IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

TABLE MOUNTAIN RANCHERIA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR,
1849 C Street NW, Washington, D.C. 20240

UNITED STATES BUREAU OF INDIAN AFFAIRS,
1849 C Street NW, Washington, D.C. 20240

NATIONAL INDIAN GAMING COMMISSION,
1849 C Street NW, Washington, D.C. 20240

OFFICE OF INDIAN GAMING,
1849 C Street NW, Washington, D.C. 20240

DOUG BURGUM, in his official capacity as Secretary of the United States Department of the Interior,
1849 C Street NW, Washington, D.C. 20240

BRYAN MERCIER, in his official capacity as Director of the Bureau of Indian Affairs,
1849 C Street NW, Washington, D.C. 20240

SCOTT DAVIS, exercising the delegated authority of the Assistant Secretary for Indian Affairs,
1849 C Street NW, Washington, D.C. 20240

PHILIP BRISTOL, in his official capacity as Acting Director of Office of Indian Gaming,
1849 C Street NW, Washington, D.C. 20240

RYAN HUNTER, in his official capacity as Acting Regional Director for the Bureau of Indian Affairs Pacific Regional Office,
2800 Cottage Way, Suite W-2820,
Sacramento, California 95825

Case No.

COMPLAINT

SHARON AVERY, in her official capacity as Acting Chairwoman of the National Indian Gaming Commission,
1849 C Street NW, Washington, D.C. 20240

Defendants.

I. INTRODUCTION

1. Plaintiff Table Mountain Rancheria ("Table Mountain" or the "Tribe") brings this action against the U.S. Department of the Interior ("DOI"), the Bureau of Indian Affairs ("BIA"), the National Indian Gaming Commission ("NIGC"), the Office of Indian Gaming ("OIG") Secretary of the Interior Doug Burgum, BIA Director Bryan Mercier, Acting Assistant Secretary for Indian Affairs Scott Davis, Acting BIA Regional Director Ryan Hunter, Acting Chairwoman of the NIGC Sharon Avery, and Acting OIG Director Philip Bristol to challenge Defendants' arbitrary, capricious, and otherwise unlawful approval of a trust-to-trust transfer of land — the "McCabe Allotment" — in the heart of Table Mountain's traditional homelands and contiguous to Table Mountain trust territory. Defendants facilitated this transfer of public domain allotment land from an individual allottee to the Big Sandy Rancheria ("Big Sandy" or "BSR") after erroneously concluding that the land was eligible for gaming, without engaging in any of the basic review required under substantive environmental and Indian law, and despite the transfer threatening significant and irremediable harm to Table Mountain's cultural, historical, social, environmental, and economic interests — harms Defendants have acknowledged repeatedly in prior decisions.

2. BSR has owned and operated the Mono Wind Casino on its own rancheria since 1998. Although BSR already owns and operates this casino, BSR has been attempting for the past two decades to open a second casino. This second casino (the "Casino Project") would not be located on the BSR rancheria, but would instead be off-reservation, 18 miles away, at the McCabe Allotment in the heart of *Table Mountain* ancestral territory — contiguous to and surrounded by Table Mountain trust lands, and just a mile from Table Mountain's own casino.

3. BSR's Casino Project has long struggled to get off the ground because of the plethora of environmental, historical, and cultural threats it poses to the affected land and the surrounding Table Mountain community. Starting in 2004, Big Sandy sought approval of a proposed casino management contract and a lease of the McCabe Allotment from the individual allottee. At the time, Table Mountain repeatedly warned that the McCabe Allotment and

surrounding lands were culturally sensitive historic properties deemed eligible for the National Register of Historic Places ("NRHP") by the BIA and of considerable importance to the Tribe. In violation of the law, BIA failed to respond to Table Mountain's requests for consultation. BIA's environmental review process, which included archeological survey and surface excavations, soon confirmed Table Mountain's concerns. In late 2008, following the BIA's issuance of an Archeological Resources Protection Act ("ARPA") permit, BIA consulting archeologists disturbed a historic gravesite, requiring Table Mountain to become involved in the reinterment of ancestral remains. BSR ultimately abandoned its request for NIGC approval of a casino management contract, and no final Environmental Impact Statement ("EIS") was prepared for the proposed lease of the McCabe Allotment.

4. BSR instead pivoted to a new mechanism for attempting to acquire control over the McCabe Allotment — a land consolidation plan under the Indian Land Consolidation Act, 25 U.S.C. §§ 2201 *et seq.*, which BSR hoped would not trigger the same level of agency scrutiny. But BSR was mistaken. In 2013, BIA rejected BSR's proposed acquisition of the McCabe Allotment as "consolidated" tribal territory specifically because BSR was attempting to acquire off-reservation land for gaming purposes without engaging in environmental and other review. BIA noted that the property was a public domain allotment, rather than an allotment from former Big Sandy rancheria land. BIA further noted that ***even a trust-to-trust transfer*** — that is, the very type of transfer now at issue — would also trigger such review, just like any other attempt to acquire land for gaming purposes. BIA's decision was upheld by the Interior Board of Indian Appeals ("IBIA") in 2017. Further, although historic sites were identified on the property, the requisite environmental scoping and historic preservation review were never completed.

5. Rather than engage in the mandatory environmental review, BSR abandoned its proposed land consolidation plan and shifted tactics once again in an attempt to circumvent the law. This time, however, the agencies improperly acquiesced. In 2022, BSR revised its gaming ordinance to unilaterally declare its authority to engage in gaming on the McCabe Allotment.

Around the same time, BSR arranged for a trust-to-trust transfer from the individual allottee who held the McCabe Allotment to BSR itself.

6. With no environmental scoping or National Historic Preservation Act consultation, with no notice to Table Mountain as an affected tribe, and with no explanation for (or even mention of) Defendants' departure from contradictory prior BIA decisions indicating that BSR lacks jurisdiction over the McCabe Allotment, Defendant NIGC approved BSR's revised gaming ordinance, and Defendant BIA approved the trust-to-trust transfer of the McCabe Allotment.

7. Having claimed control of the McCabe Allotment, BSR is now rapidly seeking to move forward with a Casino Project that promises immense harm to Table Mountain and its people — harm to the natural and human environment surrounding the development area, harm to the cultural resources and historic properties previously determined to be NRHP-eligible and known to exist on and around the McCabe Allotment, harm to the Tribe's interest in the integrity of its traditional homelands, and ultimately harm to the Tribe's economic wellbeing as BSR targets Table Mountain's primary source of revenue by developing a competing casino (its second) in the heart of Table Mountain territory. Table Mountain's injuries follow directly from Defendants' inexplicable departure from prior rulings and their disregard for the basic requirements of environmental review, historic property review, administrative process, and tribal consultation.

II. PARTIES

8. Plaintiff Table Mountain Rancheria is a federally recognized Indian tribe located in the Central Valley near Friant, California, approximately 24 miles northeast of Fresno, California.

9. Defendant DOI is a cabinet-level agency of the United States. DOI manages the affairs of Indian tribes through BIA and is responsible for maintaining government-to-government relations with federally recognized Indian tribes, including Table Mountain, consistent with longstanding federal trust responsibilities to tribal governments. DOI is also

responsible for promulgating and ensuring compliance with its regulations and internal policies.

10. Defendant BIA is a bureau within DOI. BIA provides services to Indian tribes and manages resources held in trust by the United States for Indian tribes. In that role BIA is responsible for reviewing, processing, and complying with legal requirements relating to proposed trust-to-trust acquisitions.

