorized the termination of Wilton Rancheria and 40 other California tribes. Pub. L. No. 85¬671, 72 Stat. 619 (amended 1964). The CRA stated that, "After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians." CRA § 10(b), 72 Stat. at 621.

But that was not the end of the rancheria saga. Congress later "expressly repudiated the policy of

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[3] *But see* Fed. Defs.' Mot. for Summ. J. 43. Part C.2 of this Opinion addresses Stand Up's standing to challenge the Department's title examination review.

terminating recognized Indian tribes" by enacting the Federally Recognized Indian Tribe List Act of 1994 ("List Act"), Pub. L. No. 103-454, § 103, 108 Stat. 4791. The List Act expressed Congressional intent "to restore recognition to tribes that previously have been terminated." *Id*. It directed the Secretary of the Interior to keep "a list of all federally recognized tribes" in the United States. *Id*. And along with other authorizing laws, Congress delegated to the Secretary the authority to decide "whether groups have been federally recognized in the past or whether other circumstances support current recognition." *Mackinac Tribe v. Jewell*, 829 F.3d 754, 757 (D.C. Cir. 2016) (citing 25 U.S.C. § 2). The List Act also said that an Indian tribe may be recognized "by a decision of a United States court," which "may not be terminated except by an Act of Congress." List Act § 103, 108 Stat. at 4791.

Under that authority, ten years ago, the Department and the Wilton Rancheria entered into a stipulated judgment in the Northern District of California restoring Wilton Rancheria as a federally recognized tribe. *See* AR596–621; Stipulation and Order for Entry of Judgment, *Wilton Miwok Rancheria v. Salazar*, No. 5:07-cv-02681-JF (N.D. Cal. June 8, 2009), ECF No. 61. The Department issued a Federal Register notice relieving Wilton Rancheria from "the application of section 10(b) of the [CRA]" and entitling the tribe to "the same status as it possessed prior to distribution of the assets of the Rancheria." Restoration of Wilton Rancheria, 74 Fed. Reg. 33468-02 (July 13, 2009). The federal government's list of recognized tribes now includes Wilton. *See* Indian Entities Recognized by and Eligible to Receive

Services From the U.S. Bureau of Indian Affairs, 84 Fed. Reg. 1200-01, 1204 (Feb. 1, 2019).

In the Indian Reorganization Act ("IRA") of 1934, Congress delegated to the Department authorization to acquire land in trust "for the purpose of providing land for Indians." 25 U.S.C. § 5108. The term "Indian" under the IRA includes "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." *Id*. § 5129. The Secretary has created procedures for these "fee-to-trust" actions in the Code of Federal Regulations. *See* 25 C.F.R. § 151.1 *et seq*.

Stand Up makes, in its words, a "straightforward" argument that the CRA precludes the Federal Defendants' trust acquisition. Pls.' Reply Mem. 9, ECF No. 100. In its final form, that argument goes like this: The CRA says that "all statutes of the United States which affect Indians because of their status as Indians" do not apply to Indians who received "the assets of a rancheria or reservation" under the Act. *Id.; see* CRA § 10(b), 72 Stat. at 621. Indians in Wilton received rancheria assets under the CRA. Pls.' Reply Mem. 9. The Department thus violated the CRA when it acquired land in trust for the Wilton Rancheria under Section 5 of the IRA. *Id*. at 9–10; see 25 U.S.C. § 5108. The stark language of the CRA buttresses Stand Up's argument.

But the Department and Wilton challenge Stand Up's second premise and argue that the stipulated judgment between the Department and Wilton restored the tribe to the same status it held before the rancheria assets were distributed under the CRA. Fed.

Defs.' Reply Mem. 6, ECF No. 104; Wilton's Reply Mem. 8–9, ECF No. 103. Wilton notes that the CRA "only applies to a rancheria once its assets 'have been distributed *pursuant to this Act*.'" Wilton's Reply Mem. 8–9 (quoting CRA § 10(b)). And the judgment said expressly that Wilton "was not lawfully terminated, and the Rancheria's assets were not distributed, in accordance with the provisions of the [CRA]." AR602. The judgment even addressed trust land, stipulating that "The Department of the Interior will process . . . any applications for land into trust for any parcels of land acquired by the Tribe." AR605. The Defendants have the better argument here. Under the plain terms of the stipulated judgment, the CRA does not apply to Wilton.

And that is not all. Congress authorized restoration for "tribes that previously have been terminated." List Act § 103, 108 Stat. at 4791. More, the List Act specifically prescribed "a decision of a United States court" as one of the methods for tribal recognition. *Id.* So even if the CRA did strip Wilton of its tribal status, the List Act and the stipulated judgment relieved Wilton from "the application of section 10(b) of the [CRA]" and entitled the tribe to "the same status as it possessed prior to distribution of the assets of the Rancheria." 74 Fed. Reg. 33468-02. To the extent that there is a conflict between the 1958 CRA and 1994 List Act, of course the more recent statute prevails. *See Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 144 (2000).

In earlier filings, Stand Up appeared to challenge the 2009 settlement itself, arguing that the Department "cannot violate a federal statute because

it agreed to the action by stipulation," and characterizing the settlement agreement as a violation of federal law. Pls.' Mot. for Summ. J. 20 & n.4. But their Reply Brief clarifies that they do not challenge the settlement itself, and they now assert that the settlement cannot restore rights that the CRA revoked. *See* Pls.' Reply Mem. 12 ("[T]he Plaintiffs did not challenge—and did not need to challenge—Wilton's status as a federally recognized tribe to assert that BIA lacks authority to acquire the Elk Grove Site in trust."). By going all in on the CRA argument, Stand Up has abandoned its attack on the settlement agreement.[4]

This is a difficult line for Stand Up to walk, however. After all, Congress specifically authorized the restoration of terminated tribes to their pre-CRA status. *See* List Act § 103, 108 Stat. at 4791. And the court judgment reset the CRA's effects, stipulating that Wilton "was not lawfully terminated, and the Rancheria's assets were not distributed, in accordance with the provisions of the [CRA]." AR602. If one accepts the stipulated judgment, one must also accept that it carried out Congressional intent to undo the

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[4] Stand Up also takes pains to argue that the Department "conflates 'restoration' and 'recognition'" despite important differences between the two concepts. Pls.' Reply Mem. 12. But after highlighting those differences, Stand Up concludes that the distinction would matter only if they had "actually challenged Wilton's 'restoration' or 'recognition.'" *Id*. at 13. "But because Plaintiffs do not challenge either, the Court need not decide whether [the Department's decision to recognize Wilton] warrants judicial deference." *Id*. at 13–14. The Court agrees. Like Stand Up's arguments against the settlement agreement itself, the Court considers these arguments abandoned.

purported termination of Wilton's status under the CRA. After conceding the settlement's legitimacy, Stand Up reveals its own argumentative flaw: even if the syllogism is valid, Stand Up's conclusion does not follow.

Stand Up is no new fish to the casino litigation scene. They recently brought a challenge to a similar stipulated judgment involving the North Fork Tribe. *See Stand Up for California! v. Dep't of Interior ("North Fork")*, 204 F. Supp. 3d 212 (D.D.C. 2016), *aff'd*, 879 F.3d 1177 (D.C. Cir. 2018). In dismissing Stand Up's challenge, Chief Judge Howell noted that North Fork's stipulated judgment reflected the coordinated judgment of all three branches of the federal government. *Id*. at 300–301. The executive and judiciary "validated the existence of the North Fork Tribe and found the Tribe to qualify appropriately as a recognized Indian tribe," *id*. at 300, and Congress sanctioned that judgment through the List Act. See id. at 300–301; List Act § 103(3). The result in *North Fork* was that the tribe "as a federally recognized Indian tribe, has the benefit of land acquisition under § 465 of the IRA, like any other federally recognized tribe." 204 F. Supp. 3d at 301. So too here. There is no basis to invalidate the Department's land acquisition for Wilton; it rests on the tripartite authority of the entire federal government. The Court will grant summary judgment to the Defendants as to Count III.

C. Count IV: The Department May Acquire Gaming Land for Wilton

1. Stand Up Lacks Standing to Assert its Encumbrances Claim

Count IV challenges the Department's authority to acquire land for Wilton under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq*. The IGRA "provide[s] a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." *Id*. § 2702(1).

Stand Up argues that encumbrances on the Elk Grove site prevent it from qualifying as "Indian lands" under the IGRA, defined as "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4); *see* Pls.' Mot. for Summ. J. 45. Stand Up claims that the Department violated the APA by failing to resolve the encumbrances. Pls.' Mot. for Summ. J. 45. But Stand Up lacks Article III standing to assert this because they do not have an interest in the Department's title examination process. *See* AR14062–63; New York, 139 S. Ct. at 2565.

The Department's regulations do not require that all encumbrances be eliminated before acquiring land. The key question is whether the Secretary "determines that the liens, encumbrances or infirmities make title to the land unmarketable."

25 C.F.R. § 151.13(b). If title will be unmarketable, the Secretary "*shall* require elimination" of the encumbrances before "taking final action on the acquisition." *Id.* (emphasis added). But if the Secretary concludes title will remain marketable despite the liens, encumbrances, or infirmities, elimination is discretionary. *Id.*

The Department noted in its ROD that the purpose of title evidence "is to ensure that the Tribe has marketable title to convey to the United States, thereby protecting the United States." AR14064 n.198; *see also* Title Evidence for Trust Land Acquisitions, 81 Fed. Reg. 30173-02, 30174 (May 16, 2016). The Department also found that title examination "is separate from the process of deciding whether to accept land in trust in the first place," and that "only the United States has an interest in ensuring its own compliance with the title examination process." AR14063–64.

Stand Up rests their challenge on the vindication of private property rights. Pls.' Mot. for Summ. J. 45 ("To the extent that proposed trust land might include private rights (e.g., easements, right-of-way, etc.), it is critical that those property rights be protected."). But not their own. *See* Fed. Defs.' Cross-Mot. for Summ. J. 43. Recall that standing requires "an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *New York*, 139 S. Ct. at 2565.

Stand Up lacks standing because they have not suffered an "injury in fact." *See Lujan v. Defenders of*

Wildlife, 504 U.S. 555, 560 (1992). As the Department correctly argues, "a plaintiffs' injury in trust challenges typically derives from the decision to accept land in trust, not from the title examination that precedes the formal conveyance of title." Fed. Defs.' Cross-Mot. for Summ. J. 43–44. *Accord Upstate Citizens for Equal., Inc. v. Jewell*, No. 5:08- CV-0633 LEK, 2015 WL 1399366, at *12 (N.D.N.Y. Mar. 26, 2015) ("Plaintiffs' alleged injuries are caused by the decision to acquire the land into trust, and not by the title examination procedures."), *aff'd sub nom., Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556 (2d Cir. 2016). Stand Up does not have an interest in either the land acquisition or the title examination process, instead challenging the Department's review based on evidence that Wilton and the Department recognized encumbrances as obstacles to clean title. *See id*. at 45–46; AR213–15, AR1206, AR3386–87, AR3752. This is not a concrete and particularized injury. *See New York*, 139 S. Ct. at 2565.

The APA "grants standing to a person 'aggrieved by agency action within the meaning of a relevant statute.'" *Assoc. of Data Proc. Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970) (quoting 5 U.S.C. § 702). And it is well settled that plaintiffs like Stand Up can challenge land-into-trust acquisitions under the IGRA and the Department's regulations when they have an interest in the land. *See, e.g., Amador County, Cal. v. Salazar,* 640 F.3d 373, 379 (D.C. Cir. 2011). But the Department's title examination is different because unlike a land acquisition, clean title affects only the United States, not the "surrounding community." *See id*. Under the Department's

regulations, the Secretary must obtain title evidence, but retains discretion to resolve liens, encumbrances, or infirmities. 25 C.F.R. § 151.13. So while the Department's land acquisition itself might encroach on property rights or the public's land use, infirm title affects only the United States. Title Evidence for Trust Land Acquisitions, 81 Fed. Reg. at 30174. Recognizing this, the ROD rejected public participation precisely because title review ensures that "the title actually taken does not expose the United States to liability." AR14064.

Stand Up's claims against the Department's title review exceed the limits of the standing doctrine. "NEPA, of course, is a statute aimed at the protection of the environment." *ANR Pipeline Co. v. FERC*, 205 F.3d 403, 408 (D.C. Cir. 2000). And the APA confers a right of judicial review for those wronged by agency action, including those in violation of NEPA. *See* 5 U.S.C. § 702. But parties cannot challenge an agency's internal processes when they are of no direct consequence to the challenger. To extend standing as far would be hardly different than conferring standing on the rejected basis of "informational injury," which the D.C. Circuit predicts "would potentially eliminate any standing requirement in NEPA cases." *Found. on Econ. Trends v. Lyng*, 943 F.2d 79, 84 (D.C. Cir. 1991).

To illustrate this, consider whether Stand Up's theory would bar anyone from making similar arguments against the Department's title review. Although they rest their challenge on the assumption that the encumbrances reveal private property rights, Stand Up does not allege any interest in those rights at all. *See* Pls.' Mot. for Summ. J. 45. And if they do

not have an interest in the property but can nevertheless claim standing to challenge the title examination, there is no limiting who could pursue the same challenge. *Cf. Lyng*, 943 F.2d at 85 ("If one of NEPA's purposes is to provide information to the public, any member of the public— anywhere—would seem to be entitled to receive it.").

Because Stand Up has not suffered an injury as a result of the Department's title review, they have no more right to challenge the title examination than any other member of the public. Their claim ignores the "irreducible constitutional minimum of standing" that a "plaintiff must have suffered or be imminently threatened with a concrete and particularized injury in fact. . . ." *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014) (internal citations and quotations omitted). It therefore cannot stand.

2. Wilton Qualifies for the Indian Gaming Regulatory Act's "Restored Lands" Exception

Although the IGRA generally prohibits gaming on newly acquired land, there is an exception "when lands are taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition." *Id.* § 2719(b)(1)(B)(iii). The Department's implementing regulations for the IGRA are codified in 25 C.F.R. Part 292 (2008). Under the "restored lands" exception, Wilton must meet each of these four conditions:

> (a) The tribe at one time was federally recognized;
>
> (b) The tribe at some later time lost its government-to-government relationship;
>
> (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition; and
>
> (d) The newly acquired lands meet the criteria of "restored lands."

25 C.F.R. § 292.7. Each of the four conditions also references a later section in the regulation, which the Court analyzes below. *See id.*

Wilton applied to the Department for a determination that it qualifies under this "restored lands" exception. AR14035. Stand Up argues that Wilton cannot qualify as a restored tribe and the Elk Grove site cannot qualify as restored land. Am. Compl. ¶¶ 98, 100.

The Department's Record of Decision ("ROD") contained a full analysis of Wilton's qualification under the "restored lands" exception. *See* AR14034-45. When reviewing agency interpretation of a statute, the Court "must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). In keeping with *Kisor v. Wilkie*, the Court reviews the Department's application of its own regulation in the

same way, "exhaust[ing] all the 'traditional tools' of construction" to determine the meaning of the regulation. 139 S. Ct. 2400, 2415 (2019) (citing *Chevron*, 467 U.S. at 843 n.9).

