

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SCOTTS VALLEY BAND OF POMO INDIANS,)

Plaintiff,)

v.)

DOUGLAS BURGUM, *et al.*,)

Defendants.)

Civil Action No.: 1:25-cv-00958-TNM
Judge Trevor N. McFadden

**MEMORANDUM OF LAW IN SUPPORT OF
GTL PROPERTIES, LLLP'S MOTION TO INTERVENE**

TABLE OF CONTENTS

INTRODUCTION AND BACKGROUND	1
ARGUMENT	3
I. Intervention As Of Right Under Federal Rule Of Civil Procedure 24(A)(2) Is Appropriate Here.	3
A. This Motion is Timely.	4
B. GTL Properties Has Weighty Legally Protected Interests In This Action And Article III Standing.	5
C. GTL’s Interests May Be Impaired Absent Intervention.	6
D. The Tribe Does Not Adequately Represent GTL’s Interests.	7
II. Alternatively, GTL Should Be Allowed To Intervene By Permission.	9
CONCLUSION.....	9

TABLE OF AUTHORITIES

Cases

<i>Akiachak Native Cmty. v. U.S. Dep’t of Interior</i> , 584 F. Supp. 2d 1 (D.D.C. 2008).....	6
<i>Cnty. Of San Miguel v. MacDonald</i> , 244 F.R.D. 36 (D.D.C. 2007).....	6
<i>EEOC v. Nat’l Children’s Center, Inc.</i> , 146 F.3d 1042 (D.C. Cir. 1998).....	8
<i>Forest Cnty. Potawatomi Cmty. v. United States</i> , 317 F.R.D. 6 (D.D.C. 2016).....	7
<i>Hodgson v. United Mine Workers</i> , 473 F.2d 118 (D.C. Cir. 1972).....	4
<i>Karsner v. Lothian</i> , 532 F.3d 876 (D.C. Cir. 2008).....	3, 7
<i>NRDC v. Costle</i> , 561 F.2d 904 (D.C. Cir. 1977).....	7
<i>Roeder v. Islamic Rep. of Iran</i> , 333 F.3d 228 (D.C. Cir. 2003).....	6
<i>Trbovich v. United Mine Workers of Am.</i> , 404 U.S. 528 (1972).....	7
<i>United States v. Am. Tel. & Tel. Co.</i> , 642 F.2d 1285 (D.C. Cir. 1980).....	4
<i>*WildEarth Guardians v. Haaland</i> , No. 21-175 (RC), 2021 WL 12241910 (D.D.C. Apr. 21, 2021).....	4, 6, 7
<i>WildEarth Guardians v. NPS</i> , 605 F.3d 1192 (10th Cir. 2010)	7

Statutes

25 C.F.R. § 292.12	1
25 U.S.C. § 2719(b)(1)(B)(iii)	1
28 U.S.C. § 1331.....	8

28 U.S.C. § 1346..... 8

5 U.S.C. §§ 701-705 8

Rules

Fed. R. Civ. P. 24(a)(2)..... 1, 3, 6, 7, 8

Fed. R. Civ. P. 24(b) 8

Pursuant to Federal Rule of Civil Procedure 24(a)(2), GTL Properties, LLLP (“GTL”) respectfully requests to intervene in support of Plaintiff Scotts Valley Band of Pomo Indians (“Plaintiff” or the “Tribe”) in this case.

INTRODUCTION AND BACKGROUND

On January 10, 2025, the U.S. Department of the Interior (“Department”) issued one final decision comprised of two component parts (the “January 10 Decision”). First, the Department determined that a certain 160.33-acre parcel of land in Vallejo, California (“Vallejo Parcel”), in the San Francisco Bay Area, qualifies as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. § 292.12, meaning that the Tribe may lawfully conducting gaming on the Vallejo Parcel pursuant to the Indian Gaming Regulatory Act (“IGRA”) (“Gaming Determination”). *See* ECF 1-1, Ex. A to the Tribe’s Complaint, at 1–2. Second, and as a direct result of the Gaming Determination, the Department determined that it would therefore take title to the Vallejo Parcel and hold it in trust “as a restoration of land for a restored tribe.” *Id.* at 30.