11. Defendant NIGC is an independent agency charged with regulating tribal gaming under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.* Among NIGC's responsibilities are the review and approval of tribal gaming ordinances and "Indian Lands Opinions."

12. Defendant OIG is the primary advisor to the Secretary and the Assistant Secretary of Indian Affairs regarding Indian gaming and the requirements of IGRA and related federal laws. The OIG is responsible for the review and analysis of the statutory and regulatory requirements of IGRA, including Indian gaming trust acquisitions, gaming-eligible determinations and Indian Lands Opinions, and review of tribal-state gaming compacts.

13. The Individual Defendants are:

i. Doug Burgum, Secretary of the Interior.

ii. Bryan Mercier, Director of BIA. Mr. Mercier discharges the duties of the Secretary with respect to IGRA and related regulations. Mr. Mercier also exercises authority over BIA and decides requests for trust-to-trust transactions.

iii. Scott Davis, exercising the delegated authority of the Assistant Secretary for Indian Affairs.

iv. Philip Bristol, Acting Director for the OIG.

v. Ryan Hunter, Acting Regional Director for the Pacific Regional Office of BIA. Mr. Hunter oversees BIA review of trust-to-trust transfers in the relevant geographic area. From 2010 until 2025, the office of Regional Director was held by Amy Dutschke.

vi. Sharon Avery, Acting Chairwoman of the NIGC. In this role, Ms. Avery is responsible for regulating and ensuring the integrity of Indian gaming facilities and their

compliance with IGRA, including review and approval of tribal gaming ordinances.

14. The Individual Defendants are sued in their official capacities and are named Defendants as a result of the actions and decisions of DOI, BIA, and NIGC for which they bear responsibility.

III. JURISDICTION AND VENUE

15. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and pursuant to 28 U.S.C. §§ 2201 and 2202. Plaintiff Table Mountain Rancheria is a federally recognized Indian tribe in a matter arising under federal law, 28 U.S.C. § 1362, that seeks declaratory, injunctive, and other necessary relief against each and all Defendants as allowed by these and other applicable statutes.

16. This Court has personal jurisdiction over Defendants because each Defendant has the requisite minimum contacts with the District of Columbia. This case challenges the legality of actions and decisions taken by DOI under IGRA, the Indian Reorganization Act, the National Environmental Policy Act, the National Historic Preservation Act, and their corresponding federal regulations. DOI is a federal agency established by the government of the United States. BIA is a bureau within DOI. NIGC is an independent regulatory agency operating within DOI. OIG is an office within DOI. Individual Defendants are sued in their official capacities with respect to DOI, BIA, NIGC, and OIG.

17. The United States has waived sovereign immunity from suit under 5 U.S.C. § 702 and 28 U.S.C. § 2409.

18. Venue in the United States District Court for the District of Columbia is proper under 28 U.S.C. § 1391(b)(2) and (e), and under 5 U.S.C. § 703.

IV. STATUTORY BACKGROUND

A. Public Domain Allotments

19. The General Allotment Act of 1887, also known as the Dawes Act, 25 U.S.C. §§ 331 *et seq.*, authorized the allotment of land within the boundaries of an Indian reservation ("reservation allotments") as well as public domain land ("public domain allotments") to

individual Indians. Public domain allotments were intended for Indians not residing on a reservation or belonging to a landless tribe. 25 U.S.C. § 334. They are therefore inherently "off-reservation," and sometimes located miles from a reservation or rancheria.

20. Reservation allotments and public domain allotments differ in meaningful ways. For example, if an individual allottee dies intestate and without heirs, a reservation allotment escheats to the tribe owning the land at the time of allotment. 25 U.S.C. § 373a. Public domain allotments, on the other hand, escheat to the federal government, as they consist of land within the public domain. 25 U.S.C. § 373.

21. Furthermore, unlike reservation allotments, public domain allotments in California have not historically been subject to tribal jurisdiction. *See Big Sandy Rancheria Band of W. Mono Indians v. Acting Pac. Reg'l Dir., Bureau of Indian Affairs*, 62 IBIA 202, 211 (2016). In many instances, individual allottees have been disenrolled by tribes, or the allotment is distant from any potentially associated reservation or rancheria, or both. *Id.*

B. Sales, Exchanges, and Conveyances of Trust Lands

22. Various federal laws set forth the procedures and criteria for evaluating requests to sell, exchange, gift, transfer, or convey land allotted by the United States to Indians or their heirs. These federal laws guide whether the United States will accept a "trust-to-trust" transfer and for what purposes.

23. The Indian Reorganization Act ("IRA"), 25 U.S.C. §§ 5101 *et seq.*, provides that restricted Indian lands may be sold, devised, gifted, exchanged, or transferred. *See* 25 U.S.C. § 5107. The Act authorizes the Secretary of the Interior or a duly authorized representative "to approve conveyances[] with respect to lands or interests . . . held by individual Indians." 25 U.S.C. § 5134.

24. Similarly, under 25 U.S.C. § 379, "[t]he adult heirs of any deceased Indian to whom a trust . . . containing restrictions upon alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent . . . subject to the approval of the Secretary of the Interior." And under 25 U.S.C. § 404, the lands "allotted to any

Indian, or any inherited interest therein, which can be sold under existing law by authority of the Secretary of the Interior . . . may be sold on the petition of the allottee, or his heirs, on such terms and conditions and under such regulations as the Secretary of the Interior may prescribe."

25. The authority of the Secretary of the Interior to approve or deny trust conveyances has been delegated to BIA. This authority is commonly referred to as "acquisition and disposal" responsibility by the BIA Division of Real Estate Services.

26. The regulations governing the acquisition and disposal of trust lands are located at 25 C.F.R. part 151 ("Part 151") and 25 C.F.R. part 152 ("Part 152").

27. Under Part 152, trust lands "acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary." 25 C.F.R. § 152.17. Secretarial approval is also required to effectuate a trust-to-trust transfer: "Trust or restricted lands, . . . or any interest therein, may not be conveyed without the approval of the Secretary." 25 C.F.R. § 152.22(a). The "BIA has promulgated regulations governing such conveyances, including gift conveyances." *Kent v. Acting Nw. Reg'l Dir.*, 45 IBIA 168, 174 (2007) (citing 25 C.F.R. §§ 152.17, 152.22(a), 152.23, 152.25(d)).

28. The decision to approve a conveyance of trust land must comport with the law, be supported by the record, and be adequately explained by BIA. *Id.* To the extent BIA has discretion to approve conveyances, "that discretion is not boundless and must be exercised in accordance with the [Part 152] regulations." *Cloud v. Alaska Reg'l Dir.*, 50 IBIA 262, 271 (2009).

29. An acquisition of trust land must also satisfy the factors outlined in Part 151. *See* 25 C.F.R. §§ 151.3, 151.5, 151.11. For example, in reviewing a proposed acquisition, the BIA must consider the "location of the land and potential conflicts of land use." 25 C.F.R. § 151.11(c). And the BIA must consider the "purposes for which the land will be used," with "great weight" to "protect[ing] sacred sites or cultural resources." 25 C.F.R. § 151.11(a)(3), (b)(2).

30. Approvals under the Part 151 and Part 152 regulations are federal actions that

trigger the public notice requirements providing interested parties the opportunity to engage in the process on the record. These processes are further subject to environmental and historic preservation laws, including the National Environmental Policy Act and the National Historic Preservation Act.