The Court finds both the IGRA and the Department's regulation unambiguous and agrees with the Department that Wilton qualifies under the "restored lands" exception. *See* AR14034–14045. Wilton meets the first condition because it was at one time federally recognized under at least three of the five methods for determining tribal recognition listed in 25 C.F.R. § 292.8. *See* AR14037. Congress terminated the Wilton Rancheria in the CRA, proving the existence of a government-to-government relationship between Congress and Wilton before the termination. *See* AR14036–37; 25 C.F.R. § 292.8(c); CRA § 10(b), 72 Stat. at 621. The same termination also satisfies the second requirement that Wilton later lost its government-to-government relationship. *See* AR14038; 25 C.F.R. § 292.9(a). Third, a "court-approved settlement agreement entered into by the United States" restored Wilton to federal recognition. 25 C.F.R. § 292.10(c); *see* AR14038–39, AR596–621. Because Wilton meets the first three conditions in § 292.7, the Court agrees with the Department that Wilton "is a 'restored tribe' for purposes of IGRA and Part 292." AR14039.

To meet the fourth requirement, the newly acquired land must qualify as "restored lands" under § 292.11. 25 C.F.R. § 292.7(d). Additionally, because a court-approved settlement restored Wilton, § 292.11(c) applies, and in turn points to the requirements of § 292.12:

(a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:

(1) The land is within reasonable commuting distance of the tribe's existing reservation;

(2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;

(3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or

(4) Other factors demonstrate the tribe's current connection to the land.

(b) The tribe must demonstrate a significant historical connection to the land.

(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:

> (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
>
> (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

Wilton meets the requirements under § 292.12(a)(3) and (4). As the Department noted in its ROD, the Elk Grove site is two miles from Wilton's current headquarters and three miles from its former headquarters, satisfying subsection (a)(3). AR14042. And the site is within Wilton's Service Delivery Area of Sacramento County, satisfying subsection (a)(4). *Id.*; Indian Health Service, Notice of Service Delivery Area Designation for Wilton Rancheria, 78 Fed. Reg. 55731-02 (Sept. 11, 2013).

Wilton also has "significant historical connection" to the site, which "means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. § 292.2. The Department found that the site "is located within the territory once predominantly occupied by" ancestors of Wilton members, near "historic" village sites of other ancestors, "and just a short distance from territory predominantly occupied by" still other ancestors.

AR14042–43. The site is also fewer than six miles from the historic Wilton Rancheria and "a short distance" from a cemetery that Wilton "members have long used as a burial site." AR14043. These attachments show Wilton's historical connection to the Elk Grove site.

Finally, Wilton has met the "temporal connection between the date of the acquisition of the land and the date of the tribe's restoration." 25 C.F.R. § 292.12(c). Despite Stand Up's argument to the contrary—which they raise only in a footnote, *see* Pls.' Mot. for Summ. J. 21 n.6—Wilton included the land in "the tribe's first request for newly acquired lands" since restoration. 25 C.F.R. § 292.12(c)(1). While Wilton first requested acquisition of the Galt site, they withdrew that request in favor of the Elk Grove land. AR13215. The Galt site was not a separate parcel under the "restored lands" exception as Stand Up claims, because the Department never acquired it. *See* 25 C.F.R. § 292.2 ("Newly acquired lands means land that has been taken, or will be taken, in trust . . . ."). In other words, since the Department never approved Wilton's request for the Galt land, the Department never considered it "newly acquired lands." *See* 25 C.F.R. § 292.12(c)(1).

Wilton also independently satisfied the temporal requirement under subsection (c)(2), by making its trust application well within 25 years of tribal restoration. Wilton applied only five years after the 2009 restoration settlement. AR596–621, AR14045. Even if Wilton had not met the "first request" requirement of subsection (c)(1), this alone would meet the temporal requirement. Thus, the Court agrees with the Department that the Elk Grove site qualifies as "restored lands" and that Wilton meets all four

requirements of the IGRA's "restored lands" exception. *See* AR14045; 25 U.S.C. § 2719(b)(1)(B)(iii). The Court will grant summary judgment to the Defendants as to Count IV.

D. Count V: The Department Complied with NEPA and the APA

Count V challenges the Department's compliance with NEPA and the APA. Am. Compl. ¶¶ 103–104; *see* 42 U.S.C. §§ 4321 *et seq*.; 5 U.S.C. § 706(2)(A), (D). Before any federal agency adopts a major action "significantly affecting the quality of the human environment," NEPA requires "a detailed statement" on "the environmental impact of the proposed action," as well as any potential "alternatives to the proposed action." 42 U.S.C. § 4332(c). This process ensures that agencies "consider every significant aspect of the environmental impact of a proposed action" and keep the public informed about their analysis. *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). "In other words, agencies must 'take a hard look at [the] environmental consequences' of their actions, and 'provide for broad dissemination of relevant environmental information.'" *Pub. Emps. for Envtl. Responsibility v. Hopper*, 827 F.3d 1077, 1082 (D.C. Cir. 2016) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)) (brackets in original).

The purpose of this requirement is to ensure "'a fully informed and well-considered decision, not necessarily' the best decision." *Theodore Roosevelt Conserv. P'ship v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010) (quoting *Vt. Yankee Nucl. Pow. Corp. v. Nat. Res.*

Def. Council, Inc., 435 U.S. 519, 558 (1978)). "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

Court review of administrative actions under NEPA is the same as APA review. *Mayo*, 875 F.3d at 19. The Supreme Court has stated that "inherent in NEPA and its implementing regulations is a 'rule of reason.'" *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004). The rule of reason governs judicial review of decisions not to supplement an Environmental Impact Statement ("EIS"). *Marsh v. Or. Nat. Resources Council*, 490 U.S. 360, 372–73 (1989). Whether an agency must complete a supplemental EIS "turns on the value of the new information to the still pending decisionmaking process." *Id.* at 374.

1. The Department's EIS is Sufficient under NEPA

Stand Up argues that the Department failed to consider the environmental impact of the Elk Grove acquisition. Pls.' Mot. for Summ. J. 34–38. They identify three "major deficiencies" based on the Department's review of area water supply, public safety risks, and traffic impacts. *See id.* at 46–50. The Court will consider each in turn.

a. The Department Considered the Project's Water Impact

Stand Up argues that the Department failed to address the effect of the Elk Grove acquisition on the Sacramento County Water Agency's ("SCWA") water capacity or "the cumulative effects of the casino project and the surrounding development." *Id.* at 47. Referencing the SCWA's 2005 Master Plan, Stand Up argues that Wilton's proposed casino will require "three times what SCWA budgeted" for the site.[5] *Id.*; *see* AR11000. As a result, Stand Up claims that the Department's mitigation measures are inadequate, and its selection of the Elk Grove site is unjustified. Pls.' Mot. for Summ. J. 47; *see* AR10703–04.

In fact, the Department thoroughly considered water supply availability. The Final EIS noted that although the Elk Grove site would have "[a] significant effect" on water distribution, "detailed water analyses"

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[5] The Department and Wilton argue that Stand Up waived their arguments related to the SCWA's 2005 Master Plan because they failed to raise them during the NEPA process. *See* Fed. Defs.' Reply Mem. 19; Wilton's Reply Mem. 21; *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1297 (D.C. Cir. 2004) ("It is a hard and fast rule of administrative law, rooted in simple fairness, that issues not raised before an agency are waived and will not be considered by a court on review."). But the Defendants' bet ignores the fact that the Department addressed similar comments in the Final EIS. The Final EIS even referenced the 2005 Master Plan in response to a public comment challenging the Draft EIS. *See* AR10729. The Court cannot say that the Department was deprived of "a fair opportunity" to consider arguments about the SCWA's water capacity during its administrative review. *See Nuclear Energy*, 373 F.3d at 1298 (citation and formatting omitted).

combined with appropriate mitigation measures showed that "there would be adequate water supply to serve any of the project alternatives." AR10703, AR10729. The Department also noted that the SCWA had already accounted for increased water demands at the Elk Grove site associated with other development plans. AR10729. The Final EIS concluded that the only water option for the Elk Grove site would be reliance on the SCWA but noted that the impact on water distribution facilities would be no more significant than the alternatives considered in Galt, and "less than significant" after mitigation measures. AR10704. Wilton also agreed to pay for additional water development improvements. *Id*.

Stand Up's concerns about the regional water supply are well-taken, particularly in drought-afflicted California. *See* Pls.' Mot. for Summ. J. 47. But it does not follow that the Department failed to address those concerns or, critically, that it violated NEPA. Recall that so long as the Department "adequately identified and evaluated" the environmental impacts, "the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson*, 490 U.S. at 350. The Department reviewed the water supply constraints, identified mitigation measures, including Wilton's agreement to fund improvements, and found that the SCWA would be able to meet the site's needs. AR10703.

Considering the water supply constraints in Sacramento County, it is safe to say that the Department could not find a perfect answer. But that is not what the law requires. The law does not even

require "the best decision." *Salazar*, 616 F.3d at 503. It only requires "a fully informed and well-considered decision." *Vt. Yankee*, 435 U.S. at 558. The Department's analysis of water supply meets that requirement under the arbitrary and capricious review standard. *See Advocates for Hwy. & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 429 F.3d 1136, 1150 (D.C. Cir. 2005) ("[C]ourts are not authorized to second-guess agency rulemaking decisions; rather the role of the court is to determine whether the agency's decision is arbitrary and capricious for want of reasoned decisionmaking.").

b. The Alleged Public Safety Impact is Not an Environmental Concern

Stand Up also argues that the Department failed to consider the public safety risk of an explosion or attack at a propane facility one-half mile from the Elk Grove site. Pls.' Mot. for Summ. J. 49. Stand Up faults the Department for failing to conduct a review in its Draft EIS altogether, and for failing to consider fully the risks in the Final EIS. *See id*.

But the risk of accident or sabotage "on an unrelated, pre-existing facility" exceeds the scope of the Department's review on this proposal. *See* Wilton's Reply Mem. 24 & n.3. "NEPA does not require the agency to assess every impact or effect of its proposed action, but only the impact or effect on the environment." *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (emphasis in original). Stand Up's creative claim—that the development might make another facility a likelier,

because more deadly, target for terrorists—does not transform the issue into an environmental concern. An accidental explosion or terrorist attack at the propane facility are not environmental impacts any more than they could be proximately traced to the proposed casino. *See Metro. Edison*, 460 U.S. at 774.

Yet the Department did consider the potential impact of a threat to the propane facility and concluded earlier reviews had adequately addressed the threat. *See* AR24781–82. The Department contends that contrary to Stand Up's claims, "the rule is not 'in for a dime, in for a dollar.' The Department's determination that [Stand Up's] later submissions did not change its opinion, AR24782, sufficed at a minimum because the Department did not need to respond to [Stand Up's] speculative comments at all." Fed. Defs.' Reply Mem. 21. The Court agrees. NEPA did not require the Department to assess the impacts to public safety posed by a potential terrorist attack. The Department could have omitted the review altogether without violating NEPA. So the fact that the Department did address those impacts does not create an opportunity for Stand Up to challenge the quality of the review.

c. The Department Considered the Project's Traffic Impact

Stand Up's final "major" attack on the EIS is its failure to assess the traffic impacts of the Elk Grove site's increase from 28 proposed acres to the adopted size of 36 acres. Pls.' Mem. for Summ. J. 50. The change was based exclusively on a new parking structure after Wilton discovered that it would not be

able to share parking with an adjacent shopping mall. AR24771– 72. The Department concluded that the gaming floor square footage, which remained unchanged, would be the driver of customer demand, and that the additional parking would "not [be] expected to affect the number of customers who will visit the proposed casino resort." AR24771.

The Court's role in this review is not to "'flyspeck' an agency's environmental analysis, looking for any deficiency no matter how minor." *WildEarth Guardians v. Jewell*, 738 F.3d 298, 308 (D.C. Cir. 2013) (cleaned up). The Department explained why the lot needed to accommodate a new parking structure and noted that the "currently mostly paved" site would "not create any significant changes in the environmental impacts" of the Elk Grove acquisition. AR24771–72. That is a reasonable conclusion, as is the Department's finding that the size of the gaming floor, and not the size of the parking structure, will determine customer demand at the site. AR24771. The Court will not "flyspeck" the Department's review over minor quibbles that the Department has considered in its reasoned decisionmaking.

2. The Department was Not Required to Perform a New or Supplemental EIS

The same standard of review for agency compliance with NEPA also applies to the narrower review of an agency's obligations to prepare a new or supplemental EIS. *Marsh*, 490 U.S. at 376. The court is "highly deferential" to agency actions, which it presumes are valid. *Envtl. Def. Fund, Inc. v. Costle*, 657 F.2d 275, 283 (D.C. Cir. 1981). And while the court's "inquiry

into the facts is to be searching and careful," it "is not empowered to substitute its judgment for that of the agency." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). The "court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Id*.

An agency must supplement an existing EIS only if the agency "makes substantial changes in the proposed action that are relevant to environmental concerns," or if there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c). An agency need not conduct a new assessment "every time it takes a step that implements a previously studied action, so long as the impacts of that step were contemplated and analyzed by the earlier analysis." *Mayo*, 875 F.3d at 16. To require otherwise would be an exercise in superfluity.

The Supreme Court has explained that under the rule of reason, "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized." *Marsh*, 490 U.S. at 373. Rather, "a supplemental EIS must be prepared" only when a new action will affect the quality of the environment "in a significant manner or to a significant extent not already considered." *Id*. at 374.

Courts must also defer to the agency's "informed discretion" about whether to prepare a supplemental EIS because it requires "substantial agency expertise." *Id*. at 376–77. That said, "courts should not

automatically defer to the agency's express reliance on an interest in finality without carefully reviewing the record and satisfying themselves that the agency has made a reasoned decision based on its evaluation of the significance—or lack of significance—of the new information." *Id.* at 378. "The overarching question is whether an EIS's deficiencies are significant enough to undermine informed public comment and informed decisionmaking." *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).

Stand Up argues that the Department had to prepare a second EIS once Wilton applied for the Elk Grove site instead of Galt or, at a minimum, needed a supplemental EIS because of major changes to the proposed action. Pls.' Mot for Summ. J. 34. According to Stand Up, when the Department changed "from acquiring one site for a casino to acquiring another site, [it] self-evidently made a 'substantial change[] in the proposed action.'" *Id.* (citing 40 C.F.R. § 1502.9(c)(1)(i)) (first bracket added). The Department counters that it "fully consider[ed] the environmental impacts" of the Elk Grove site in both the Draft EIS and Final EIS. Fed. Defs.' Cross-Mot. for Summ. J. 34. The Department also warns that Stand Up's argument boils down to an untenable claim that "even though an agency must consider reasonable alternatives in [a Statement], that consideration cannot be so serious as to warrant choosing one of the environmentally preferable alternatives identified in the process." *Id.* at 9.