GTL is the former owner of a 32-acre portion of the Vallejo Parcel and also loaned the Tribe funds to acquire an adjoining 128-acre parcel, collectively comprising the approximate 160.33-acre Vallejo Parcel. GTL and the Tribe agreed as to the terms of a purchase and sale agreement (“Agreement”) for the 32-acre portion on November 2, 2024 in anticipation of a potential determination by the Department that the Vallejo Parcel qualifies as restored lands and is therefore eligible for gaming. Under these conditions, the Department would take title to the portion of the Parcel and hold it in trust for the Tribe. Therefore, because of the uncertainty of the Department’s decisions, the deed for GTL portion of the Vallejo Parcel was held in escrow until the Department issued the January 10 Decision. In other words, the Agreement was structured such that deed to that portion of the Vallejo Parcel would not transfer to the Department unless and until

it had determined that the Vallejo Parcel qualified as restored lands, was therefore eligible for tribal gaming under IGRA, and that the Department would take title to the portion of the Vallejo Parcel and hold it in trust for the benefit of the Tribe. The transfer of GTL's land was therefore contingent on the January 10 Decision.

Thus, only after the Department issued its January 10 Decision did the deed to the portion of the Vallejo Parcel immediately transfer from GTL to the Department to be held in trust. *See* Notice, 90 Fed. Reg. 3,905, 3,906 (Jan. 15, 2025).

Reasonably so, GTL wholly relied on the finality of the January 10 Decision, which is the culmination of a nearly ten-year process beginning in 2016, went through extensive administrative process, and is supported by a seventy-page rationale. Upon the Department's publication of the January 10 Decision, GTL's title to the valuable portion of the Vallejo Parcel passed through the Tribe to the Department to be held in trust, and GTL received no compensation. Additionally, GTL loaned the tribe funds so that it could purchase the remaining part of the Vallejo Parcel. GTL will only be paid for both the land sale and the loan once the Tribe generates revenues from gaming on the Vallejo Parcel. This is because the payment of the purchase price for the land and repayment for the loan is to be contingent on gaming occurring at the Vallejo Parcel, for which the Gaming Determination was critical. Thus, under the terms of the Agreement, GTL has not received a penny from the Tribe (or the Department) in exchange for the land it deeded over to the Department.

That delayed payment structure was working as planned for GTL. That is, until the Department upset the applecart.

On March 27, 2025, the Department issued its letter where it claimed to be "temporarily rescinding the Gaming [Determination] for reconsideration" ("March 27 Rescission"). *See* ECF 1-2, Ex. B to the Tribe's Complaint, at 1. The Department also solicited further information relevant

to the reconsideration process, to be submitted by “the Tribe and other interested parties” by May 30, 2025. *Id.* Notably, while the March 27 Rescission purports to temporarily rescind the Gaming Determination, the March 27 Rescission explicitly states that the action to take the Vallejo Parcel into trust is not being reconsidered, which means the United States retains title to the Vallejo Parcel. *Id.* The March 27 Rescission also does not state how long the Department intends to take in reconsidering the Gaming Determination, nor does it provide any backstop date by which the Department must act. *See id.*

The Tribe filed this action challenging the lawfulness of the March 27 Rescission on April 1, 2025.

Because of GTL’s important separate interest in seeking to ensure that it is compensated for the valuable real property transferred to the Department, GTL now seeks to intervene in this case.

GTL satisfies the criteria for intervention as of right. And even if this Court determines that GTL does not satisfy such criteria, permissive intervention is appropriate so that GTL can protect its important interest here.

ARGUMENT

I. Intervention As Of Right Under Federal Rule Of Civil Procedure 24(A)(2) Is Appropriate Here.

GTL satisfies the requirements for intervention as of right under Rule 24(a)(2).

A party is entitled to intervene as a matter of right if (a) the motion to intervene is timely, (b) the movant demonstrates a legally protected interest in the action, (c) the action threatens to impair that interest, and (d) no party to the action can be an adequate representative of the movant’s interest. *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). Each requirement is satisfied here.

A. This Motion is Timely.

The timeliness of a motion to intervene requires “consideration of all the circumstances.” *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980). In conducting this inquiry, the Court of course considers the amount of time that has elapsed since the litigation began, while also examining the “related circumstances, including the purpose for which intervention is sought, the necessity for intervention as a means of preserving the applicant’s rights, and the improbability of prejudice to those already parties in the case.” *Hodgson v. United Mine Workers*, 473 F.2d 118, 129 (D.C. Cir. 1972).

GTL’s motion is timely under these standards. First, Plaintiff filed this action on April 1, 2025, only 10 days ago. This Court has permitted intervention when the request was submitted approximately ten weeks after the action was filed. *See WildEarth Guardians v. Haaland*, No. 21-175 (RC), 2021 WL 12241910, at *1 (D.D.C. Apr. 21, 2021) (“API moved to intervene less than ten weeks after the initial complaint was filed. . . . [T]he Court concludes that intervention by the movant is timely.”).

Additionally, the Court’s minute entry of April 7, 2025 specifies that interventions for proposed defendant-intervenors are due on April 11, 2025. Although GTL seeks to intervene as a *plaintiff*-intervenor, there is no reason that such deadline for intervention should be more stringent than for *defendant*-intervenors.