31. Where the trust-to-trust land transfer is proposed for future Indian gaming, the tribe seeking gaming approval must also comply with 25 C.F.R. part 292 ("Part 292"). When triggered, Part 292 requires that the tribe seek an Indian Lands Opinion clarifying whether the site qualifies as a "reservation" as defined in the regulations, and whether the site meets or will meet one of the exceptions authorizing gaming on land acquired after October 17, 1988. 25 C.F.R. §§ 292.2, 292.3. In evaluating the effective date of a site's status as trust land, an Indian Lands Opinion will look to the date a trust-to-trust conveyance was effected.

C. The Indian Land Consolidation Act

32. Congress passed the Indian Land Consolidation Act ("ILCA"), 25 U.S.C. §§ 2201 *et seq.*, "to reverse the effects" of the United States's allotment policy on Indian tribes, Pub. L. No. 106-462, tit. I, § 102, Nov. 7, 2000, 114 Stat. 1991. Accordingly, ILCA seeks "to prevent the further fractionation of trust allotments made to Indians" and to consolidate tribal landholdings, fractional interests and ownership into useable parcels in a manner that "enhances tribal sovereignty." *Id.*

33. ILCA achieves these goals by establishing a mechanism by which a tribe may adopt a "land consolidation plan" that provides for the sale or exchange of tribal lands. 25 U.S.C. § 2203(a).

34. All land consolidation plans must receive "approval of the Secretary," who considers whether the proposed land consolidation plan meets ILCA's "purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings." *Id.* The Secretary's authority to approve or deny land consolidation plans has been delegated to BIA. *See Van Mechelen v. Nw. Reg'l Dir.*, 61 IBIA 125, 128 (2015). BIA's authority to approve land consolidation plans is discretionary. *Id.*

35. BIA has concluded that consolidating public domain allotments, which consist of land outside the boundaries of an Indian reservation or rancheria, does not further the purposes of ILCA, and is therefore not permitted. *Big Sandy*, 62 IBIA at 205-06.

D. Indian Gaming Regulatory Act

36. IGRA establishes a regulatory structure for gaming on Indian lands in the United States. *See* 25 U.S.C. §§ 2701 *et seq.*

37. Under IGRA, "Class III" gaming activities are lawful on "Indian lands" provided such activities are (i) authorized by a gaming ordinance or resolution adopted by "the Indian tribe having jurisdiction over the lands" and (ii) approved "by the Chairman" of NIGC. "Indian lands" are defined as all lands within the limits of any Indian reservation, and "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.

38. IGRA authorizes the NIGC Chair to approve a gaming ordinance, unless the Chair determines that (i) the ordinance was not adopted in compliance with the governing documents of the Indian tribe, or (ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by statutorily specified persons. 25 U.S.C. § 2710(d)(2)(B). IGRA further instructs the NIGC Chair to publish notices of approval of gaming ordinances in the Federal Register. *Id.*

E. Administrative Procedure Act

39. The Administrative Procedure Act ("APA") provides a right of judicial review for "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702.

40. The APA directs that the reviewing court "shall" hold unlawful and set aside agency actions, findings, or conclusions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or that are adopted "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D).

F. National Environmental Policy Act

41. The National Environmental Policy Act ("NEPA") "establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 40 C.F.R. § 1500.1(a)(1). Its purposes are to ensure that "relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies" and that "Federal agencies conduct environmental reviews in a coordinated, consistent, predictable and timely manner." 40 C.F.R. § 1500.1(b). Those purposes are satisfied "if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process." 40 C.F.R. § 1500.1(a).

42. To achieve these objectives, NEPA imposes on federal agencies certain "action-forcing" procedures that require agencies to take a "hard look" at environmental consequences of major federal action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). A "major federal action" subject to NEPA is any decision "which permits action by other parties which will affect the quality of the environment." *Scientists' Inst. for Pub. Info. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1088-89 (D.C. Cir. 1973).

43. Chief among NEPA's "action-forcing procedures" is the mandate that federal agencies contemplating "major Federal action[] significantly affecting the quality of the human environment" prepare a comprehensive Environmental Impact Statement. 42 U.S.C. § 4332(C). If an agency is uncertain as to whether a major federal action will significantly affect the quality of the human environment, it may prepare an Environmental Assessment. 40 C.F.R. § 1501.5(a). If the Environmental Assessment establishes that the proposed action will not have any significant environmental impacts, the agency must prepare a finding of No Significant Impact. 40 C.F.R. § 1501.6(a)(1), (2). If the Environmental Assessment reveals that the proposed action

[1] All citations are to the regulations in effect during the relevant time period.

will *or may* significantly impact the human environment, the agency must prepare an EIS. Indian Affairs National Environmental Policy Act Guidebook ("BIA NEPA Guidebook"), 59 IAM 3-H at § 6.5 (August 2012).

44. Additionally, NEPA and its regulations provide potentially affected tribal governments with special rights and consideration. For example, DOI procedures mandate tribal consultation during NEPA review. "When BIA determines that Tribal governments could be affected by a proposed action, Tribal governments are to be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents." Department of the Interior Procedures for Managing the NEPA Process ("Interior NEPA Procedures"), 516 DM 10 at § 10.3(A)(2)(a) (July 28, 2020); *see also* 40 C.F.R. § 1501.9; 43 C.F.R. § 46.230; BIA NEPA Guidebook § 6.4.7. Furthermore, regulations and agency procedures also direct that tribal governments with special expertise should be accorded an enhanced role in the NEPA process as "cooperating agencies." *See* 40 C.F.R. § 1501.8; 43 C.F.R. §§ 46.225, 46.230; BIA NEPA Guidebook § 8.2.3. The agency must also provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents "so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. § 1506.6(a).

45. NEPA "directs that, to the fullest extent possible . . . regulations[] and public laws of the United States shall be interpreted and administered in accordance with [it]." 42 U.S.C. § 4332.

G. National Historic Preservation Act

46. Congress enacted the National Historic Preservation Act ("NHPA") to "foster conditions under which our modern society and our historic property can exist in productive harmony." 54 U.S.C. § 300101(1). The NHPA enshrines Congress's declared policy that historic and cultural resources should be preserved as "a living part of our community life" and that "the preservation of . . . heritage is in the public interest." Pub. L. No. 89-665, 80 Stat. 915 (1966), as amended by Pub. L. No. 96-515, 94 Stat. 2987 (1980). Accordingly, the purposes of the NHPA

include preserving "historical and cultural foundations," *id.*, and "discouraging federal agencies from ignoring preservation values in projects they initiate, approve funds for or otherwise control." *Lee v. Thornburgh*, 877 F.2d 1053, 1056 (D.C. Cir. 1989).

47. Section 106 of the NHPA furthers this goal of historic preservation by imposing obligations on federal agencies to "take into account the effect of" their "undertaking" on any historic property "prior to" the undertaking. 54 U.S.C. § 306108. The NHPA section 106 process "seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties." 36 CFR § 800.1(a).

48. The NHPA broadly defines "undertaking" to include any "project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency," including those "requiring a Federal permit, license or approval." 54 U.S.C. § 300320. The D.C. Circuit has "construed the statute to mean that, for an action to be a federal undertaking 'only a federal permit, license or approval is required,' not necessarily federal funding." *United Keetoowah Band of Cherokee Indians in Okla. v. FCC*, 933 F.3d 728, 734 (D.C. Cir. 2019) (quoting *CTIA-Wireless Ass'n v. FCC*, 466 F.3d 105, 112 (D.C. Cir. 2006) (internal quotation marks omitted)).

49. "Historic property" under the NHPA includes "[p]roperty of traditional religious and cultural importance to an Indian tribe." 54 U.S.C. § 302706. The term "means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior," including "artifacts, records, and remains that are related to and located within such properties," as well as "properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria." 36 C.F.R. § 800.16(*l*)(1).