Stand Up also lists several other shortfalls it deems "significant new circumstances or information relevant to environmental concerns and bearing on the

proposed action or its impacts." Pls.' Mot. for Summ. J. 34 (quoting 40 C.F.R. § 1502.9(c)(1)(ii)). These include complaints that the Department misidentified the parcel of land and failed to consider the effects of utility improvements, impacts on wastewater, the proximity of residential neighborhoods, impacts on police services and taxes, among other complaints. *Id.* at 34–36. The Department counters that Stand Up's "laundry list . . . merely flyspecks the [Draft EIS] . . . for missing minutiae and minor mistakes." Fed. Defs.' Reply Mem. 22; see *WildEarth Guardians*, 738 F.3d at 308. The Court agrees.

The Department did not have to conduct another EIS simply because it ultimately adopted the Elk Grove site over the Galt site. NEPA explicitly requires that an EIS include any potential "alternatives to the proposed action." 42 U.S.C. § 4332(c). Closely related proposals "shall be evaluated in a single impact statement." 40 C.F.R. § 1502.4. And "[t]he degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the 'proposed action.'" CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026-01, 18027 (Mar. 23, 1981).

The Department did just that. From the start, it evaluated the environmental impacts of seven alternatives, including the initial proposal in Galt and the adopted site in Elk Grove. And the Elk Grove site received robust analysis in the Draft EIS and Final EIS. *See, e.g.*, AR10703– 04, AR10719–20, AR11666-712, AR26979–80, AR26637, AR26985–87, AR 27142–237; Wilton's Cross-Mot. for Summ. J. 40

n.10. As the Department notes, NEPA's EIS requirements would be empty if a new or supplemental EIS was required every time an agency adopted an alternative proposal. Fed. Defs.' Cross-Mot. for Summ. J. 22. After all, the requirement to "[r]igorously explore and objectively evaluate all reasonable alternatives" lies at "the heart of" the EIS. 40 C.F.R. § 1502.14. Stand Up's proposal would require the Department—and every other federal agency—to repeat this analysis for every alternative proposal it adopts. There is no basis for such a rule in logic or in the law. *See* 42 U.S.C. § 4332(c).

More, the Department did not define the Galt site as the proposed action; Wilton's application to the Department did. Fed. Defs.' Cross-Mot. for Summ. J. 22, 23 & n.14; *see also* 46 Fed. Reg. at 18028 ("the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a 'preferred alternative' at the Draft EIS stage . . . ."). It would be perverse to hold against the Department a designation that it did not control. In any event, the delineation of preferred and alternative proposals is inconsequential when an agency properly analyzes each, and the Department did that. *See* 42 U.S.C. § 4332(c).

And Stand Up's "laundry list" of other complaints also fails to paint a "*seriously* different picture of the environmental landscape" that would require a supplemental EIS. *See City of Olmstead Falls v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002) (emphasis in original). Stand Up cannot raise these issues in a passing fashion and expect the Court to invalidate the Department's entire review. *Cf. Airport Impact Relief,*

Inc. v. Wykle, 192 F.3d 197, 205 (1st Cir. 1999) (noting arguments raised "in a perfunctory manner, unaccompanied by some effort at developed argumentation" are waived when they "do not attempt to explain the manner in which the environment will be significantly affected"). More, many of Stand Up's criticisms are entirely misplaced because the Department analyzed the issues in its Draft EIS. *See, e.g.,* AR26513–15, AR26610–15, AR26616–27, AR26637, AR26690–93, AR26853–54, AR26878–82, AR26979– 88; Fed. Defs.' Cross-Mot. for Summ. J. 39. The Department was not required to complete a supplemental EIS solely because it analyzed the issues in greater detail in the Final EIS than it did in the Draft. *See Marsh*, 490 U.S. at 374.

The Department took "a 'hard look' at the environmental consequences of its actions, including alternatives to its proposed course." *See Sierra Club*, 867 F.3d at 1367. Stand Up has identified no compelling analytical or legal deficiencies in that "hard look," let alone evidence that the Department's review was arbitrary or capricious. NEPA not only contemplates that an agency may select an alternative proposal, it demands that an agency look at the alternatives. *See* 42 U.S.C. § 4332(c).

That is what happened here. The EIS considered the Elk Grove site's impacts on the quality of the environment. *See Marsh*, 490 U.S. at 374. Considering the Department's environmental review, particularly under the deferential arbitrary and capricious standard, Stand Up has not shown that the Elk Grove site presented significant environmental impacts that the Department failed to consider. *See id.* To the

contrary, the record shows a thorough and comprehensive environmental review of each of the alternatives, including the Elk Grove site. The Court is satisfied that the Department made a "reasoned decision" not to complete a new or supplemental EIS. *See id*. at 378.

Stand Up's reliance on *Lemon v. McHugh*, 668 F. Supp. 2d 133 (D.D.C. 2009), fares no better than their other arguments. *See* Pls.' Mot. for Summ. J. 37. Stand Up argues that *Lemon* compels the Department to perform a more thorough evaluation before deciding not to complete a supplemental EIS. Pls.' Mot. for Summ. J. 37. But in *Lemon*, the Final EIS came six years before the plan was ultimately approved. 668 F. Supp. 2d at 136. The court was not convinced that the agency had fully considered the overall environmental impact of the project. *Id*. at 140. In contrast to that stale review, here the Department conducted a thorough analysis in the Draft EIS and added to it in the Final EIS, rendering a supplemental review unnecessary. *See Olmsted Falls*, 292 F.3d at 274 (no need for supplemental EIS where "there simply is not significant new information, and the landscape is unchanged"). NEPA requires a "hard look," but it does not require "a new look every time [an agency] takes a step that implements a previously-studied action." *Mayo*, 875 F.3d at 14–15 (emphasis in original). The unique facts in *Lemon* do not compel a supplemental EIS in this case.

This also follows other courts' decisions to upheld agency discretion in this area. *See, e.g., Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) ("[T]he Commission's determination that

the new information was not significant enough to warrant preparation of a supplement to the [Draft EIS] is entitled to deference."); *Friends of Marolt Park v. U.S. Dep't of Transp.*, 382 F.3d 1088, 1097 (10th Cir. 2004) ("The Agency has determined a supplemental EIS is not required where the ROD selects an option not identified as the preferred option in the final EIS, as long as the selected option was fully evaluated. . . . [W]e conclude that the Agency's failure to issue a supplemental EIS in this case was not arbitrary or capricious."). Stand Up's insistence on another EIS demands too much of the Department on this record. The Department acted well within its discretion, and the Court cannot say that the EIS was so deficient as to "undermine informed decisionmaking." *See Sierra Club*, 867 F.3d at 1368.

3. The Timing of the Decision Does Not Show Impermissible Predetermination

Stand Up claims that the Department's rush to a decision before the 2017 presidential inauguration is evidence that it had "predetermined its outcome," and that it raced to a decision "apparently because it assumed that the incoming Administration would be less friendly." Pls.' Mot. for Summ. J. 38–39. The Department's dash to issue its decision may be suspicious, but upon review of the record, the Court finds that it complied with NEPA and the APA.

Stand Up's argument to the contrary relies heavily on *North Carolina Alliance for Transportation Reform, Inc. v. U.S. Department of Transportation*, 151 F. Supp. 2d 661 (M.D.N.C. 2001). In that case, a district court inferred that the Department of Transportation

acted in bad faith when it issued its ROD only one day after the Final EIS. *Id.* at 676. The very quick turnaround is similar here, where the Department issued its ROD just two days after the close of comments on the Final EIS. *See* Pls.' Mot. for Summ. J. 16. And that is arguably "alarming, especially in light of the crawling pace at which administrative agencies typically conduct their business." *See Alaska v. U.S. Dep't of Agric.*, 273 F. Supp. 3d 102, 118–19 (D.D.C. 2017).

But important differences also distinguish this case from *North Carolina Alliance*. For one, the agency in that case acknowledged that it received and left unanswered "numerous comments" to the Final EIS before issuing the ROD. *N.C. Alliance*, 151 F. Supp. 2d at 676. And before the court's review in that case, the agency had already re-opened "the entire NEPA process" in an implicit admission of a flawed process. *Id.* Finally, the court's inquiry was about an award of attorney fees and expenses, not whether the Department violated NEPA. *Id.* In all, the court found that the agency "would not have issued the ROD so rapidly had they undertaken a more deliberate consideration of the environmental analysis." *Id.*

While a two-day turnaround between the close of public comments and issuance of the ROD is highly unusual, that alone does not prove a NEPA violation. Consider the principle in another case, *Alaska v. U.S. Department of Agriculture*:

> Alaska seems to want this Court to presume that, because the USDA conducted such a far-reaching

> rulemaking in an extraordinarily short time period, the USDA *necessarily* did not satisfy NEPA's goals of adequate public disclosure and informed decision-making. Indeed, the fact that the USDA issued a rule affecting a whopping 2 percent of all land in the United States in less than 15 months is alarming, especially in light of the crawling pace at which administrative agencies typically conduct their business. But upon review of the record herein, I find that the USDA complied with NEPA in conducting its public comment and decisionmaking processes.

273 F. Supp. 3d at 118–19 (emphasis in original).

So too here. Despite Stand Up's claim that the Department compressed a 15-month process into 40 hours, *see* Pls.' Mot. for Summ. J. 40,[6] the extensive administrative record shows that the Department spent sufficient time and energy analyzing the many contours of its acquisition decision. Not only that, but the Department received only eleven letters during the Final EIS comment period, and only four of them on the final day for submission. AR24530; Fed. Defs.' Cross-Motion for Summ. J. 41. It is certainly reasonable to conclude that the Department addressed the substantive concerns in those letters before

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[6] The 15-month calculation is a dubious one, anyway. *See* Fed. Defs.' Reply Mem. 18 n.9 ("Plaintiffs' assertion that an agency ROD should take fifteen months to issue is of their own concoction.").

issuing its ROD. And although Stand Up points to internal Department emails seeking "a very quick review" and correspondence showing intent to "allow land to be put into trust by January 19, 2017," Stand Up cites no unanswered public comment or evidence that the Department's decisionmaking process was flawed. *See id*. at 41–42; AR5791, AR5627.

Time aside, an agency engages in impermissible predetermination when it "irreversibly and *irretrievably* commits itself to a plan of action that is dependent upon the NEPA environmental analysis producing a certain outcome." *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 70 (D.D.C. 2012) (citation omitted) (emphasis in original). But the Department may work toward a solution, even its preferred one. "Bias towards a preferred outcome does not violate NEPA so long as it does not prevent full and frank consideration of environmental concerns." *Cmte. of 100 on Fed. City v. Foxx*, 87 F. Supp. 3d 191, 206 (D.D.C. 2015); *see also Envtl. Def. Fund, Inc. v. Corps of Engineers*, 470 F.2d 289, 295 (8th Cir. 1972) (holding NEPA requires agencies "to objectively evaluate their projects," but does not require "agency officials to be subjectively impartial"). Concluding that a quick turnaround proves a *per se* violation of NEPA is not only legally incorrect, it is also illogical. The Department's response is instructive: If "two days is, as a matter of law, too short to take a hard look under NEPA," then "it is unclear what the agency is supposed to do on remand except wait longer. And if that is the case, exactly how long should the agency wait?" Fed. Defs.' Reply Mem. 18–19.

Stand Up's failure to marshal any evidence of bad faith is not for lack of opportunity. In a previous ruling and in light of the unusual sequencing of events here, the Court directed the Department to provide Stand Up with additional discovery and the Department's privilege log. *See Order*, May 30, 2018, ECF No. 63.[7] Yet this extraordinary discovery did not present any new evidence of bad faith. *See* Pls.' Mot. for Summ. J. 38–39. In this regard, it is notable that— despite being almost three years into the new Administration—the Department's leaders have not made any effort to repudiate or undermine the decisions made in this case by their predecessors.

The lack of evidence of bad faith suggests another, more plausible explanation for the rush: the outgoing leadership team wanted to "clear the decks" of unfinished business before their departure. While this instinct *might* be motivated by a desire to "bind the hands" of incoming political appointees, it can also

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[7] In the same Order, the Court also denied the part of Stand Up's motion seeking to supplement the administrative record. *See* Order, May 30, 2018. Among other documents, Stand Up wanted a March 6, 2017 SCWA memorandum added to the record, a request they have renewed in a Motion for Reconsideration. *See* Pls.' Mot. to Supp. the Admin. Rec. and for Disc., ECF No. 57; Pls.' Mot. for Recons., ECF No. 87. But as the Court noted, the memorandum post-dates the Department's decision and there was no evidence that the Department had notice of the document at the time. *See* Mem. Op., May 30, 2018 at 8, ECF No. 62. In its request for reconsideration, Stand Up concedes that "the memo was not before the Department during the decision-making process." Pls.' Mot. for Recons. 4. Thus, for the same reasons listed in the May 30, 2018 Memorandum Opinion, the Court will deny Stand Up's Motion for Reconsideration. See Mem. Op., May 30, 2018 at 8.

spring from a sense of obligation and good governance to finish projects that are nearly complete while the decisionmakers who are most knowledgeable about the project are still in office. Stand Up has not provided any reason to believe that such a motivation would be invalid.

And that is not all. Stand Up's insinuations of impropriety run up against a strong "presumption of regularity" afforded to executive branch agencies. *See Overton Park*, 401 U.S. at 415. Earlier this year, the Supreme Court emphasized that reviewing courts "may not reject an agency's stated reasons for acting simply because the agency might also have had other unstated reasons." *New York*, 139 S. Ct. at 2573. More specifically, "a court may not set aside an agency's policymaking decision solely because it might have been influenced by political considerations or prompted by an Administration's priorities. . . . Such decisions are routinely informed by unstated considerations of politics, the legislative process, public relations, interest group relations, foreign relations, and national security concerns (among others)." *Id.* In practice, courts "give the benefit of the doubt to the agency." *Id.* at 2580 (Thomas, J. dissenting). This Court must follow suit. While the Department worked around the clock to issue its decision before President Trump's inauguration, the Court will not impute improper motives when other considerations were likely at play.

4. The Public Appropriately Participated in the Department's Selection Process

Finally, Stand Up argues that the Department withheld information about the Elk Grove site that deprived the public of a meaningful opportunity to participate in the selection process. *See* Pls.' Mot. for Summ. J. 26. The record tells a different story. *See* Fed. Defs.' Cross-Mot. for Summ. J. 26–33.

The Department first published notice of the Elk Grove site in the 2014 EIS Scoping Report, which identified the site as Alternative F. AR16278, AR24777. The Scoping Report included maps and diagrams of each of the alternatives, including Elk Grove. AR16282–83, AR16289, AR16291. The December 2015 Draft EIS also included Alternative F and "analyzed in great detail all of the alternatives and their environmental impacts, including Alternative F, in over 700 pages." *See* Fed. Defs.' Cross-Mot. for Summ. J. 26; *see, e.g.*, AR26360–61. The Department published a Notice of Availability for the Draft EIS in the Federal Register, which included key information about the proposal and the public comment process. 80 Fed. Reg. 81352-02 (Dec 29, 2015). And to make it more accessible, the Department also published the Notice of Availability in three area newspapers. AR12527–29. Then, after 60 days for public comment, Wilton's Chairman announced at a public hearing that "Alternatives A and F, Elk Grove, are the tribe's preferred alternatives." AR431.