GTL intends to intervene to support Plaintiff in the preliminary injunction hearing. GTL’s intervention at this early stage will not interfere with the briefing schedule related to both Plaintiff’s request for preliminary injunction and the ultimate merits briefing. Defendants’ responsive pleading to the motion for preliminary injunction is not due until April 25, 2025. Defendants will therefore have adequate time to respond to GTL’s motion for preliminary injunction.

Additionally, the necessity for intervention to preserve GTL's rights weighs strongly in favor of intervention here. As discussed below, GTL suffers its separate and distinct harms from the March 27 Rescission. Namely, GTL's real property in Vallejo, California has been deeded to the Department of the Interior to be held in trust for Plaintiff. However, the value proposition from that land transfer will be lost unless the March 27 Rescission is enjoined (both preliminarily, and, eventually, permanently). Further, repayment of the loan to the Tribe is also contingent on gaming.

Therefore, and so GTL can fully protect its rights, GTL respectfully requests that the Court grant the Motion to Intervene before ruling on Plaintiff's Motion for Preliminary Injunction. However, should this Court rule on the Motion for Preliminary Injunction before ruling on this Motion to Intervene, GTL respectfully requests that the Court consider its Memorandum of Law as an amicus submission in support of Plaintiff's Motion for Preliminary Injunction.

B. GTL Properties Has Weighty Legally Protected Interests In This Action And Article III Standing.

The Department now holds the deed to the 160.33-acre Vallejo Parcel, in trust for the Tribe. The Department has expressly stated that decision is unaffected by the March 27 Rescission. However, by splitting the package deal set out in the January 10 Letter, the Department has attempted to rescind the Gaming Determination through the March 27 Rescission. As described above, payment to GTL for the portion of the Vallejo Parcel it previously owned and for the loan to the Tribe is contingent on gaming occurring on the land, for which the Gaming Determination was a necessary predicate. The Department's March 27 Rescission thereby harms GTL directly by depriving GTL of the ability to receive payment for the value of the land and for the loan that GTL made. At the very least, even if the Department ultimately reaffirms the Gaming Determination, GTL would be harmed by the delay caused in receiving the funds owed to it under its agreements with the Tribe.

This weighty interest is also more than enough to satisfy the threshold for Article III standing.

Although a prospective intervenor must have Article III standing, the D.C. Circuit has explained that any person who has the right to intervene under Rule 24(a) will also meet Article III's standing requirements. *Roeder v. Islamic Rep. of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003); *see also WildEarth Guardians*, 2021 WL 12241910, at *1 n.3 (noting the same and citing *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 584 F. Supp. 2d 1, 7 (D.D.C. 2008)).

Here, GTL's interests are directly and adversely affected by the March 27 Rescission's attempt to overturn the Gaming Determination while the Department proposes to reconsider that determination. As discussed above, the Department has stated that it is temporarily rescinding the Gaming Determination, but the Department did *not* rescind (temporarily or otherwise) the action that allowed the Department to take title to the Vallejo Parcel and hold it in trust for the Tribe. This leaves GTL in the untenable position where it no longer owns its portion of the Vallejo Parcel—in reliance on the Gaming Determination—but now faces the prospect never being paid for that land, or for the loan that GTL made to the Tribe to acquire the other portion of the Vallejo Parcel.

There are few more concrete injuries than being deprived of the value of one's real property. *See* U.S. Const. amend V. This Court has found a protectable interest and standing in circumstances with less concrete and important interests related to the litigation. *See, e.g., Cnty. Of San Miguel v. MacDonald*, 244 F.R.D. 36, 44 (D.D.C. 2007) (allegations of expected increase in regulatory restrictions on members' use of public and private land sufficient).

C. GTL's Interests May Be Impaired Absent Intervention.

Under Rule 24(a)(2), it is sufficient to demonstrate impairment if disposition of the case “may as a practical matter impair or impede the movant's ability to protect its interest” in the

litigation. *Karsner*, 532 F.3d at 885 (quoting Fed. R. Civ. P. 24(a)(2)). This is a flexible inquiry in which the courts look to the “practical consequences” of denying intervention. *NRDC v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977).

Here, absent intervention, GTL’s interests may—as a practical matter—be impaired if this Court upholds the March 27 Rescission and allows the Department to put the Gaming Determination on hold while the Department undertakes a reconsideration process. This would leave GTL in limbo, having already deeded its land to the Department but with the prospect of no payment, or payments delayed for a potentially indefinite period.