50. The NHPA review process further requires federal agencies to "consult with any Indian tribe . . . that attaches religious and cultural significance to" a historic property potentially affected by a federal undertaking. 54 U.S.C. §§ 302706, 306102. State Historic Preservation Officers, local government representatives, individuals and organizations "with a demonstrated interest in the undertaking," and the public also have consultative roles in the section 106 process. 36 C.F.R. § 800.2(c).

51. The NHPA also established an independent agency, the Advisory Council on Historic Preservation, 54 U.S.C. § 304101, which is responsible for promulgating regulations governing section 106. 54 U.S.C. § 304108(a).

52. NHPA section 106 regulations require the federal agency responsible for an undertaking to determine the undertaking's Area of Potential Effect, to identify historic properties within that area that may be affected, to consider whether effects on historic properties may be adverse, and to resolve any potential for such adverse effects. 36 C.F.R. §§ 800.2-800.6. Each of these steps must be taken in consultation with Indian tribes that attach religious and cultural significance to the lands in question. *Id.* Consultation includes "seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process." 36 C.F.R. § 800.16(f).

53. Federal agencies are required to "ensure that consultation in the section 106 process provides the Indian tribe . . . a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii)(A). Accordingly, and consistent with the Federal Government's "unique legal relationship" with the Indian tribes, agencies are instructed to conduct consultation "in a sensitive manner respectful of tribal sovereignty," and "sensitive to the concerns and needs of the Indian tribe." 36 C.F.R. § 800.2(c)(2)(ii)(B)-(C).

H. Tribal Consultation

54. In connection with its trust duty to Indian tribes, the United States government has

"charge[d] all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications." 86 Fed. Reg. 7491 (Jan. 29, 2021).

55. Federal Executive Order No. 13175 memorializes a policy "to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications." 65 Fed. Reg. 67249 (Nov. 9, 2000). The term "Federal policies that have tribal implications" includes any "actions that have substantial direct effects on one or more Indian tribes." *Id.*

56. Additionally, the federal government has established a set of uniform standards for tribal consultation. 87 Fed. Reg. 74479 (Dec. 5, 2022). These standards provide that "[w]hen a Tribal government requests consultation," the agency "shall" respond "within a reasonable time period." *Id.* at 74480. These standards further direct that tribal parties be notified and provided with relevant materials well in advance of consultation, and that the heads of federal agencies timely disclose to any affected tribe the outcome of the consultation and the decisions made as a result. *Id.* at 74480-81.

57. DOI has adopted its own procedures requiring consultation with federally recognized Indian tribes. Those procedures declare a commitment to (1) "invite Tribes to consult on a government-to-government basis whenever there is a Departmental Action with Tribal Implications"; (2) "make good-faith efforts to invite Tribes to consult early in the planning process"; (3) "engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with Tribal implications"; and (4) "seek consensus with impacted Tribes in accordance with the Consensus-Seeking Model." Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations ("Interior Consultation Policy"), 512 DM 4 at § 4.4 (Nov. 30, 2022).

58. DOI procedures likewise require that the agency "must invite Indian Tribes early in the planning process to consult whenever a Departmental . . . action with Tribal Implications arises," and instruct that the agency "should operate under the assumption that all actions with

land or resource use or resource impacts may have Tribal implications." Department of the Interior Procedures for Consultation with Indian Tribes ("Interior Consultation Procedures"), 512 DM 5 at § 5.4(A) (Nov. 30, 2022). DOI procedures specifically require the agency to "extend consultation invitations" in accordance with this guidance. *Id.*

59. In establishing these policies and its commitment to consultation with Indian tribes, the federal government has "created a justified expectation on the part of the Indian people that they will be given a meaningful opportunity to express their views." *Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 721 (8th Cir. 1979). The government's failure to comply with its articulated consultation policies "not only violates those general principles which govern administrative decision making, but also violates the distinctive obligation of trust incumbent upon the Government in its dealings" with the Indian tribes. *Id.* (alterations omitted).

V. FACTUAL BACKGROUND

A. The Tribes

1. Table Mountain Rancheria

60. Table Mountain Rancheria is a federally recognized tribe of Chukchansi and Western Mono people. Table Mountain's traditional lands include territory in the Central Valley near Friant, California, approximately 24 miles northeast of Fresno, California.

61. In 1916, Table Mountain received land in trust from the United States and formally established a reservation.

62. In the 1950s and 1960s, Congress passed the California Rancheria Termination Acts, which authorized the termination of federal trust responsibilities to dozens of California tribes, including Table Mountain. The government specifically terminated federal recognition of Table Mountain in 1959.

63. In 1983, after a successful lawsuit challenging termination, Table Mountain's federal recognition was restored.

64. Since restoration, Table Mountain has applied for and received approval for gaming on its traditional land pursuant to IGRA. In 1999, the Tribe and the State of California

entered into a Tribal-State Compact, enabling Table Mountain to conduct Class III gaming on its territory. Table Mountain now owns and operates the Table Mountain Casino Resort, located on Table Mountain territory in Friant, California. In 2024, Table Mountain renewed its tribal-state compact.

2. Big Sandy Rancheria

65. Big Sandy Rancheria of Western Mono Indians of California is a federally recognized tribe near Auberry, California, approximately 35 miles from Fresno, California.

66. In 1909, the United States purchased land to hold in trust for the benefit of a band of Western Mono Indians, which became known as the Big Sandy Rancheria of Auberry.

67. In 1965, in connection with the California Rancheria Termination Acts, the federal government terminated its trust relationship with BSR. In 1983, following successful litigation, the federal government restored BSR's status as a recognized tribe.

68. BSR previously applied for and received approval for gaming on its traditional land pursuant to IGRA. In 1999, BSR and the State of California entered into a Tribal-State Compact, enabling BSR to conduct Class III gaming on its reservation. Pursuant to this Compact, BSR now owns and operates the Mono Wind Casino, located in Auberry, California.

69. In June 2025, BSR submitted a new tribal-state compact for approval by the Department of Interior. Pursuant to this compact, the McCabe Allotment is mentioned as a site-specific location for a future Class III gaming facility. The Secretary has the authority to approve or reject a compact within 45 calendars days upon receipt. *See* 25 U.S.C. § 2710(d)(8)(C); 25 C.F.R. § 293.12; 89 Fed. Reg. 13232, 13238 (Feb. 21, 2024). A compact will be deemed approved after the 45-day review period lapses, except to the extent it is inconsistent with IGRA. *See* 25 U.S.C. § 2710(d)(8)(C); 25 C.F.R. § 293.12. A decision is due by July 21, 2025.

B. The McCabe Allotment

70. The McCabe Allotment is a parcel of approximately forty acres initially allotted out of the public domain to Mary McCabe (née Buffalo), Casson (Gashowu Yokuts) / Mono, in 1920, and immediately placed in trust as a public domain allotment. It is well-known as the site

of an indigenous village, known in oral history and recorded in the ethnographic record as Chai-chi-yu. This village was inhabited as long as 10,000 years ago. Chai-chi-yu translates as Blue Jay Place (Western Scrub Jay) in the Gashowu dialect of the Yokuts language. Ancestors of Table Mountain are known to have been buried at this site.

71. The McCabe Allotment was not allotted out of Big Sandy Rancheria land. Instead, it came from the public domain and lies in the heart of Table Mountain's traditional homelands — contiguous to Table Mountain trust territory, and just one mile from the Table Mountain Casino Resort. The Allotment is undeveloped, landlocked, and distant from Big Sandy's rancheria, which is some 18 miles away.