And the public notice only expanded from there. Wilton revised its fee-to-trust application in June 2016, requesting the Elk Grove site over the Galt

location. AR13215. Wilton then held a "town-hall-style meeting" with the public to "present its plans to the community, solicit comment and respond to questions and concerns." AR12558. Then toward the end of 2016, the Department issued the Final EIS, which listed the Elk Grove site as the preferred alternative. AR10957, AR10964. Like the Draft EIS, the Department published the Final EIS in the Federal Register and local newspapers. *See* AR24768; 81 Fed. Reg. 90379-01 (Dec 14, 2016). Surely the public knew that the Elk Grove site was under consideration.

And it was not only the extent of the notice that suggests the public was aware of the possibility. The number of public comments in the record referencing the Elk Grove site show that the public knew it was an option. *See* Fed. Defs.' Cross-Mot. for Summ. J. 27 (citing record). Notable commenters included the City of Elk Grove, AR10290; Sacramento County, AR10447–48; and the EPA, AR10310 (recommending the Elk Grove site "be designated the environmentally preferable alternative"). But individual citizens commented as well. Indeed, Plaintiff Lynn Wheat encouraged the Department to "consider carefully" the Elk Grove site instead of the Galt site. AR10677. It strains the limits of credulity for Stand Up to argue that the public was unaware Lynn Wheat might get her wish. The Court will grant summary judgment to the Defendants as to Count V.

IV. CONCLUSION

Finding no evidence of a legal or procedural flaw in the Department's decisionmaking processes, and for all the reasons stated above, the Court will deny Stand

Up's motion for summary judgment and grant the Department's and Wilton's motions for summary judgment.[8] A separate Order will issue.

Dated: October 7, 2019

/s/
TREVOR N. McFADDEN, U.S.D.J.

[8] The Court has considered the parties' requests for a motions hearing but finds oral argument unnecessary here. *See* LCvR 78.1.

APPENDIX D

RECORD OF DECISION

Record of Decision

Trust Acquisition of 35.92 +/- acres in the City of Elk Grove, California, for the Wilton Rancheria

U.S. Department of the Interior
Bureau of Indian Affairs
January 2017

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Record of Decision (ROD) for acquisition in trust by the United States of 35.92+/- acres in the City of Elk Grove, California, for the Wilton Rancheria (Tribe), for gaming and other purposes.

Summary: The Tribe submitted an application in 2013 to the Bureau of Indian Affairs (BIA) requesting that the Secretary of the interior (Secretary) acquire approximately 282 +/- acres of land in trust near Galt, Sacramento County, California, for gaming and other purposes. The Draft Environmental Impact Statement (DEIS) identified a site near Galt as the proposed action that would allow for the development of the Tribe's proposed casino/hotel project. In December, 2016, after evaluating all alternatives in the DEIS, the BIA instead selected the Elk Grove Mall Site, which was identified as Alternative F in the DEIS, as its preferred alternative to allow for the Tribe's proposed project. The Secretary will acquire approximately 35.92 acres of land in the City of Elk Grove, Sacramento

County, California (Site) for gaming and other purposes.

The Tribe has no reservation or land held in trust by the United States. In 1958, Congress enacted the California Rancheria Act of 1958, which authorized the Secretary to transfer several California Rancherias from federal trust ownership to individual fee ownership, and to terminate the government-to-government relationship between the United States and those tribes so affected, including Wilton Rancheria. In 1964, the Department of the Interior (Department) reported in the Federal Register that it had terminated federal supervision of the Tribe, among others. Following termination, the Tribe's former 38.81 acre reservation, the Wilton Rancheria, was distributed to eleven individual tribal members and the dependents of their immediate families, with two parcels held in common ownership.

The Tribe now seeks to restore its homeland in an area it historically inhabited. The Site is 5.5 miles from the Tribe's historic Rancheria, and 4 miles from the Tribe's historic cemetery. The Tribe proposes to construct a casino/hotel facility on the Site which would be 608,756 sq.f

(Proposed Project). The gaming floor would be 110,260 sq.ft. Restaurant facilities include a 360-seat buffet, as well as a café, center bar and lounge, sports and lobby dining, and other food and beverage services. A 60-seat pool grill, a retail area of approximately 1,870 sq.ft., an approximately 2,120 sq.ft. fitness center, an approximately 8,683 sq.ft. spa, and an approximately 47,634 sq.ft. convention center are also proposed. The proposed hotel would be 12 stories with a total of 302 guest rooms, totaling approximately 225,280 sq.ft. A total of 1,437 on-site surface parking spaces, along with a three-level, 1,966 space parking garage would be included.

The Department analyzed the proposed acquisition in a Final Environmental impact Statement (FEIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Pacific Regional Office. The BIA published a Notice of Intent (NOI) in the *Federal Register* on December 4, 2013, describing the Proposed Action and announcing the BIA's intent to prepare an EIS. The results of the scoping period were made available in a Scoping Report published by the BIA on February 24, 2014. A subsequent

errata sheet was released on February 24, 2014 documenting the inclusion of two additional comments. The BIA issued notice of the availability of the FEIS and a Revised Draft Conformity Determination on December 14, 2016. The Draft Environmental Impact Statement (DEIS) arid FEIS considered a reasonable range of alternatives to meet the purpose and need for acquiring the Site in trust, and analyzed the potential effects and feasible mitigation measures. The FEIS and information contained within this ROD fully consider comments received from the public on the DEIS and FEIS. The comments and the Department's responses to the comments are contained in the FEIS and **Attachment II** of this ROD, and are incorporated herein.

The DEIS identified Alternative A, located on the 282-acre Twin Cities site, as the Proposed Action that would allow for the development of the Tribe's proposed casino/hotel project; however, after evaluating all alternatives in the DEIS, the BIA has now selected Alternative F, located on the Elk Grove Site, as its Preferred Alternative to allow for the Tribe's Proposed Project, Since the DEIS was published, the Site increased by approximately eight acres, from

approximately 28 to 36 acres. The additional eight acres consists of developed and disturbed land similar to the original 28 acres and was added due to parcel configuration and redesigned interior circulation. In addition, Alternative F project components have been revised in the FEIS from their discussion in the DEIS. The total square footage of the proposed facility has decreased approximately 2,299 sq.ft, from 611,055 sq.ft. to 608,756 sq.ft. Some components have also changed, such as restaurant types, and a three-story parking garage has been added, however gaming floor square footage has remained the same. These changes do not impact the conclusions of the FEIS. The FEIS was updated accordingly.

With issuance of this ROD, the Department has determined that it will acquire the Site in trust for the Tribe for gaming and other purposes. The Department has selected Alternative F as the Preferred Alternative because it will best meet the purpose and need for the proposed trust acquisition by promoting the long-term economic self-sufficiency, self-determination, and self-governance of the Tribe.

Implementation of this action will provide the Tribe with a restored land base and the best opportunity for attracting and maintaining a significant, stable, and long-term source of governmental revenue. This action will also provide the best prospects for maintaining and expanding tribal governmental programs to provide a wide range a health, education, housing, social, and other programs, as well as creating employment and career development opportunities for tribal members.

The Tribe seeks to conduct gaming on the Site pursuant to the Restored Lands Exception of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(iii) (IGRA). As discussed in the ROD, the Tribe qualifies as a "restored tribe," and the Site qualifies as "restored lands." Accordingly, the Tribe may conduct gaming on the Site upon its acquisition in trust.

The Department has considered potential effects to the environment, including potential impacts to local government. The Department has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects will be adequately

addressed by these mitigation measures.

The Department's decision to acquire the Site in trust for the Tribe is based on a thorough review and consideration of the Tribe's application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of land in trust and the eligibility of land for gaming; the DEIS and FEIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies, and potentially affected Indian tribes.

For Further Information Contact:

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7.2 Legal Framework

Analysis of the Restored Lands Exception is governed by IGRA and its implementing regulations at 25 C.F.R. Part 292.

1. The Indian Gaming Regulatory Act

IGRA[44] was enacted in 1988 "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."[45] Section 20 of IGRA generally prohibits gaming activities on lands acquired into trust by the United States on behalf of a tribe after October 17, 1988. However, Congress expressly provided that lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition" arc not subject to IGRA's general prohibition. 25 U.S.C. § 2719 (b)(1)(B)(iii). Section 20 of IGRA does not provide the Secretary of the interior with the authority to acquire land in trust; rather, it allows gaming on certain after-acquired lands once those lands are acquired into trust. Because the Tribe has requested that the Site in the City of Elk Grove, Sacramento County, be taken in trust for gaming, the

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[44] 25 U.S.C. § 2701 *et seq*.

[45] *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). *See* also 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

Tribe must satisfy one of the IGRA Section 20 exceptions before it may game on the property.

One commenter, Stand Up for California!, observes that the Tribe's Resolution asks for a two-part determination, and not a restored lands opinion.[46] While this is so, the Tribe made an application to the Department for a determination that it qualifies for the Restored Lands Exception;[47] that is sufficient for our purposes.

The same commenter, in a subsequent comment, submitted a historical report by Stephen Dow Beckham, Ph.D., titled "The Wilton Rancheria: History of the Wilton Community and Its Antecedents" ("Beckham Report"). The commenter asserts that the Beckham Report demonstrates that the Elk Grove Site cannot be taken into trust and cannot be eligible for gaming because (1) the Tribe is not a "tribe" at all; (2) that the Tribe's restoration to Federal recognition in 2009 was invalid; and (3) that the Tribe has no significant historical connection to the Elk Grove Site.[48] Each of these arguments is addressed in turn in this Section.[49]

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[46] FEIS Comments O8-02, O8-18.

[47] *See* Application.

[48] *See generally* Letter from Cheryl Schmit, Director, Stand Up for California!, et al., to Amy Dutschke, Regional Director, Pacific Regional Office, BIA at 2 (Jan. 6, 2017) ("Schmit Letter"); Beckham Report.

[49] The same commenter also argues that the Elk Grove Site cannot be taken into trust because the Tribe was not under

2. The Department's Part 292 Regulations

In 2008, the Department promulgated regulations to implement IGRA. Under those regulations, the Restored Lands Exception allows for gaming on newly acquired lands when all of the following conditions in Section 292.7 are met:

(a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
(b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
(c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to federal recognition by one of the means specified in § 292.10; and
(d) The newly acquired lands meet the criteria of "restored lands" in Section 292.11.

7.3 Restored Lands Exception Analysis

Part 292 requires two inquiries for determining whether newly acquired land meets this exception:

(1) Whether the tribe is a "restored tribe," and
(2) Whether the newly acquired land meets the "restored lands" criteria set forth in Section 292.11.

Federal jurisdiction in 1934. *Id*. That argument is addressed elsewhere in this document.

7.3.1 Restored Tribe Criteria

Sections 292.7 (a) - (c) provide criteria for determining whether a tribe is a "restored tribe." As discussed below, the Tribe meets these criteria, and, thus qualifies as a "restored tribe."

1. The Wilton Rancheria was federally recognized.

In order to show that a tribe was at one time federally recognized for purposes of Section 292.7(a), a tribe must demonstrate one of the following:

(a) The United States at one time entered into treaty negotiations with the tribe;
(b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
(c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
(d) The United States at one time acquired land for the tribe's benefit; or
(e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.[50]

The Wilton Rancheria was federally recognized under at least three of the specific exceptions -- Sections

[50] 25 C.F.R. § 292.8.

292.8(b), (c) and (d). First, the Tribe meets the requirements of Section 292.8(b), because the Department determined that the Wilton Rancheria could vote on whether to accept or reject the IRA.[51] The Haas Report shows that the Department held an election on the Rancheria on June 15, 1935, and that out of a voting population of 14 persons, the vote was 12-0 in favor of accepting the IRA.[52] Second, the Tribe meets the requirements of Section 292.8(c), because the Tribe is mentioned by name in the list of rancherias and reservations to be terminated by the California Rancheria Act.[53] Third, the Tribe meets the requirements of Section 292.8(d), because the United States purchased a 38-acre parcel for the Tribe in 1927[54] with funds appropriated by various appropriations acts enacted in the early Twentieth Century.[55] Therefore, the Tribe meets the criteria in

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[51] *Ten Years of Tribal Government Under the I.R.A.*, U.S. Indian Services Tribal Relations Pamphlets I (1947) ("Haas Report") at 16.

[52] *Id*.

[53] Act of Aug. 18, 1958, 72 Stat. 619 ("Rancheria Act").

[54] Land Division, Office of Indian Affairs, "Lands Purchased for California Indians," at Sheet B. The Department has relied upon this document to determine whether a tribe meets the requirements of Section 292.8(d). *See* Letter from Larry Echo Hawk, Ass't Sec'y – Indian Affairs, to Hon. Jason Hart, Chairman, Redding Rancheria, at 4 (Dec. 22, 2010) [hereinafter "Redding Letter"], *provided by the Tribe at* Request, Tab 5.

[55] In 1906, Congress appropriated funds to the Department to purchase land, water, and water rights for the benefit of Indians in California who either were not at that time on reservations, or whose reservations did not contain land suitable for cultivation. Act of June 21, 1906, 34 Stat. 325, 333 (appropriating $100,000). Congress made similar appropriations in many of the following

the regulations that it was at one time federally recognized.

One commenter asserts that the Tribe cannot meet this criterion because the Tribe "does not derive from any historical tribal entity at all."[56] This comment generally does not address any of the specific criteria of 25 C.F.R. Section 292.8. In fact, the Beckham Report bolsters the Department's existing evidence that the

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years, through at least 1929. *See, e.g.*, Act of Apr. 30, 1908, 35 Stat. 70, 76 (appropriating $50,000); Act of Aug. 1, 1914, 38 Stat. 582, 589 (appropriating $10,000 to purchase lands and improvements thereon "for the use and occupancy" of "homeless Indians of California"); Act of May 18, 1916, 39 Stat. 123, 132 (same); Act of Mar. 2, 1917, 39 Stat. 969, 975 (same, appropriating $20,000); Act of May 25, 1918, 40 Stat. 561, 570 (same); Act June 30, 1919, 41 Stat. 3, 12 (same); Act of Feb. 14, 1920, 41 Stat. 408, 417 (same, appropriating $10,000); Act of Mar. 3, 1921, 41 Stat, 1225, 1234 (same); Act of May 10, 1926, ch. 277, 44 Stat. 453, 461 (same, appropriating $7,000); Act of Jan. 12, 1927, 44 Stat. 934, 941 (same); Act of Mar. 7, 1928, 45 Stat. 200, 206 (same, appropriating $4,000); Act of Mar. 4, 1929, 45 Stat. 1562, 1569 (same, appropriating $8,000).