Further, the Department’s current reconsideration process that solicits input by May 30, 2025 does not diminish any impairment of interest that GTL may suffer. This is because the interest of a prospective intervenor may be impaired where a decision in the other side’s favor “would return the issue to the administrative decision-making process, notwithstanding the prospective intervenor’s ability to participate in formulating any revised rule or plan.” *WildEarth Guardians v. NPS*, 605 F.3d 1192, 1199 (10th Cir. 2010); *see also WildEarth Guardians*, 2021 WL 12241910, at *2.

D. The Tribe Does Not Adequately Represent GTL’s Interests.

The final criterion under Rule 24(a)(2) only requires a “minimal” or “de minimis” showing. *Costle*, 561 F.2d at 911 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *Forest Cnty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 11 (D.D.C. 2016). The “de minimis” showing “only extends to showing that there is a possibility that [the proposed intervenor’s] interests may not be adequately represented absent intervention.” *Forest Cnty. Potawatomi Cmty.*, 317 F.R.D. at 11.

GTL passes this minimal showing with flying colors. Even though GTL and the Tribe share a common interest in this Court holding the March 27 Rescission unlawful and preliminarily—and

permanently—enjoining that action, GTL and the Tribe may not share “agreement in all particular respects about what the law requires.” *Costle*, 561 F.2d at 912. For example, GTL, as a private entity rather than a recognized tribe, may take different views on certain aspects of IGRA and other applicable legal requirements. Further, GTL is differently situated from the Tribe in that the *combination* of the March 27 Rescission’s delay (at best) of the Gaming Determination with keeping title to GTL’s former land uniquely injures GTL. For this reason, GTL may ultimately seek relief that is different from the relief requested by the Tribe or be less inclined to reach a settlement agreement with the Department.

GTL’s distinct interests more than meet the “de minimis” showing required under this prong of Federal Rule of Civil Procedure 24(a)(2) to show that existing parties do not adequately represent GTL’s interest.

II. Alternatively, GTL Should Be Allowed To Intervene By Permission.

In the alternative, GTL requests that this Court grant it permission to intervene in this case pursuant to Federal Rule of Civil Procedure 24(b). Rule 24(b)(1)(B) permits intervention where anyone “has a claim or defense that shares with the main action a common question of law or fact.”

Courts analyze three criteria in determining whether this requirement has been met: (1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action. *EEOC v. Nat’l Children’s Center, Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). GTL meets all three criteria.

First, there is squarely subject matter jurisdiction here. GTL seeks review of a federal administrative action based on federal law, giving rise to this Court’s subject matter jurisdiction. *See* 28 U.S.C. §§ 1331 (federal question jurisdiction), 1346 (United States as Defendant); 5 U.S.C. §§ 701-705 (providing for judicial review of federal administrative action at issue here).

Second, GTL's motion is timely. GTL has filed its motion only 10 days after Plaintiff filed the case. GTL has filed on the same timeline the Court requested prospective Defendants-Intervenors to file motions to intervene. And, Defendants' response in opposition to Plaintiff's motion for preliminary injunction is due in 14 days. Defendants have ample time to consider and respond to the arguments raised in GTL's Memorandum of Law should this Court grant intervention in advance of reaching a ruling on the Tribe's Motion for Preliminary Injunction. If this Court does not decide on GTL's intervention until after deciding on the Tribe's Motion for Preliminary Injunction, Defendants will suffer no prejudice at all because the likely forthcoming summary judgment briefing will afford considerable time for Defendants to respond.

Third, GTL's claims indisputably share common questions of both fact and law with Plaintiffs' claims. GTL and the Tribe both argue that the Department's March 27 Rescission is unlawful under IGRA and the Administrative Procedure Act.

CONCLUSION

For the foregoing reasons, GTL respectfully requests that the Court grant its Motion to Intervene in this action and grant such other and further relief in its favor as the Court deems just and proper.

Dated: April 11, 2025

Respectfully submitted,

/s/ Jasmine G. Chalashtori

Jasmine G. Chalashtori (DC Bar No. 1016225)

WOMBLE BOND DICKINSON (US) LLP

2001 K Street, NW, Suite 400 South

Washington DC, 20006

Telephone: (202) 857-4410

Email: jasmine.chalashtori@wbd-us.com

Ana Maria Gutiérrez (*pro hac vice pending*)

Michael Dean Miller (*pro hac vice pending*)

WOMBLE BOND DICKINSON (US) LLP

1601 19th Street, Suite 10000

Denver, CO 80202

Telephone: (720) 983-1350

Email: ana.gutierrez@wbd-us.com

Email: michael.miller@wbd-us.com

*Counsel for Proposed Plaintiff-Intervenor GTL Properties,
LLP*

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2025, I electronically filed the foregoing using the Court's CM/ECF system, which will send notification of such filing to the parties.

/s/ Jasmine G. Chalashtori
Jasmine G. Chalashtori