72. The rancherias in Central California were preceded by Indian homestead and public domain allotment communities. Many of the people at the individual rancherias or old allotment communities have close familial ties. For example, Table Mountain is surrounded by and contiguous to multiple old allotments, including the McCabe Allotment. At the same time, Table Mountain tribal members have direct lineal ancestral ties to, or hold fractionated interest in, many of the old allotments surrounding neighboring tribes. The Big Sandy Band of Western Mono Indians incorrectly asserts that the McCabe Allotment and other old allotments contiguous to Table Mountain are solely Big Sandy Allotments.

73. Traditional marriage practice for local Native people was matrilocal and exogamous well into the early twentieth century. Men married outside the communities they were born in, and women stayed with the land.

74. Mary McCabe (née Buffalo) was Gashowu Yokuts and Mono and born at Table Mountain. Her first husband, John McCabe, was Chukchansi Yokuts and also born at Table Mountain. John and Mary McCabe had a son, Frank McCabe, born at Table Mountain in 1890. Frank McCabe's first wife May McCabe (née Thompson), was Chukchansi Yokuts. Frank and May McCabe were living at Rosedale Ranch close to Picayune Rancheria with their infant son Stephan, as shown in 1910 census data.

75. According to tribal elder testimony, John Buffalo (presumably Mary McCabe's

brother) and George Soledad (a close relative of the same age) left Table Mountain for the Big Sandy / Auberry area about 1890 and married two local sisters.

76. Mary McCabe's husband, John McCabe, was stabbed and killed near Table Mountain in 1901. Mary McCabe then married Robert Lewis, Chukchansi / Chauchilla, about 1912, but had no more children.

77. According to the National Archives and Records Administration General Land Entry File, Mary McCabe SAC 120, Mary McCabe died around 1916 at age 55 and was survived by her son Frank McCabe and her husband Robert Lewis, who each inherited a one-half interest in the McCabe Allotment. Robert Lewis died in 1942, leaving Frank McCabe as the sole owner.

78. Sometime around 1915, Jane Jones (née Soledad), her husband John Ned Jones, Chukchansi or Chauchilla Yokuts, son Ned, and daughter Goldie moved onto the McCabe Allotment / village of Chai-chi-yu. Jane and her daughter Goldie were the last permanent residents at the McCabe Allotment / village of Chai-chi-yu. When Jane passed away, Goldie moved to Table Mountain Rancheria and then to Lemoore, California.

79. In 1970, Frank McCabe died and conveyed his interest in the McCabe Allotment to his son, Lester McCabe. In 1979, Lester McCabe died and deeded the allotment to his daughter, Sherill Anne McCabe, later known as Sherill Esteves. Ms. Esteves was the sole owner of the McCabe Allotment throughout the 2000s until her passing, in approximately 2017.

80. The late Beverly Hunter, a Table Mountain Chairperson and respected traditional spiritual leader, shared her deep personal and cultural connection to the McCabe Allotment with a visiting BIA staff member in 2011. She recalled childhood stories recounting that Table Mountain ancestors lived and were buried at the site. For example, Chairperson Hunter shared that her Indigenous name, Selmut, was passed down from her great aunt, Jane Jones (née Soledad), who died and was buried at the site in approximately 1952. Jane Jones's grandmother, also known as Selmut, and other known ancestors were taken from the vicinity of the McCabe Allotment / village of Chai-chi-yu by Mexican soldiers from the Monterey Presidio in 1833 and were baptized at Mission Soledad.

C. Big Sandy repeatedly attempts to acquire the McCabe Allotment to develop a second gaming operation in Table Mountain ancestral territory.

1. 2004–2012: Big Sandy seeks lease approval and gaming management contract approval for its second Casino Project.

81. Big Sandy's efforts to develop a second casino in Table Mountain ancestral territory began as early as 2004. First, Big Sandy sought NIGC approval of a gaming management contract in connection with the Casino Project. Second, Big Sandy sought BIA approval for a lease of the McCabe Allotment from allotee Sherill Esteves for development of the Casino Project.

82. NIGC approval of the proposed gaming management contract and BIA approval of the proposed lease both constituted federal actions requiring the preparation of an EIS in compliance with NEPA. *See* 70 Fed. Reg. 47262-01 (Aug. 12, 2005). Both actions also constituted federal undertakings as defined in 36 C.F.R. § 800.16, and were the type of activity that might have effects on historic properties, thereby triggering NHPA review and consultation.

83. As early as 2005, Table Mountain expressed significant concerns regarding development on the McCabe Allotment, as it is known to be Table Mountain ancestral property with cultural, historical, and spiritual significance to the Tribe and its people. Table Mountain actively sought to participate in preparation of the EIS as an affected tribe, to ensure the federal government understood and properly protected the cultural and historical resources threatened by BSR's Casino Project. NIGC refused to accord Table Mountain status as a NEPA cooperating agency. However, Table Mountain continued to participate in the NEPA scoping process.

84. In January 2005, the BIA approved an ARPA permit allowing archeologists for NIGC to excavate on the McCabe Allotment. Table Mountain learned of this permit much later through a Freedom of Information Act ("FOIA") request. Approval of an ARPA permit is the type of federal action that should have triggered NHPA section 106 consultation — consultation that the BIA failed to initiate until years later, and never conducted adequately. 36 CFR § 800.3(c)(3).

85. As early as 2006, Table Mountain also expressed significant concerns regarding

BSR's claim of jurisdiction or governmental authority over the McCabe Allotment, as IGRA requires if land is to qualify as gaming-eligible "Indian lands." Table Mountain explained that both the factual record and the legal authority on the issue indicated that the McCabe Allotment — which, again, contains *Table Mountain* cultural resources, is contiguous to *Table Mountain* territory, and was part of the older *Table Mountain* allotment community — could not be BSR's "Indian lands." Table Mountain again asked to be consulted and included in connection with any decision on the status of the McCabe Allotment.

86. On October 19, 2007, BSR withdrew its request for approval of a gaming management contract. *See* 73 Fed. Reg. 19904 (Apr. 11, 2008). However, BSR still sought a final decision approving its McCabe Allotment lease. *See* 73 Fed. Reg. 57646 (Oct. 3, 2008). On October 3, 2008, BIA replaced NIGC as lead agency in preparing the EIS in connection with the proposed McCabe Allotment lease. *Id.*

87. As the administrative process continued, Table Mountain and the State of California continued to raise concerns about environmental compliance, the protection of cultural, historical, and archeological properties deemed eligible for the NRHP, and the status of the McCabe Allotment as gaming-eligible Indian land under IGRA. On January 22, 2008, the Governor's Office sent a letter to BSR noting that BSR's actions in furtherance of the Casino Project may violate both IGRA and BSR's compact with the State, and could already have caused "desecrate[ion] [of] archeological sites in violation of Bureau of Indian Affairs procedures and federal law."

88. In December 2008, in connection with review of BSR's proposed lease agreement, the BIA issued a new ARPA permit for excavation by archeologists for the BIA. Again, BIA did not consult with Table Mountain. As a result, archeologists desecrated an ancient gravesite on the McCabe Allotment. On December 19, 2008, the BIA sent a letter to Table Mountain notifying the Tribe of the excavation of ancestral human remains on the McCabe Allotment per the Native American Graves protection and Repatriation Act ("NAGPRA"). It was only after this incident that the BIA participated in NHPA section 106 consultation with Table

Mountain. On December 31, 2008, BIA invited Table Mountain to participate in the reburial of improperly removed ancestral remains from the McCabe Allotment pursuant to NAGPRA.