[56] Schmit Letter at 2-3; Beckham Report at 1-17, 54-58, 70.

Tribe meets the criteria of Sections 292.8(b),[57] (c),[58] and (d).[59]

2. The Wilton Rancheria lost its government-to-government relationship.

Once a tribe establishes that it was at one time federally recognized, it must show that it lost its government-to-government relationship with the United States. A tribe can show that its government-to-government relationship was terminated by one of the following means:

(a) Legislative termination;
(b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with

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[57] The Beckham Report documents the Tribe's vote to adopt a Constitution and By-Laws, including both the compiling of an "Approved List of Voters" by the BIA Sacramento Agency and the Department's ultimate approval of the Tribe's Constitution and Bylaws. Beckham Report at 58-59. Thus, the Beckham Report provides evidence that the Department determined that the Tribe could organize under the IRA.

[58] The Beckham Report extensively documents the Department's efforts to terminate the Tribe, *id*. at 64-70, and ties those efforts directly to the Rancheria Act. *Id*. at 65-66. Thus, the Beckham Report provides evidence that Congress enacted legislation naming the Tribe, indicating that a government-to-government relationship existed.

[59] The Beckham Report documents the purchase of the Rancheria, *Id*. at 55-58. Thus, the Beckham Report provides evidence that the United States at one time acquired land for the Tribe's benefit.

the tribe or its members or taking action to end the government-to-government relationship; or

(c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.[60]

The Wilton Rancheria meets the requirements of Section 292.9(a), because it was subject to legislative termination. The Wilton Rancheria was specifically identified for termination in the Rancheria Act, and subsequent administrative action demonstrates that the Department carried out that termination.[61] Therefore, the Tribe "lost its government-to-government relationship" as required by Section 292.7(b).

3. The Wilton Rancheria was Restored to Federal Recognition.

If a tribe can successfully show that it was at one time federally recognized and that its government-to-government relationship with the United States was terminated, then it must show that it was restored to federal recognition. A tribe can show that is was restored to federal recognition by one of the following:

(a) Congressional enactment of legislation recognizing, acknowledging, affirming,

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[60] 25 C.F.R. § 292.9.

[61] The Department has relied upon the listing of a tribe in the Rancheria Act and the subsequent administrative termination of that tribe to determine that a tribe meets the requirements of Section 292.9(a). *See* Redding Letter note 62, at 4, *provided by the Tribe at* Request, Tab 5.

reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);

(b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or

(c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.[62]

The Wilton Rancheria meets the requirements of Section 292.10(c), because it was restored to federal recognition by a court-approved settlement entered into by the United States, The Tribe sued the Department in 2007 over the Tribe's termination.[63] The parties settled pursuant to an agreement that required (among other things) that the Department restore the Tribe "to the status of a federally-recognized Indian Tribe," and in 2009 the district court entered judgment approving that settlement.[64] The Department has relied upon similar court-approved settlements to determine that a tribe meets the requirements of Section 292.10(c).[65] Therefore, the

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62. 25 C.F.R. § 292.10.

63 *Wilton Miwok Rancheria v. Salazar*, Case No, 5:07-cv-02681-JF (N.D. Cal.): the case originally was captioned *Wilton Miwok Rancheria v. Kempthorne, see id*., Compl. (May 21, 2007) [Dkt. No. 1].

64 Id., Stip. For Entry of Judgment (June 4, 2009) [Dkt. No. 60-2]; Order for Entry of Judgment (June 8, 2009) [Dkt. No. 61].

65 *See* Redding Letter at 4.

Tribe was "restored to Federal recognition" as required by Section 292.7(c).

One commenter questions the legality of the stipulated judgment entered by the District Court in 2009 as contrary to the Rancheria Act.[66] The United States remains bound by that judgment, and commenters have no standing to challenge it, more than seven years later. The Tribe's federally recognized status is beyond dispute and not subject to challenge. This federal-tribal relationship was restored in 2009[67] and the Tribe was thereafter included in all official *Federal Register* lists of federally recognized tribes.[68] Following passage of the Federally Recognized Indian Tribe List Act (List Act), inclusion on the official *Federal Register* list conclusively establishes the federally recognized status of an Indian tribe.[69]

The Wilton Rancheria is a restored tribe.

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[66] Schmitt Letter at 4.

[67] Bureau of Indian Affairs, *Restoration of Wilton Rancheria,* 74 Fed. Reg. 33468 (July 13, 2009).

[68] *See, e.g.,* Bureau of Indian Affairs, *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*. 74 Fed. Reg, 40218, 40222 (Aug. 11, 2009); Bureau of Indian Affairs, *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs,* 81 Fed. Reg. 26826, 25830 (May 4, 2016).

[69] 108 Stat. 4791 (1994).

The Tribe satisfies the requirements set forth in §§ 292.8-10 and, therefore, is a "restored tribe" for purposes of IGRA and Part 292.

7.3.2 Restored Lands Criteria

Section 292.7(d) requires that newly acquired land meet the criteria set forth in Section 292.11 to qualify as "restored lands." As discussed below, the Site meets the criteria and thus qualifies as "restored land."

* * *

such votes "within one year after June 18, 1934," which Congress subsequently extended until June 18, 1936.[116] In order for the Secretary to conclude that a reservation was eligible for a vote, a determination had to be made that the relevant Indians met the IRA's definition of "Indian" and were thus subject to the Act.[117] Such an eligibility determination would include deciding the Tribe was under Federal jurisdiction, as well as an unmistakable assertion of that jurisdiction.[118]

As stated in the report prepared in 1947 by Theodore H. Haas, Chief Counsel for the United States Indian Service, a majority of the adult Indians residing at the Tribe's reservation voted to accept the IRA at a special election duly held by the Secretary on June 15, 1935.[119] The calling of a Section 18 election at the

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[116] Act of June 15, 1935. ch. 260 § 2, 49 Stat. 378.

[117] M-37029 at 21.

[118] *Id.*

[119] Hass Report at 21.

Tribe's reservation unambiguously and conclusively establishes that the Tribe was under Federal jurisdiction in 1934. The IRA vote is dispositive as to a finding of Federal jurisdiction.

We also note that, as explained above, in 1927 the Department acquired approximately 38 acres of land for the Tribe.[120] The acquisition of the Wilton Rancheria in 1927, shortly before the IRA was enacted, also conclusively establishes that the Tribe was under Federal jurisdiction in 1934.[121]

Stand Up For California! (Stand Up) submitted comments concerning the effect of the Carcieri decision on the Secretary's IRA authority. Specifically, it appears that Stand Up's position is: 1) the Tribe does not derive from any historical tribal entity and was therefore not a recognized Indian tribe in 1934; and 2) the Tribe does not legally qualify as a federally recognized tribe at present.[122] Regarding Stand Up's

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[120] Land Division, Office of Indian Affairs, "Lands Purchased for California Indians," at Sheet B (undated)[hereinafter "Lands Purchased for California Indians"], provided by the Tribe at Request, Tab 7; Letter from John R. McCarl, Comptroller General, to Hubert Work, Secretary of the Interior (June 14, 1928), provided by the Tribe at Request, Tab 7; Indenture (Apr. 23, 1928), provided be the Tribe at Request Tab 7.

[121] See Stand Up for California! v. United States DOI, 2016 U.S. LEXIS 119649 at *199-208 (D.C. Dist. Sept. 6, 2016).

[122] See Letter from Cheryl Schmit, Director, Stand Up for California!, to Amy Dutschke, Regional Director, Pacific Regional Office Bureau of Indian Affairs, at 4 (Jan. 6, 2017), replying on Stephen Dow Beckham Report, The Wilton Rancheria: History of the Wilton Community and Its Antecedents (Dec. 2016). Stand Up raised the same arguments in its challenge to the Department's decision to acquire land in trust for the North Fork

first concern, Carcieri held only that the word "now" in the first definition of Indian modifies "under federal jurisdiction" - it did not hold, as Stand Up seems to argue, that "now" also modifies the phrase "recognized 'Indian tribe."[123] Accordingly, federal recognition must exist only at the time of the acquisition. The Tribe is federally recognized as of the date of this decision, as demonstrated by its appearance on the list of federally recognized tribes published annually in the Federal Register, and therefore meets the requirement that it be "recognized" under the first definition of Indian."[124]

To the extent that Stand Up is arguing that the Tribe was not a tribal entity, recognized or otherwise, at the time of the IRA,[125] we must also reject this contention.

Rancheria of Mono Indians. As Stand Up is aware, the D.C. District Court thoroughly evaluated and rejected all these arguments. See Stand Up for California! v. United States DOI, 2016 U.S. LEXIS 119649 at *163-227(D.C. Dist. Sept. 6, 2016).

[123] See Carcieri, 555 U.S. at 398 (Breyer, J. concurring); Confed. Tribes of Grand Ronde Cmty. of Or. v. Jewell, 830 F.3d 552, 559-63 (D.C. Cir. 2016) ("Ultimately, we defer to Interior's interpretation of the statute" and "[c]onsistent with Justice Breyer's concurrence in *Carcieri*, it was not unlawful for the Secretary to conclude that a 'tribe need only be recognized' as of the time Department acquires the land into trust") (internal citations omitted), aff'ing 75 F. Supp. 3d 387, 397-401 (D.D.C. 2014).

[124] M-37029 at 25-26; 81 Fed. Reg. 26826, 26830 (May 4, 2016). See also 25 C.F.R. § 151.2 (defining "tribe" as "any Indian tribe, band, nation, pueblo, community, Rancheria colony, or other group of Indians . . . which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.").

[125] See Letter from Cheryl Schmit Director, Stand Up For California!, to Amy Dutschke, Regional Director, Pacific Regional

In enacting the IRA, Congress expressly defined the "tribe[s]" for whom the IRA would apply. Section 19 of the IRA defines "tribe," in part, as "the Indians residing on one reservation."[126] Federal officials charged with implementing the IRA clearly deemed the Wilton Rancheria a reservation, and its residents a tribe, as evidenced by the holding of a Section 18 election at the Rancheria and the subsequent organization of the Tribe pursuant to Section 16.[127]

Office Bureau of Indian Affairs, at 2-4 (Jan. 6, 2017); Stephen Dow Beckham Report, The Wilton Rancheria: History of the Wilton Community and Its Antecedents, at 53-69 (Dec. 2016) (asserting that the federal government established the Wilton Rancheria for purposes of providing land to homeless Indians but that the federal government did not treat the resident Indians like a tribe); *see also* Letter from Carolyn Soares, citizen of Elk Grove, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 1 (January 5, 2017). This argument was squarely rejected by the DC District Court. *See Stand Up for California! v. United Stated DOI,* 2016 U.S. LEXIS 119649 at *172 (D.C. Dist. Sept. 6, 2016) ("Contrary to [Stand Up's] assertion, the calling of a Section 18 Election can, by itself, conclusively establish the existence of a tribe under federal jurisdiction within the meaning of the IRA for several reasons: first, under the first definitional prong of 'Indian' under § 479 [now codified at § 5129], 'Indians residing on one reservation' constitute a 'tribe'; . . . and, finally, the IRA does not require 'unified' tribal affiliation.").

[126] IRA Section 19, codified at 25 U.S.C. § 5129.

[127] See Haas Report at 16, 26. While not required by law, the Tribe has responded to Stand Up's allegations by submitting evidence of the Tribe's cultural and political unity prior to and following the Rancheria's establishment in 1927. See Wilton Rancheria's Supplemental Response to Report by Stephen Dow Beckham Submitted by Stand Up For California in Regard to the Notice of Application, at 8-11 (Jan. 13, 2017) (Wilton's Supplemental

Stand Up's second concern questioning the legitimacy of the Tribe's current federally recognized status is similarly unconvincing.[128] The Tribe's federally recognized status is beyond dispute and not subject to challenge. This federal-tribal relationship was restored in 2009[129] and the Tribe was thereafter included in all official Federal Register lists of federally recognized Tribes.[130] Following passage of the Federally Recognized Indian Tribe List Act (List Act), inclusion on the official Federal Register list conclusively establishes the federally recognized status of an Indian tribe.[131] The language of the List Act confirms that a court-approved settlement agreement like that entered by the Federal court here

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Response); Jennifer Whiteman & Dorothea Theodoratus, Ethnohistoric Summary of the Wilton Rancheria (Feb. 2016), Tab I to Wilton's Supplemental Response; Jennifer Whiteman, Dorothea Theodoratus, & Kathleen McBride, Supplemental Report to the Draft Ethnohistoric Summary of the Wilton Rancheria (Jan. 11, 2017), Tab 2 to Wilton's Supplemental Response; Genealogical Research on Wilton Rancheria Distributees (Jan. 12, 2017), Tab 3 to Wilton's Supplemental Response.

[128] See Letter from Cheryl Schmit, Director, Stand Up for California!, to Amy Dutschke, Regional Director, Pacific Regional Office Bureau of Indian Affairs, at 4 (Jan. 6, 2017).

[129] Bureau of Indian Affairs, Restoration of Wilton Rancheria, 74 Fed. Reg. 33468 (July 13, 2009).

[130] See, e.g., Bureau of Indian Affairs, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 40218, 40222 (Aug. 11, 2009); Bureau of Indian Affairs, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 81 Fed. Reg. 26826, 25830 (May 4, 2016).

[131] 108 Stat. 4791 (1994).

is a "decision of a United States court" that can restore an Indian tribe's federally recognized status.[132] Congress has never disturbed the Tribe's inclusion on the annual Federal Register lists and the time for third party challenges to the Tribe's listing has long since passed. Moreover, the Federal Government's termination of the Tribe's federally recognized status, which was subsequently restored in 2009, does not undermine our conclusion that the Tribe was under Federal jurisdiction in 1934. Indeed, the termination demonstrates the presence of a Federal-tribal relationship that the Federal Government affirmatively sought to end in 1964.[133]

Because the Tribe was under federal jurisdiction in 1934 and is presently federally recognized, the Secretary is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.

8.4 25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land

Section 151.10(b) requires consideration of the need of the tribe for additional land. As noted above, in 1927, a 38.81 acre parcel of land was purchased for the Tribe, through funds appropriated for that purpose. On August 18, 1958, as part of the United States'

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[132] Id. § 103(3).

[133] See Stewart L. Udall, Sec'y of the Interior, PROPERTY OF CALIFORNIA RANCHERIAS AND OF INDIVIDUAL MEMBERS THEREOF, Termination of Federal Supervision, 29 Fed. Reg. 13146 (Sept. 22, 1964); see also, Leonard M. Hill, Area Director, "WILTON RANCHERIA – Completion Statement" (July 19, 1961), provided by the Tribe at Request, Tab 9.

termination policy, Congress enacted the California Rancheria Act (Rancheria Act).[134] Section 1 of the Rancheria Act provided that the assets of forty-one (41) named Rancherias—including the Wilton Rancheria—would "be distributed in accordance with the provisions" of the Act.