89. BIA-sponsored archeological analysis at the McCabe Allotment continued outside of consultation with the Tribe. In response, Table Mountain continued to raise concerns regarding the protection of NRHP-eligible cultural and historic properties, including artifacts and gravesites.

90. BIA released a draft EIS for public comment on January 24, 2011. *See* 76 Fed. Reg. 2703, 2704 (Jan. 14, 2011) (draft EIS was required for the "Tribe's proposed lease agreement with an individual Indian trust land allotee and subsequent construction of a casino/resort project" on that land).

91. In response to the draft EIS, Table Mountain submitted comments in April 2011. The Tribe noted that the draft EIS was inadequate, incomplete, and inaccurate in multiple respects. For example, the draft EIS was based on "an earlier iteration" of BSR's Casino Project and did not account for changes to the Casino Project from 2005 to 2009. Table Mountain also objected that BIA continually failed to properly consult with the Tribe.

92. Additionally, in part due to BIA's failure to adequately consult with Table Mountain from 2006 to 2012, BIA and its consulting archeologist failed to adequately identify and evaluate certain historic properties for NRHP eligibility. The last version of the BIA consulting archeologists' Cultural Report, released as draft in 2010, did indicate that the old village site of Chai-chi-yu, CA-FRE-3423 [H], covering most of the McCabe Allotment, was deemed NRHP-eligible and that the Casino Project would have irreversible adverse effects on that property. This report was funded by BSR for BIA.

93. However, the same BSR-funded report contained numerous other errors and omissions, and it misidentified and improperly evaluated additional sensitive historical properties. Table Mountain representatives, with the support of California's State Historic Preservation Officer, explained these errors and omissions in correspondence and site visits in 2010-2011. In June 2011, BIA admitted to Table Mountain that additional archeological work

and consultation was necessary, specifically with regards to identification and evaluation of the old Gashowu village of Huku-ktu-ktu, CA-FRE-3534 [H], a large historic property also containing known ancestral burials that will be severely impacted by BSR's proposed casino entry drive. BIA told Table Mountain that it had instructed BSR's archeologist to conduct another survey, to properly consult with neighboring tribes, to correct its analysis and report, and to submit an addendum.

94. BSR did not follow through on these instructions. In 2012, Table Mountain representatives met with Pacific Regional Director Amy Dutschke and Assistant Secretary for Indian Affairs Larry Echo Hawk at Table Mountain, and again noted the problem of uncorrected survey errors, the lack of consultation, and the promised but outstanding addendum. BIA assured Table Mountain that a corrected report addendum was forthcoming.

95. Rather than correct its archeological survey as instructed by BIA, BSR shifted, hoping to secure the McCabe Allotment without meaningful agency scrutiny or consultation with Table Mountain. Specifically, in late 2012, BSR asked BIA to consider an Indian Land Consolidation Plan ("LCP") incorporating the McCabe Allotment into BSR territory under ILCA. BSR never delivered the promised addendum.

96. BIA never released a Final EIS concerning the McCabe Allotment. Nor did it release any statement concluding that an EIS was not necessary.

2. 2012–2016: BIA rejects Big Sandy's efforts to acquire the McCabe Allotment via a Land Consolidation Plan without NEPA review.

97. On November 21, 2012, BSR sought to acquire the McCabe Allotment and consolidate that land into its territory by way of a Land Consolidation Plan ("LCP") under ILCA. The stated purpose of the LCP was to provide BSR with authority to merge the McCabe Allotment into its tribal territory. Big Sandy stated that it intended to acquire the McCabe Allotment without further BIA approval and without triggering NEPA review.

98. On November 7, 2013, BIA rejected Big Sandy's LCP. BIA's Regional Director noted that the LCP "encompasses areas where public domain allotments may be owned by

members of the North Fork, Table Mountain and Cold Springs Rancherias, or where these tribes already own lands." *See* Ex. A (Nov. 7, 2013 BIA Decision) at 2.

99. BIA underscored the jurisdictional problems with BSR's claim over the McCabe Allotment in observing that approval of the LCP could lead to challenges to jurisdiction and would set an untenable precedent for future consolidations. As BIA noted, the LCP touched on numerous off-reservation public domain allotments, including the McCabe Allotment, which were not "historically subject to a tribe's jurisdiction." *Id.* at 4. BIA also noted that it was unconvinced that Big Sandy's LCP was limited to the lands subject to its jurisdiction, excluding lands held by or for other tribes. *Id.*

100. BIA reiterated that approval of the land consolidation plan would be a federal action subject to NEPA. Thus, Big Sandy's stated intent to use the McCabe Allotment for casino development triggered NEPA review. *Id.* at 3. At the time, however, no NEPA review had been completed for the proposed action, and the record indicated that BSR's prior efforts to secure approval for a gaming lease on the McCabe Allotment had not yet satisfied NEPA requirements. BIA pointed out that approving Big Sandy's LCP, "coupled with [BSR's] real intent . . . to purchase the off-reservation public domain allotment . . . for use as a gaming facility without compliance with [NEPA], . . . [would] set[] a precedent that does not, in our opinion, demonstrate consistency with the intent of ILCA." *Id.*

101. BIA noted that BSR could seek a trust-to-trust transfer of the McCabe Allotment, rather than attempt the land consolidation process. However, BIA warned that "a trust-to-trust purchase of the McCabe allotment . . . , as with gaming on lands being acquired by a tribe for gaming purposes, would have to be reviewed by the Office of Indian Gaming with the Assistant Secretary having the authority to authorize [BIA] to approve the sale." *Id.* In addition, "approval would trigger compliance with NEPA, and based on the proposed lease and correspondence already surrounding the McCabe allotment, it is not likely that a determination could be made that the sale/purchase would qualify as a category [NEPA] exclusion." *Id.* In other words, ***in a nearly identical situation, BIA previously found that a trust-to-trust transfer — the very action***

at issue now — would require NEPA review.

102. BSR appealed. In its appeal, BSR suggested that environmental review could be addressed at the time of specific land acquisitions or development projects, rather than at the plan approval stage. *See Big Sandy*, 62 IBIA at 212.

103. IBIA affirmed BIA's denial of Big Sandy's proposed land consolidation. IBIA held that Big Sandy's LCP was inconsistent with the intent of ILCA because Big Sandy's goal was not to consolidate its traditional lands, but rather to acquire new land for purposes of building a casino. *Id.* at 207-09.

104. As to Big Sandy's purported jurisdiction over the McCabe Allotment, IBIA agreed with BIA that BSR did not demonstrate jurisdiction, and that such off-reservation public domain allotments were not historically subject to tribal jurisdiction. *Id.* at 210-12. As a result, IBIA concluded, approval of the LCP could lead to "jurisdictional conflicts" over off-reservation public domain allotments. *Id.* at 212.

105. As to NEPA, IBIA again agreed with BIA and concluded Big Sandy's submission of the land consolidation plan, coupled with its well-documented intent to build a casino on the McCabe Allotment, "necessarily triggered review obligations under NEPA" that had not been fulfilled. *Id.* at 214. According to IBIA, "a more extensive NEPA review would be required," and, "[d]ue to the lack of NEPA compliance, as a matter of law, BIA could not approve the LCP." *Id.* at 215.

3. 2022–Present: Big Sandy revives its Casino Project following Defendants' unexplained and unlawful approval of a revised gaming ordinance and a trust-to-trust transfer of the McCabe Allotment.

106. On June 22, 2022, the Chair of NIGC approved BSR's amended class III gaming ordinance. *See* 87 Fed. Reg. 38778 (June 29, 2022). The Chair's approval specified that the approved class III gaming ordinance "contains a site-specific section that describes the original allotment of Mary McCabe (the 'McCabe Allotment') as land within which the Tribe is authorized to conduct gaming." On May 13, 2022, in connection with BSR's request, NIGC Office of General Counsel issued an advisory opinion concluding that the McCabe Allotment

constitutes Indian lands on which BSR may conduct gaming. The advisory opinion erroneously concluded that Big Sandy possessed "jurisdiction" over the McCabe Allotment, contradicting IBIA's 2016 finding that such distant, off-reservation public domain allotments held by individual tribal members "have not been historically subject to a tribe's jurisdiction." *See Big Sandy*, 62 IBIA at 212.

107. On June 22, 2022, the NIGC Chair approved BSR's gaming ordinance and "adopt[ed]" the General Counsel's erroneous advisory opinion, its associated record, and its conclusions regarding the McCabe Allotment. 87 Fed. Reg. 38778 (June 29, 2022). Neither the General Counsel advisory opinion nor the Chair's approval discussed the prior, and contradictory, BIA ruling and the IBIA appellate opinion regarding the McCabe Allotment.

108. The then-allottee of the McCabe Allotment, Ms. Carolyn Barber-Lee, passed away on April 12, 2023. On information and belief, before that time, Ms. Barber-Lee and BSR negotiated a trust-to-trust transfer of the McCabe Allotment from Ms. Barber-Lee to BSR, which was approved by BIA and finalized by July 2022. BIA failed to consult with Table Mountain in connection with this transfer. On information and belief, BIA also failed to conduct any review pursuant to NEPA or the NHPA before approving the transfer — ***despite its finding nine years earlier that those reviews are precisely what would be required in this scenario***.

109. One year prior, in July 2021, Table Mountain wrote a letter to the BIA Regional Director urging that BIA notify Table Mountain should it reinitiate consideration of any federal action related to the McCabe Allotment. Table Mountain further noted that any federal action related to the McCabe Allotment or the Casino Project would be, consistent with BIA's prior statements, subject to NEPA. Table Mountain also requested that it be formally consulted under section 106 of the NHPA, which requires the government to consult with tribes whose culturally significant sites may be affected by a government action.

110. Table Mountain did not receive a response to its July 2021 correspondence or to its request for consultation under section 106 of the NHPA. Table Mountain did not become aware of the trust-to-trust transfer affecting the McCabe Allotment until long after it supposedly

took place, during an unrelated call with a realty representative of the BIA Pacific Region. This BIA representative indicated that the trust-to-trust transfer was already approved, without notice to Table Mountain and without any known NEPA, NHPA, or comparable review.

111. After becoming informed of the trust-to-trust transfer, Table Mountain made multiple attempts to speak with BIA.

112. Table Mountain wrote a letter to BIA in November 2023 requesting a certified Title Status Report issued for the McCabe Allotment. BIA did not respond to that request.

113. Table Mountain made several more attempts to engage with BIA regarding the trust-to-trust transfer in 2024 and 2025. In an in-person meeting on March 24, 2025, Table Mountain shared with BIA officials maps showing the historic village locations and other culturally sensitive historic properties deemed eligible for the NRHP by the BIA on or near the areas comprising the BSR Casino Project, including on the McCabe Allotment. Table Mountain also reiterated that the trust-to-trust transfer triggered review and tribal consultation under section 106 of the NHPA.

114. At an in-person meeting on April 10, 2025, Table Mountain again raised the impropriety of the trust-to-trust transfer of the McCabe Allotment. Table Mountain advised in that meeting that BIA's actions could force Table Mountain to challenge approval of the transfer in court.

115. Meanwhile, having received no documentation regarding the trust-to-trust transfer from Defendants, on March 6, 2025, Table Mountain submitted a request under the Freedom of Information Act seeking a copy of all correspondence, title status reports, maps, or any other documents associated with the McCabe Allotment in the years leading up to and after the trust-to-trust transfer. Table Mountain has not yet received any documentation or written response to its FOIA request.

116. After receiving the McCabe Allotment in trust and NIGC's favorable Indian Lands Opinion, Big Sandy entered into negotiations with the State of California regarding a tribal-state gaming compact that would ostensibly permit Big Sandy to develop and operate its

off-reservation Casino Project on the McCabe allotment.

117. In late 2024, the State and Big Sandy executed a compact, which was ratified by the California Legislature, with certain modifications, in May 2025. The compact between the State and Big Sandy ostensibly exempts multiple aspects of the Big Sandy Casino Project from California's environmental review process, expediting development despite the demonstrated threat to Table Mountain historic sites, cultural resources, gravesites, and other NRHP-eligible properties on and around the McCabe Allotment.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706 (25 C.F.R. Parts 151 and 152)

118. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

119. 25 C.F.R. part 152 requires BIA, before approving a conveyance of trust land for sale, exchange, or gift, to "careful[ly] examin[e]" the circumstances of the case and determine that the transaction "appears to be clearly justified in the light of the long-range best interest of the owner or owners." 25 C.F.R. § 152.23.

120. 25 C.F.R. part 151 likewise requires BIA to consider a host of relevant factors, including the "location of the land and potential conflicts of land use," 25 C.F.R. § 151.11(c), and the "purposes for which the land will be used," with "great weight" to "protect[ing] sacred sites or cultural resources," 25 C.F.R. § 151.11(a)(3), (b)(2).

121. On information and belief, Defendants failed to carefully examine the unique and unprecedented circumstances of the trust-to-trust transfer of the McCabe Allotment, which both BIA and IBIA had acknowledged when BSR previously sought to acquire rights to the McCabe Allotment.

122. Specifically, Defendants inadequately considered that the McCabe Allotment was the well-known site of a historic native village and burial ground of a neighboring tribe; was not

currently or historically part of the Big Sandy Rancheria; was 18 miles from the Big Sandy Rancheria and contiguous to Table Mountain trust land; and was the focal point for the proposed development of a large casino and resort that would disturb the land and the historic sites, cultural resources, gravesites, and other NRHP-eligible properties it contains.

123. Defendants also failed to adequately examine the reasons for BIA's previous rejection of Big Sandy's attempts to obtain rights to the McCabe Allotment through the Indian Lands Consolidation process. BIA and IBIA previously determined that Big Sandy's land consolidation plan would not further the purposes of ILCA because its "real intent" was to purchase the McCabe Allotment while avoiding compliance with NEPA and other regulatory requirements, and that approval of the off-reservation land consolidation would set problematic precedent likely to trigger future "tribal jurisdiction disputes." *Big Sandy*, 62 IBIA at 205-06.

124. Defendants likewise failed to adequately consider the reasons for BIA's previous determination that a trust-to-trust transfer of the McCabe Allotment, even outside of an approved ILCA plan, "would trigger compliance with NEPA." *Id.* at 205. Defendants simply dispensed with the NEPA process, without explanation or justification.

125. Defendants likewise failed to consider the fact that previous excavations on the McCabe Allotment had disturbed a gravesite located on the parcel, forcing reinterment of the ancestral remains. Again, Defendants simply approved a transfer known to be a precursor to a highly disruptive and damaging casino development effort (previously rejected in part for that reason) without explanation or justification. Defendants completely disregarded their obligations to consult with Table Mountain consistent with the NHPA.

126. Defendants' failure to meet with Table Mountain or to provide Table Mountain with information concerning the trust-to-trust transfer, despite its known status as an interested and affected tribe, is likewise irreconcilable with Part 152's careful examination standard and with the requirements of Part 151.