On September 22, 1964, then Interior Secretary Stewart L. Udall published in the *Federal Register* an official notice of the termination of the Tribe.[135]

The Tribe's historic Rancheria was sold as a result of unlawful termination of the Tribe's status.[136] The Tribe was dismissed from the Tillie Hardwick litigation of the 1980s that restored many of California's other terminated tribes.[137] The Tribe was ultimately restored to federal . . .

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compliance with the title examination process.[197] The purpose, in other words, is as noted above to ensure

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[134] P.L. 85-671, 72 Stat. 619, amended by the Act of Aug. 1, 1964, P.L. 88-491, 78 Stat. 390.

[135] *Id.*

[136] Regional Recommendation at 28.

[137] *Id.*

Dehesa-Granite Hillsharbison Canyon Subregional Planning Group v. Acting Pacific Regional Director, BIA, 2015 I.D. LEXIS 109, at *19-21 (IBIA 2015) (finding that the interest protected by these title requirements is that of the United States, not the land or property interest of third parties that are not being acquired).

[197] To the extent any other parties can claim an injury as a result of the United States' title determination, the proper remedy would be to file a Fifth Amendment takings claim. *See Tohomo*

that after a trust decision is made, the title actually taken does not expose the United States to liability.[198] Title opinions are privileged and the land to trust process does not contemplate either public participation in or judicial review of the decision to accept title after a trust decision has been made.[199]

Moreover, and in any event, Section 151.13 is not a factor that the Department must take into consideration before deciding whether to approve a trust acquisition; rather, it is a final condition of accepting the conveyance in trust.[200] Here, the Department need only resolve any title issues raised by the development agreement prior to trust transfer.

9.0 DECISION TO APPROVE THE TRIBE'S FEE-TO-TRUST APPLICATION

I have determined that the Department will approve the Tribe's request to acquire the Site in trust and will implement Preferred Alternative F. This decision is based upon the environmental impacts identified in

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O'valham Nation v. Action Phoenix Area Director, BIA, 1992 I.D. LEXIS 120 (IBIA 1992) (recognizing the potential existence of a takings claim against the United States arising from an existing lien).

[198] 81 Fed. Reg. at 30174 ("The purpose of the title evidence requirements is to ensure that the Tribe has marketable title to convey to the United States, thereby protecting the United States").

[199] *See* Fee-to-Trust Handbook at 19.

[200] *Crest-Dehesa-Granite-Hillsharbison Canyon Subregional Planning Group v. Acting Pacific Regional Director, BIA,* 2015 I.D. LEXIS 109, at *20 (IBIA 2015).

the FEIS and corresponding mitigation, a consideration of economic and technical factors, and the purpose and need for acquiring the Site in trust. Of the alternatives evaluated in the EIS, Preferred Alternative F would best meet the purpose and need for action. The Proposed Project described under Preferred Alternative F would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government and to fund necessary mitigation for development of economic ventures. This would enable the Tribal government to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to tribal members, as well as provide the Tribe and its members with greater opportunities for employment and economic growth. Accordingly, the Department will approve the fee-to-trust application subject to implementation of the applicable mitigation measures identified in **Section 4.0**.

9.1 Preferred Alternative F Results in Substantial Beneficial Impacts

The Preferred Alternative F is reasonably expected to result in beneficial effects for the residents of Sacramento County, the city of Elk Grove, and the Tribe and its members. Key beneficial effects include:

- Establishment of a land base for the Tribe to expand its economic development opportunities and business enterprise, and from which it can operate its Tribal government.

- Revenues from the operation of the Proposed Project would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for Tribal members, and provide employment opportunities for its members.
- Creation of a new source of revenue will allow the Tribe to meet its and its members' needs and to help develop the political cohesion and strength necessary for tribal self-sufficiency, self-determination and strong Tribal government.
- Generation of approximately 2,528 jobs within Sacramento and Sap Joaquin Counties during the construction period, with total wages of $156.5 million.[201]
- In the first full year of operations, jobs from operating activities are estimated at 2,9,14 in Sacramento and San Joaquin Counties. Total annual wages from operations that accrue to residents of Sacramento and San Joaquin Counties are estimated at $142.5 million.
- Construction would result in an estimated $27.6 million in federal tax revenues, with State, county, and local taxes resulting from construction activities of approximately $ 15.5 million. Operation of the Proposed Project would result in an estimated $31.7 million in federal tax revenues and $14.0 million in State, County, and local government tax revenues annually.[202]

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[201] *Id.*

[202] *Id.*

- State, County, and local taxes resulting from operating activities of approximately $14.0 million per year, or $13.6 million after adjusting for the elimination of the property taxes on the Site after it is taken into trust.
- Direct total output is estimated to total approximately $288.2 million, of which approximately $244.5 million would boost the gaming and entertainment industry. Indirect and induced outputs are estimated to total $67.5 million and $71.5 million, respectively. Indirect and induced output benefits would be dispersed among a variety of different industries and businesses in the local area.[203]

9.2 Alternatives A, B, C, D, and E Result in Fewer Beneficial Effects

Alternatives A, B, C, D, and E would generate less revenue than the Preferred Alternative. As a result, it would limit the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. The development of Alternative A would require mitigation for impacts to the geology and soils, water resources, biological resources, and land use, resulting in this Alternative being less financially sustainable. Alternatives B and E would result in a reduced intensity project, but would not provide the same development opportunities as Alternatives A and F due to their proposed locations. Alternatives C and D would result in environmental impacts and require mitigation, which would restrict the economic development

[203] FEIS § 4.7.6; DEIS Volume II Appendix II at 80.

options for the Tribe. We believe the reduced economic and related benefits of Alternatives A, B, C, D, and E make them less viable options. Alternatives A, B, C, D, and E would fulfill the purpose and need for acquiring the Site in trust to a lesser degree, however, than Preferred Alternative F.

9.3 No-Action Alternative Fails to Meet Purpose and Need of Project

The No-Action Alternative (Alternative G) would not meet the purpose and need for acquiring the Site in trust. Specifically, it would not provide the Tribe with a land base or a source of net income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong tribal government. This alternative would also likely result in substantially fewer economic benefits to the City of Elk Grove, Sacramento County, and surrounding communities than the Development Alternatives.

10.0 SIGNATURE

By my signature, I indicate my decision to implement Alternative F and acquire 35.92 +/- acres in Sacramento County, California, for gaming and other purposes for the Wilton Rancheria. Upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the land in trust.

/s/	1/19/17
Lawrence S. Roberts	Date

Principal Deputy Assistant
Secretary – Indian Affairs

APPENDIX E

STIPULATION AND ORDER FOR ENTRY OF JUDGMENT

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THE UNITED STATES DEPARTMENT OF THE INTERIOR, KENNETH L. SALAZAR, et al.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

WILTON MIWOK RANCHERIA, a formerly federally recognized Indian Tribe, ITS MEMBERS and DOROTHY ANDREWS, Plaintiffs, v. KENNETH L. SALAZAR, et al. Defendants.	Case No. C-07-02681 (JF) (PVT) **STIPULATION AND ~~[PROPOSED]~~ ORDER FOR ENTRY OF JUDGMENT**
ME-WUK INDIAN COMMUNITY OF THE WILTON RANCHERIA, Plaintiff, v.	Case No. C 07-05706 (JF)

KENNETH L. SALAZAR, et al.,

Defendants.

Plaintiffs, Wilton Miwok Rancheria, its members, and Dorothy Andrews, and the Me-Wuk Indian Community of the Wilton Rancheria (collectively "Plaintiffs"), and Defendants, Kenneth L. Salazar, Secretary of the Interior, George T. Skibine, Deputy Assistant Secretary – Economic Development and Policy of the Department of Interior, the United States Department of the Interior, Kathleen Sebelius, Secretary of the Department of Health and Human Services, and the United States Department of Health and Human Services (collectively "Defendants"), by and through their respective counsel, have agreed to settle all aspects of the above-captioned cases. The aforementioned Parties have signed a separate Stipulation for Entry of Judgment a copy of which is attached hereto as Exhibit 1.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, through their respective counsel, as follows:

1. That judgment can be entered, and the Court is requested to enter Judgment in accordance with Exhibit 1.

2. The above-captioned actions are dismissed with prejudice as to all claims and parties.

3. Each party is to bear its own costs and attorneys' fees.

Dated: June 4, 2009 Respectfully submitted,

KAZHE LAW GROUP PC
CHRISTINA V. KAZHE
ROSE M. WECKENMANN

By: /s/
CHRISTINA V. KAZHE, Attorney for Plaintiffs, WILTON MIWOK RANCHERIA, ITS MEMBERS and DOROTHY ANDREWS

Dated: June 4, 2009 ROSETTE & ASSOCIATES, PC

By: /s/
ROBERT A. ROSETTE, Attorney for Plaintiff, ME-WUK INDIAN COMMUNITY OF THE WILTON RANCHERIA

Dated: June 4, 2009 JOHN C. CRUDEN

Acting Assistant Attorney General Environment and Natural Resources Division

By: /s/
SARA E. COSTELLO, Attorneys for

Defendants,
KENNETH L.
SALAZAR,
SECRETARY OF THE
INTERIOR, et al.

Dated: June 4, 2009 JOSEPH P. RUSSONIELLO

United States Attorney

By: /s/
CHARLES O'CONNOR,
Attorneys for Defendants,
KENNETH L. SALAZAR,
SECRETARY OF THE
INTERIOR, et al.

[~~PROPOSED~~] ORDER

Pursuant to the foregoing stipulation and request,

IT IS HEREBY ORDERED:

1. That judgment can be entered, and the Court is requested to enter Judgment in accordance with Exhibit 1.

2. The above-captioned actions are dismissed with prejudice as to all claims and parties.

3. Each party is to bear its own costs and attorneys' fees.

Dated: June 5, 2009

/s/
JEREMEY FOGEL
JUDGE, U.S. DISTRICT COURT

EXHIBIT 1

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THE UNITED STATES DEPARTMENT OF THE INTERIOR, KENNETH L. SALAZAR, et al.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

WILTON MIWOK RANCHERIA, a formerly federally recognized Indian Tribe, ITS MEMBERS and DOROTHY ANDREWS, Plaintiffs, v. KENNETH L. SALAZAR, et al. Defendants.	Case No. C-07-02681 (JF) (PVT) **STIPULATION FOR ENTRY OF JUDGMENT**
ME-WUK INDIAN COMMUNITY OF THE WILTON RANCHERIA, Plaintiff, v. KENNETH L. SALAZAR, et al., Defendants.	Case No. C 07-05706 (JF)

Wilton Miwok Rancheria, its members, and the Me-Wuk Indian Community of the Wilton Rancheria (collectively the "Tribe" or "Wilton Rancheria") and Dorothy Andrews (collectively "Plaintiffs"), and Defendants, Kenneth L. Salazar, Secretary of the Interior, George T. Skibine, Deputy Assistant Secretary — Economic Development and Policy of the Department of Interior, the United States Department of the Interior, Kathleen Sebelius, Secretary of the Department of Health and Human Services, and the United States Department of Health and Human Services or collectively ("Defendants"), by and through their respective counsel, enter into the following Stipulation for the purpose of reaching a compromise and final settlement of the claims alleged by said Plaintiffs in *Wilton Miwok Rancheria et al. v. Kenneth L. Salazar et al.*, No. C-072681 JF, and *Me-Wuk Indian Community of Wilton Rancheria v. Kenneth L. Salazar*, C-075706 JF. The settling parties understand that this stipulation shall provide the basis for entry of judgment by the Court which will serve to implement, in an orderly and timely fashion, the substantive and procedural matters agreed to herein. Accordingly, the parties stipulate and agree as follows:

1. The Department of the Interior agrees that the Tribe was not lawfully terminated, and the Rancheria's assets were not distributed, in accordance with the provisions of the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390 ("the Rancheria Act").

2. The Department of the Interior agrees that within thirty (30) days of this Court's approval of the entry of judgment pursuant to this Stipulation, the Assistant Secretary - Indian Affairs of the Department of Interior ("Assistant Secretary"), shall transmit to the Federal Register for publication a notice that states the Wilton Rancheria was not lawfully terminated and its assets were not distributed in accordance with the provisions of the Rancheria Act, and that the Tribe is restored to the status of a federally-recognized Indian Tribe.

3. The Department of the Interior agrees to restore the Tribe to the status of a federally-recognized Tribe. The Department of Interior shall include the Tribe on the Department of the Interior's list of federally-recognized tribes published annually in the Federal Register as required by the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a-1 and 25 C.F.R. § 83.5(a). The Tribe shall be a "restored Tribe" pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. § 292.10(c). The Department of the Interior further agrees to advise the Commissioner of the Internal Revenue Service and the State of California promptly that the Tribe has been restored to Federal recognition and has been added to the list of federally recognized tribal entities.

4. The Department of the Interior agrees that the Indian status of the persons named as distributees in the distribution plan of the Rancheria attached as Exhibit A (the "Distribution Plan") was not terminated in accordance with the Rancheria Act.

5. The Department of the Interior agrees that the members of the Tribe shall have the individual and collective status and rights that they formerly had as members of a federally-recognized Indian tribe. The Department of the Interior further agrees to deal with these individuals on the same basis on which it deals with other Indians who are members of federally-recognized Indian tribes. The Department of Health and Human Services agrees to deal with the Wilton Rancheria and its members on the same basis on which it deals with other newly recognized/restored Indian Tribes, in accordance with applicable law and the policies of the Indian Health Service.

6. Plaintiffs agree that the initial tribal organization of the Tribe shall be a General Council consisting of all distributees and dependant members listed in the Distribution Plan, and all lineal descendants of any distributees or dependent members. The General Council shall elect an Interim Tribal Council with the number of members determined by a majority vote, provided the size of the Interim Tribal Council shall be an odd number no less than five and no greater than seven. The Bureau of Indian Affairs ("BIA") shall compile a list of General Council members who are eligible to participate in the Interim Tribal Council election based upon information provided by the Tribe and its members. The Tribe and its members shall provide the BIA with evidence of eligibility to participate in the Interim Tribal Council election, and the BIA shall verify eligibility of persons to participate in the election as described in 25 C.F.R. § 61.9; provided that if affidavits are submitted as a basis for eligibility, no less than three notarized affidavits must be submitted

on behalf of that person, and each shall be sworn under penalty of perjury in accordance with federal law. The BIA shall call for the vote, monitor the election and certify the election results of the Interim Tribal Council. The Tribe shall, consistent with federal law, have the right to determine its own membership and otherwise to govern its internal and external affairs as a tribal entity. The Interim Tribal Council shall develop the Tribal Constitution that shall provide for membership criteria based on the Tribe's historical documentation, which may include the Census documents of 1933/1935 and 1941. The Tribe shall use the provisions of the Indian Reorganization Act, 25 U.S.C. § 461 et seq., as guiding principles in its organization.

7. The Department of the Interior agrees to accept in trust status any land within the boundaries of the former Rancheria, as described in Exhibit B attached hereto (the "Rancheria"), fee title to which:

a. was, as a consequence of the termination of federal supervision of the Rancheria, deeded to the Consumnes River Indian Association or to a distributee named in the Distribution Plan; and

b. is currently held either (i) by the Consumnes River Indian Association, (ii) by a distributee named in the Distribution Plan; or (iii) by a dependent of or Indian heir or successor-in-interest to a distributee named in the Distribution Plan, provided that such heir or successor-in-interest is an Indian member of the Tribe.

8. The Department of the Interior agrees to take into trust any land within and/or contiguous, as defined by 25 C.F.R. § 292.2, to the former boundaries of the Rancheria which is owned by the Tribe.

9. The Department of the Interior will process, pursuant to 25 C.F.R. Part 151, any applications for land into trust for any parcels of land acquired by the Tribe or an individual member of the Tribe.

10. Land that is taken into trust within and/or contiguous, as defined by 25 C.F.R. § 292.2, to the former boundaries of the Rancheria for the benefit of the Tribe shall be considered "Indian country" as defined by 18 U.S.C. § 1151. Upon application by the Tribe, the Assistant Secretary Indian Affairs shall consider whether to declare such land a reservation pursuant to established procedures. Land taken into trust for the benefit of the Tribe that is within or contiguous, as defined by 25 C.F.R. § 292.2, to the Rancheria shall be "restored land" as defined by 25 U.S.C. § 2719(b)(1)(B)(iii). Other lands held in trust shall be evaluated according to regulations in effect at the time of the application, and nothing herein shall preclude such other lands from being deemed "restored lands."

11. Nothing in this stipulation shall be construed to require the Secretary of the Interior to (a) accept into trust any land which has on it hazardous substances or contaminants contrary to applicable law; or (b) accept into trust any land which is subject to any adverse legal claims, including outstanding liens, mortgages, or taxes owed.

12. The Department of the Interior will, following the execution of this Stipulation by counsel, assist the Tribe in preparing needs assessments for the Tribe. The Department of the Interior will provide workshops within 90 days of the BIA certification of the Interim Tribal Council election to be conducted by a technical team comprised of representatives from the BIA. The Department of the Interior commits to invite representatives of the Indian Health Service and the Department of Housing and Urban Development, for the purpose of providing needed technical assistance to the Tribe. The scheduling and content of the workshops will be developed by the Department of the Interior in consultation with representatives from the Tribe and will be designed to provide, at a minimum, specific information regarding Federal programs available to Indian tribes, including the tribal contracting requirements of Public Law 93-638, and an overview of those Indian programs available to meet the developmental needs of individual Indians. The Department of the Interior shall cover the costs of attendance at the workshops of the Tribe.

13. Plaintiffs, in consideration of the above agreements by the Defendants, will: (a) release and forever discharge Defendants and the United States of America from and against any liability, including attorneys' fees and costs, arising out of this litigation and settlement; (b) release and forever discharge the Department of Health and Human Services from and against any and all claims arising after the implementation of the Rancheria Act and prior to the Department of the Interior's restoration of the Tribe's recognition pursuant to this settlement, including any

claims for damages for health, facilities, and ISDA funds it did not receive during that period; and (c) will dismiss with prejudice all claims alleged herein against the Defendants, including any individual and tribal claims, arising out of this litigation and settlement.

14. Notwithstanding the dismissal of this action as set forth in paragraph 13, this Court shall retain jurisdiction to determine, upon motion by the Tribe or the Defendants, whether any other Party has materially violated terms of this Stipulation, and has not cured such violation promptly after receiving notice from the moving Party pursuant to the procedures set forth in paragraph 15. In any motion pursuant to the terms of this paragraph and paragraph 15, the moving party shall bear the burden of establishing a violation, and the non-moving Party shall bear the burden of establishing that any violation did not materially affect compliance with the terms and conditions of this Stipulation. If this Court determines that any Party has materially violated this Stipulation, and has not promptly cured such violation after receiving notice of such violation from the moving Party, the Court may order that the action be reinstated. Reinstatement of this action pursuant to this paragraph shall be the sole remedy under this Stipulation, and no other remedies, including but not limited to contempt sanctions, may be requested or ordered by the Court for any alleged breach of this Stipulation. If this action is reinstated, this Stipulation shall be rendered null and void, all pending obligations pursuant to this Stipulation are immediately suspended and the Parties' legal claims and defenses shall be preserved in full as if the action

had not previously been dismissed. Notwithstanding the foregoing, reinstatement of this action shall have no effect on the Tribe's federally-recognized status which is effective upon the Department of the Interior's transmittal to the Federal Register for publication a notice that states the Wilton Rancheria was not lawfully terminated and its assets were not distributed in accordance with the provisions of the Rancheria Act, and that the Tribe is restored to the status of a federally-recognized Indian Tribe.

15. In the event there is a dispute over compliance with any term or provision of this Stipulation, the Tribe and Defendants shall engage in informal dispute resolution procedures as set forth in this paragraph, prior to seeking judicial relief. The disputing Party shall notify the other Parties in writing, setting forth (a) the nature of the dispute, (b) the disputing Party's position with respect to the dispute, and (c) the information that the disputing Party is relying on to support its position. The Parties shall then meet and/or confer in good faith to attempt to resolve the dispute. If the Parties are unable to resolve the dispute within thirty days after the disputing Party has provided written notice of the dispute to the other Parties, the disputing Party may file a motion before this Court under paragraph 14 of this Stipulation for a determination that a Party materially violated this Stipulation and has not promptly cured such violation after receiving notice of such violation. The thirty day dispute resolution period may be shortened by agreement of the Parties, or upon emergency motion by the disputing Party demonstrating by a preponderance of the evidence that the disputing Party will be irreparably injured unless the dispute

resolution period is shortened. At least three business days prior to bringing any such emergency motion, the disputing Party shall provide written notice of the dispute to other Parties. Any such emergency motion shall be on notice to all Parties.

16. Defendants shall notify the Interim Tribal Council or governing body of the Tribe in writing when they believe that they have completed all of the obligations set forth in Paragraphs 2, 3, 6, 7, 8 and 12 of this Stipulation and that this Stipulation should be completed ("Notice of Completion"). If the Interim Tribal Council or governing body of the Tribe disagrees as to whether Defendants have completed all such obligations, it must invoke the dispute resolution procedures set forth in paragraph 15 within 60 days of receiving the Notice of Completion from Defendants. If the dispute resolution procedures cannot resolve the dispute, the Tribe may file a motion pursuant to paragraph 14 alleging material noncompliance with the terms of this Stipulation no later than 60 days after the conclusion of the dispute resolution period. This Stipulation shall be complete if (a) the Tribe does not invoke the dispute resolution procedures within 60 days after receiving the Notice of Completion from Defendants; (b) the Tribe does not file a motion pursuant to paragraph 14 of this Stipulation within 60 days after the conclusion of the dispute resolution period as set forth in paragraph 14; or (c) the Tribe files such a motion and it is denied by the Court and the Tribe exhausts all rights to appeal said denial.

Dated: 6/4, 2009 Respectfully submitted,

KAZHE LAW GROUP PC
CHRISTINA V. KAZHE
ROSE M. WECKENMANN

By: /s/
CHRISTINA V. KAZHE,
Attorneys for Plaintiffs,
WILTON MIWOK
RANCHERIA, ITS
MEMBERS and
DOROTHY ANDREWS

Dated: ___, 2009 **ROSETTE & ASSOCIATES**, PC

By: /s/
ROBERT A. ROSETTE,
Attorney for Plaintiff, ME-
WUK INDIAN
COMMUNITY OF THE
WILTON RANCHERIA

Dated: ___, 2009 **JOHN C. CRUDEN**
Acting Assistant Attorney General
Environment and Natural Resources Division

By: /s/
SARA E. COSTELLO,
Attorneys for Defendants,
KENNETH L. SALAZAR,
SECRETARY OF THE
INTERIOR, et al.

Dated: ____, 2009

JOSEPH P. RUSSONIELLO
United States Attorney

By: /s/
CHARLES O'CONNOR,
Attorneys for Defendants,
KENNETH L. SALAZAR,
SECRETARY OF THE
INTERIOR, et al.

Dated ___, 2009

LARRY ECHO HAWK
Assistant Secretary — Indian
Affairs

By: /s/
LARRY ECHO HAWK,
Department of the Interior

Dated: ____, 2009

DR. YVETTE ROUBIDEAUX
Director
Indian Health Service

By: /s/
DR. YVETTE ROUBIDEAUX,
Director, Indian Health
Service

EXHIBIT A

A PLAN FOR THE DISTRIBUTION OF THE ASSETS OF THE WILTON RANCHERIA, ACCORDING TO THE PROVISIONS OF PUBLIC LAW 850671, ENACTED: BY THE 85th CONGRESS,

APPROVED AUGUST 18, 1958

The Wilton. Rancheria, 38 and 81/100 acres, is located north of the Wilton Post Office and general store, about twenty-four miles southeast of Sacramento, California, in Sacramento. County.

The homesite area of the rancheria is located on high ground which is also adaptable for home consumption gardens. The northerly portion of the rancheria is lower than the homesite area and is subject to flooding during years of abnormally high runoff. A drainage ditch divides the high ground from the low ground.

An improved county road runs along one side of the rancheria with access to the Wilton Road directly in front of the rancheria. The road which provides access to the residences does not meet minimum specifications for Sacramento County and should be rebuilt.

The domestic water system is old and should be rehabilitated. The cost of the development of the present water system has been placed as a lien against the rancheria.

The outer boundaries of the rancherias have been surveyed and iron pipes set at various, reference points. Interior surveys will be req44.ttd.

The rancheria is organized under Section 16 of the Indian Reorganization Act of June 18, 1934, as the Me-Wuk Indian Community of the Wilton Rancheria, California. The constitution and by-laws were approved January 16, 1936, and were subsequently amended on two different occasions. A charter was never issued to the group.

There are no Government-owned buildings on the rancheria.

There are no funds on deposit to the credit of the ranch-cries either in an Individual Indian Money Account in the Area Office or in the United States Treasury.

The distributees listed in this plan are recognized as the only people of the rancheria who hold informal assignments and are entitled to share in the distribution of the property.

No minors will receive deeds in the distribution of the real estate and all adults participating are capable of handling their own affairs.

All distributees are fully advised of the opportunity to participate in vocational program afforded by the Bureau of Indian Affairs and no one has indicated any interest.

The Indians of the Wilton Rancheria desire termination of Federal trusteeship under the provisions of Public Law 85-671 and request that the Bureau of Indian Affairs undertake the following actions.

1. Provide assistance for the establishment of such legal entity as might be necessary to accept the conveyance of properties that are to be retained in common by the group.

2. Convey ownership of Lot No. 9 (area surrounding the water tank), Lot No. 12 (area to be set aside as a playground), and the water system to the distributees as owners-in-common or to a legal entity organized to accept. them.

3. Make such surveys as are necessary to convey a merchantable and recordable title to each lot.

4. Rehabilitate the present domestic water system by replacing all leaky, defective water pipes and providing water connections to all occupied residences or other residences constructed or in the course of construction and more than fifty percent completed within a ninety (90) day period after approval of this plan by the Indians of the Wilton Rancheria.

5. Construct a road at the location shown on the attached map that will meet the minimum specifications of the Sacramento County Road Department and turn this road over to the County for operation and maintenance.

6. Cancel all reimbursable indebtedness owing to the United States on account of unpaid construction and for operation and maintenance charges for water facilities.

7. Furnish each distributee with the approximate value of his lot at the time of conveyance.

8. Revoke the constitution and by-laws of the Me-Wuk Indian Community of the Wilton Rancheria upon receipt of a financial statement from the group including a certificate that all the debts and obligations of the organization have been liquidated or adjusted and that all the assets of the organization have been or are simultaneously therewith conveyed to persons or corporations authorized to receive them.

9. Convey to individual Indians according to this plan, and the map attached hereto which is a part of this plan, unrestricted title to the following lands constituting the Wilton Rancheria, subject to existing rights.-of-way, easements or leases.

> Lots 61.5, 616 and 617 of Central California Traction Unit NO4 7, according to the official plat thereof flied in the Office of the Recorder of

Sacramento County, California, on May 11, 1912, in Book 13 of Maps, Map No. 20.

Title will also include such mineral and water rights as are now veered in the United States.

The distributees who will, receive title to particular lots and the dependent members of their immediate families are:

NAME	LOT NO.	RELATION-SHIP	BIRTH DATE	ADDRESS
Jane Brown	1	Distributee	9-20-1922	General Delivery Wilton, California
Donald L. Brown		Son	1-04-1949	Same
Debra E. Brown		Daughter	2-17-1954	Same
Archie G. Williams	2	Distributee	10-08-1907	General Delivery Wilton., California
Edith G. Williams		Wife	1-18-1912	Same
Mildred Williams		Daughter	3-13-1941	Same
Jerome J. Williams		Son	5-20-1942	Same
Alfred E. Williams		Son	6-15-1943	Same

NAME	LOT NO.	RELATION-SHIP	BIRTH DATE	ADDRESS
Wilson R. Williams		Spa	3-12-1945	Same
Carol Mae Williams		Daughter	5-07-1946	Same
Silvia Williams		Daughter	5-30-1947	Same
Joanna Francis Williams		Daughter	11-13-1950	Same
Eva Irish	3	Distributee	1-28-1893	General Delivery Wilton, California
Dorothy Andrews	4	Distributee	8-16-1930	5734 Mascot Avenue Sacramento, California
Jacqueline V. Andrews		Daughter	2-02-1950	Same

NAME	LOT NO.	RELATION-SHIP	BIRTH DATE	ADDRESS
Anita D. Andrews		Daughter	7-01-1953	Same
Beverly G. Andrews		Daughter	4.49-1955	Same
Lawrence C. Andrews		Son	1-24-1951	Same
Ella Taylor	5	Joint Distributee	4-15-1888	General Delivery Wilton, Calif.
Arthur M. Taylor		Joint Distributee	4-26-1928	General Delivery Wilton, Calif.
Annie McKean	6	Distributee	7-04-1882	General Delivery Wilton, Calif.
John McKean	7	Distributee	6-21-1916	General Delivery Wilton, Calif.

NAME	LOT NO.	RELATION-SHIP	BIRTH DATE	ADDRESS
Ada Madrigal	8	Distributee	4-15-1888	General Delivery Wilton, Calif.
Community Property	9			
Gertrude Dupree	10	Distributee	2-09-1892	General Delivery Wilton, Calif.
Charles McKean, Jr.	11	Distributee	12-06-1904	P.O. Box 167 Wilton, Calif.
Bertha McKean		Wife	2-28-1914	Same
Paul J. McKean		Son	7-24-1942	Same
Lloyd J. McKean		Son	5-19-1944	Same
Billie W. Daniels		Stepson	12-24-1942	Same
Jimmie E. Daniels		Stepson	8-28-1944	Same

NAME	LOT NO.	RELATION-SHIP	BIRTH DATE	ADDRESS
Richard A. Daniels		Stepson	9-08-1945	Same
Community Property	12			
Virginia Hatch	13	Distributee	10-03-1901	P. O. Box 84 Wilton, Calif.

Upon approval of this plan or a revision thereof by the Secretary of the Interior and acceptance thereof by a majority of the adult Indian distributees, as provided in Section 2(b) of Public Law 85-671, the distributees and the dependent members of their immediate families listed in this plan shall be the final list of Indians entitled to participate in the distribution of the assets of the Wilton Rancheria, and the rights or beneficial interests in the property of each person whose name appears in this list shall constitute vested property which may be inherited or bequeathed but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such property.

After the assets of the Wilton Rancheria have been distributed pursuant to this plan and Public Law 85-671, the Indians who receive any part of such assets and the dependent members of their immediate families shall thereafter net be entitled to any of the services performed by the United States for those persons because of their status as Indians, All statutes of the United States, which affect Indians because of their status as Indians shall not apply to them and the laws of the several states shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this plan, however, shall affect the status of such persons as citizens of the United States.

All provisions of Public Law 05-671 shall be applicable in the execution of this plan and general notice of the contents shall be given by posting a copy of this plan in the post office at. Wilton, Sacramento County, California, by posting a copy in a prominent place on the Wilton gaucherie, by mailing a copy to the head of each individual family participating in this plan and by mailing a copy to any person who advises the Sacramento Area Office that he feels that he may have a material interest in the plan.

This plan was prepared by the Area Director, Bureau of Indian Affairs,. Sacramento Area Office pursuant to the authority delegated on February 26, 1959, and after consultation with the Indians of the Wilton Rancheria.

Approved, with authority retained to	Final approval given by Commissioner of Indian

revise or change if appeals are received within 30 days after general notice to this plan is given.

Affairs September 11, 1959.

Accepted by majority of distributees in a referendum.

/s/ H REX LEE

Effective date of plan is September 25, 1959.

Date July 6, 1959

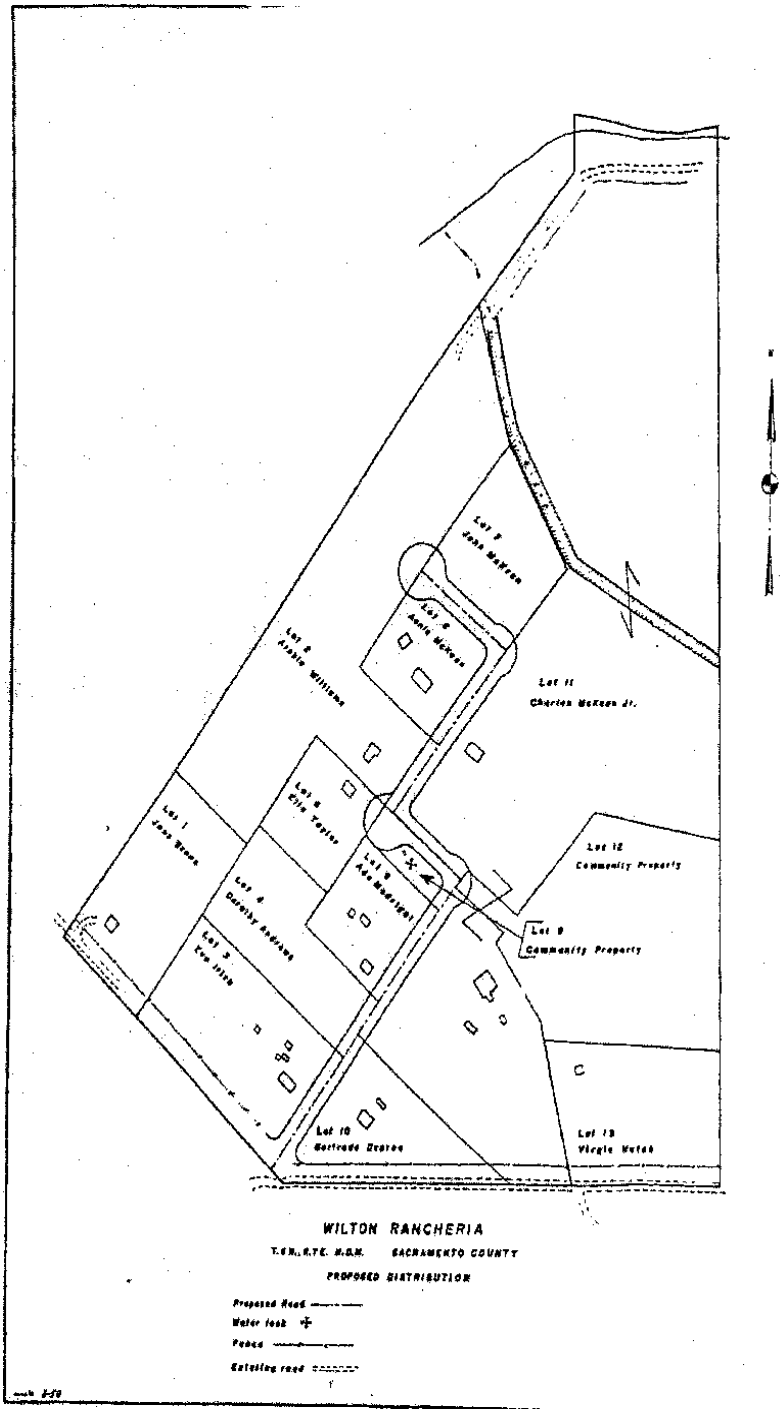
Lot 7
Jack McKeon
Lot 6
Annie McKeon
Lot 8
Alzada Williams
Lot 11
Charles McKeon Jr.
Lot 5
Clyde Taylor
Lot 1
Jack Weeks
Lot 4
Dorothy Andrews
Lot 3
Eva Jolly
Lot 9
Ada Mondragon
Lot 12
Community Property
Lot 9
Community Property
Lot 10
Gertrude Deaton
Lot 13
Virgie Mutch
WILTON RANCHERIA
T.6N., R.7E. M.D.M. SACRAMENTO COUNTY
PROPOSED DISTRIBUTION
Proposed Road
Water tank
Fence
Existing road

EXHIBIT B

Legal Description of Wilton Rancheria

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 1 through 13 as shown on the Map entitled, "Wilton Rancheria", recorded February 9, 1961 in Book 64 of Maps, Page 3, Sacramento County Records.

APPENDIX F

Tribal Operations
103.3 Wilton

Sacramento Area Office
Sacramento, California

Jul 13 1964

Commissioner, Bureau of Indian Affairs

Washington 25, D. C.

Attention: Office of Tribal Operations

Sir:

Your letter of December 7, 1961 advised that rancherias and reservations under Public Law 85-671 were to be considered eligible for assistance in the development of sanitation facilities under Public Law 86-121 and they should be given an opportunity to apply for such assistance. If applications for assistance were submitted to the Division of Indian Health, final publication of the "termination notice" was to be withheld until installation of the facilities.

All actions required by the Bureau of Indian Affairs under the plan for the distribution of assets of the Wilton Rancheria have been completed for some time and a "Completion Statement" was sent to your office on July 19, 1961.. Subsequently, the residents of the Wilton Rancheria submitted a formal request for the

installation of sanitation facilities. These facilities have now been installed and the project completed by the conveyance of the facilities to the individual families.

We therefore recommended that the "termination notice" be published for the Wilton Rancheria. The information given in the distribution plan about the Indians participating in the distribution can be used in the publication, subject to the following changes.

Dorothy Andrews - new address - 8873 Halverson Drive Elk Grove, California

Virgin Hatch - deceased

Sincerely yours,

(Sgd.) Leonard M. Hill

Area Director

MWBabby/dyc 7-10-64

APPENDIX G

July 19, 1961

WILTON RANCHERIA - Completion Statement

The Wilton Rancheria plan, prepared under the terms of Public Law 85-671, became final on September 25, 1959, when it was accepted by a majority of the distributees named therein. The provisions of Public Law 85-671 and the plan were carried out as follows.

1. The plan was prepared, promulgated, and accepted in accordance with Sections 2(a) and 2(b) of Public Law 85-671.

2. The training or educational program provided by Section 9 of Public Law 65-671 was made available to the Indiana named in the plan.

3. Since all the distributees are adults and considered capable of conducting their own affairs, no guardians or conservators were appointed.

4. A legal entity, known as the Cosumnes River Indian Association, was established to accept title to community property.

5. The domestic water system was repaired. Reimbursable debts against the rancheria were cancelled. All right, title, and interest to the domestic water system, appurtenances and rights-of-way for water pipelines located within the county roads known as Rancheria Drive end

Cecatra Drive was conveyed to the Cosumnes River Indian Association by deed dated March 30, 1961.

6. The road construction called for by the plan was completed and the road was conveyed to Sacramento County by deed dated and delivered March 30, 1961.

7. A survey was prepared and recorded in the records of Sacramento County, California, February 9, 1961. This survey was used as a basis for preparation of the deeds issued.

8. Ownership of community property was conveyed to the Cosumnes River Indian Association by deed dated March 30 and delivered May 17, 1961.

9. The Constitution and By-laws of the Me-Wuk Indian Community of the Wilton Rancheria were revoked on May 19, 1961.

10. By letters dated May 16, 1961, each recipient of property under this plan was advised of the approximate value of the property received and that the property was tax free at the time of distribution, but that from the date of recording in county records the same taxes apply that apply to property generally.

11. Unrestricted title to the property was conveyed to the distributees named in the plan by deeds dated March 30, recorded in Sacramento County records on March 31, and delivered to

the recipients on May 16 and 17, 1961. The Government protection of water rights was explained to the recipients.

12. Each recipient of property under this plan understands that a "termination" notice in which his name will appear will be published and that he will thereafter not be entitled to any services from the Federal Government because of his status as an Indian.

The conveyance of the assets of the rancheria has been completed within the three-year period established in Public Law 85-671. We recommend that the Secretary issue the proclamation a provided by 25 CFR 242.10.

(Sgd.) Leonard M. Hill

Area Director

APPENDIX H

72 Stat. 619, Pub. L. No. 85-671 (Aug. 18, 1958)

Public Law 85-671

AN ACT

To provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark Nest, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

SEC. 2. (a) The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians, shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common. The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act.

(b) General notice shall be given of the contents of a plan prepared pursuant to subsection (a) of this section and approved by the Secretary, and any Indian who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments for the consideration of the Secretary. After such consideration, the plan or a revision thereof shall be submitted for the approval of the adult Indians who will participate in the distribution of the property, and if the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out. It is the intention of Congress that such plan shall be completed not more than three years after it is approved.

(c) Any grantee under the provisions of this section shall receive an unrestricted title to the property

conveyed, and the conveyance shall be recorded in the appropriate county office.

(d) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

SEC. 3. Before making the conveyances authorized by this Act on any rancheria or reservation the Secretary of the Interior is directed:

(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or

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appropriate for the conveyance of marketable and recordable titles to the lands.

(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political

subdivisions thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.

(c) to install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

(d) To cancel all reimbursable indebtedness owing to the United States on account of unpaid construction, operation, and maintenance charges for water facilities on the reservation or rancheria.

(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value.

SEC. 4. Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to

the priority of any such right not theretofore based upon State law. During the time such State law is not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

SEC. 5. (a) The Secretary of the Interior is authorized to convey without consideration to Indians who receive conveyances of land pursuant to this Act, or to a corporation or other legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property on the reservations or rancherias subject to this Act that is not needed for the administration of Indian affairs in California.

(b) For the purposes of this Act, the assets of the Upper Lake Rancheria and the Robinson Rancheria shall include the one-hundred-and-sixty-acre tract set aside as a wood reserve for the Upper Lake Indians by secretarial order dated February 15, 1907.

(c) The Secretary of the Interior is authorized to sell the five hundred and sixty acres of land, more or less, which were withdrawn from entry, sale, or other disposition, and set aside for the Indians of Indian Ranch, Inyo County, California, by the Act of March 3, 1928 (45 Stat. 162), and to distribute the proceeds of sale among the heirs of George Hanson.

SEC. 6. The Secretary of the Interior shall disburse to the Indians of the rancherias and reservations that

are subject to this Act all funds of such Indians that are in the custody of the United States.

SEC. 7. Nothing in this Act shall affect any claim filed before the Indian Claims Commission, or the right, if any, of the Indians sub-

ject to this Act to share in any judgment recovered against, the United States on behalf of the Indians of California.

SEC. 8. Before conveying or distributing property pursuant to this Act, the Secretary of the Interior shall protect the rights of individual Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indians in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from such Indians, including but not limited to the creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians.

SEC. 9. Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume

their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

SEC. 10. (a) The plan for the distribution of the assets of a rancheria or reservation, when approved by the Secretary and by the Indians in a referendum vote as provided in subsection 2(b) of this Act, shall be final, and the distribution of assets pursuant to such plan shall not be the basis for any claim against the United States by an Indian who receives or is denied a part of the assets distributed.

(b) After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they

apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.

SEC. 11. The constitution and corporate charter adopted pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, by any rancheria or reservation subject to this Act shall be revoked by the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2(b) of this Act.

SEC. 12. The Secretary of the Interior is authorized to issue such rules and regulations and to execute or approve such conveyancing instruments as he deems necessary to carry out the provisions of this Act.

SEC. 13. There is authorized to be appropriated not to exceed $509,235 to carry out the provisions of this Act.

Approved August 18, 1958.

APPENDIX I

PL 103–454, November 2, 1994, 108 Stat 4791

UNITED STATES PUBLIC LAWS

103rd Congress - Second Session

Convening January 25, 1994

Additions and Deletions are not identified in this document.
8848

PL 103–454 (HR 4180)

November 2, 1994
FEDERALLY RECOGNIZED INDIAN TRIBE LIST ACT OF 1994

An Act to provide for the annual publication of a list of federally recognized Indian tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—WITHDRAWAL OF ACKNOWLEDGEMENT OR RECOGNITION

<< 25 USCA § 479a NOTE >>

SEC. 101. SHORT TITLE.

This title may be cited as the "Federally Recognized Indian Tribe List Act of 1994".

<< 25 USCA § 479a >>

SEC. 102. DEFINITIONS.

For the purposes of this title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

(3) The term "list" means the list of recognized tribes published by the Secretary pursuant to section 104 of this title.

<< 25 USCA § 479a NOTE >>

SEC. 103. FINDINGS.

The Congress finds that—

(1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;

(2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship

with those tribes, and recognizes the sovereignty of those tribes;

(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;" or by a decision of a United States court;

(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

(6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

(7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs

and services provided by the United States to Indians because of their status as Indians.

<< 25 USCA § 479a–1 >>

SEC. 104. PUBLICATION OF LIST OF RECOGNIZED TRIBES.

(a) PUBLICATION OF THE LIST.—The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) FREQUENCY OF PUBLICATION.—The list shall be published within 60 days of enactment of this Act, and annually on or before every January 30 thereafter.

* * *

Approved November 2, 1994.

PL 103–454, 1994 HR 4180