127. Defendants' unexamined approval of the trust-to-trust transfer of the McCabe Allotment poses a significant threat to Table Mountain's cultural sites and artifacts, as well as its

economic resources. As Big Sandy has made clear and as Defendants have long known, the McCabe Allotment is the proposed site of Big Sandy's (second) Casino Project, a mile from the Table Mountain Casino that is the primary economic engine for the Tribe. The McCabe Allotment is also in the heart of Table Mountain land, lies within the ancestral aboriginal territory of Table Mountain, and contains a historic village and gravesites with cultural, historical, and sacred significance for Table Mountain and its people. Defendants' approval of the trust-to-trust transfer poses an imminent threat to Table Mountain's economic and cultural interests.

128. Defendants' decision to approve the trust-to-trust transfer was therefore arbitrary, capricious, an abuse of discretion, and contrary to Parts 151 and 152.

SECOND CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 555

129. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

130. The APA requires "prompt notice" to be given of the denial of a "request of an interested person made in connection with any agency proceeding." 5 U.S.C. § 555(e). Notice must be accompanied by "a brief statement of the grounds for denial." *Id.*

131. Both before and after BIA approved the trust-to-trust transfer of the McCabe Allotment, Table Mountain repeatedly requested that it be consulted so that it could participate and share information material to Defendants' decision making regarding the McCabe Allotment. In particular, in July 2021, Table Mountain wrote to BIA asking that Table Mountain be notified and formally consulted should BIA reinitiate any federal action related to the McCabe Allotment.

132. Defendants did not respond to Table Mountain's requests, provided no notice to Table Mountain that its requests were denied, and offered no explanation for their denial. In fact,

Defendants did not even inform Table Mountain of BIA's approval of a trust-to-trust transfer until long after the fact.

THIRD CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706
(NEPA, 42 U.S.C. § 4332)

133. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

134. Agency approval of a trust-to-trust land transfer requires that BIA "careful[ly] examin[e]" the circumstances of the transaction. 25 C.F.R. § 152.23.

135. In this case, the circumstances of the trust-to-trust transfer of the McCabe Allotment involved BSR's acquisition of trust lands contiguous to Table Mountain Rancheria trust lands. The lands subject to transfer are landlocked, have no known water supply, lack road access, and contain Table Mountain cultural resources, including an ancient village and burial site. Big Sandy's intent to construct a casino, hotel, and related facilities on the McCabe Allotment was a matter of public record and well-known to BIA. *See, e.g.*, *Big Sandy*, 62 IBIA at 214. BIA had also previously acknowledged that Big Sandy's "real intent" behind purchasing the McCabe Allotment was to develop a gaming facility. *See id.* at 205. BIA's approval of the trust-to-trust transfer of the McCabe Allotment was therefore a "major federal action" for purposes of NEPA. 42 U.S.C. § 4332(C); *see also Scientists' Inst. for Pub. Info.*, 481 F.2d at 1088-89.

136. Defendants have likewise acknowledged that approval of a transfer of the McCabe Allotment to Big Sandy would require NEPA review and compliance. BIA's 2013 decision rejecting Big Sandy's proposed land consolidation plan specifically determined that "a trust-to-trust purchase of the McCabe allotment . . . , as with gaming on lands being acquired by a tribe for gaming purposes, would have to be reviewed by the Office of Indian Gaming with the Assistant Secretary having the authority to authorize [BIA] to approve the sale." *See* Ex. A (Nov. 7, 2013 BIA Decision) at 3. "[A]pproval would trigger compliance with NEPA." *Id.*

137. Big Sandy has similarly conceded that the applicability of NEPA review is a

matter of substance rather than form. As Big Sandy acknowledged during its failed ILCA bid to acquire the McCabe Allotment, "[i]f a change in land use is anticipated, then federal action is probably not subject to a categorical exclusion from further NEPA review." *See Big Sandy*, 62 IBIA at 213-14. Here, Big Sandy's intent to "purchase[] the McCabe Allotment and construct a casino, hotel, and related facilities is a matter of public record," *id.* at 214, and constitutes a change in land use.

138. Because BIA approval of the trust-to-trust transfer amounted to a "major federal action," BIA was required to prepare a comprehensive EIS pursuant to NEPA. 42 U.S.C. § 4332(C); *see also* 40 C.F.R. Part 1502. To the extent BIA was uncertain as to whether an EIS was required, it was required to prepare an Environmental Assessment. 40 C.F.R. § 1501.5(a).

139. In violation of the law, Defendants failed to prepare either an EIS or an Environmental Assessment in connection with the trust-to-trust transfer. Defendants failed to do so despite BIA's earlier repeated acknowledgements that approval of a trust-to-trust transfer of the McCabe Allotment "would trigger compliance with NEPA." *See Big Sandy*, 62 IBIA at 205.

140. Additionally, when a tribe has special expertise, or will be impacted by a proposed action, BIA regulations provide that the tribe must be consulted. 40 C.F.R. § 1501.9; 43 C.F.R. § 46.230; BIA NEPA Guidebook § 6.4.7; Interior NEPA Procedures, 516 DM 10 at § 10.3(A)(2)(a). As repeatedly demonstrated, Table Mountain has special knowledge and expertise regarding the cultural and historical resources at and around the McCabe Allotment. Table Mountain would likewise be impacted by any action affecting the status of that land and the resources it contains. For that reason, Table Mountain has repeatedly requested consultation as an affected tribe.

141. Despite multiple requests and meetings over a period of years, both before and after the trust-to-trust transfer, Defendants ignored Table Mountain's requests for consultation.

142. Defendants' failure to adhere to NEPA's requirements poses a significant environmental threat to Table Mountain, as Big Sandy intends to construct a one million square-foot gaming facility on land with no known water supply, without an access road, and contiguous

to Table Mountain territory, in the heart of the Table Mountain community. The Casino Project promises a profound negative impact on, for example, Table Mountain's water supply and air quality. The San Joaquin Valley Air Basin in which the McCabe Allotment sits is already designated as an "extreme" nonattainment area for the federal ozone standard. Emissions from the proposed development therefore threaten to dramatically exceed regional thresholds of significance. Additionally, well tests in the area have shown that development on the McCabe Allotment would strain the area's water supply to the point of interference with neighboring wells. And because Defendants have not conducted the requisite review and consultation, the full nature and extent of these social and environmental harms remains unknown.

143. Defendants' decision to approve the trust-to-trust transfer without preparing an EIS or Environmental Assessment, and without consulting Table Mountain as an interested tribe, was arbitrary and capricious, an abuse of discretion, and contrary to NEPA, related regulations, and agency policies and guidelines.

FOURTH CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706
(NHPA, 54 U.S.C. § 306108; 36 C.F.R. § 800.2)

144. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

145. The trust-to-trust transfer of the McCabe Allotment to Big Sandy required BIA approval. 25 C.F.R. § 152.17. It is therefore an "undertaking" within the meaning of section 106 of the NHPA. *See* 54 U.S.C. § 300320.

146. Big Sandy's gaming ordinance, claiming authority to engage in gaming on the McCabe Allotment, likewise required NIGC approval. 25 U.S.C. § 2710(d)(2)(B). It is also an "undertaking" within the meaning of section 106 of the NHPA. *See* 54 U.S.C. § 300320.

147. The section 106 regulations direct federal agencies to "ensure that the section 106 process is initiated early in the undertaking's planning," and requires agencies to "consult with any Indian tribe" that attaches "religious and cultural significance to historic properties that may

be affected by an undertaking." 36 C.F.R. §§ 800.1(c), 800.2(c)(2)(ii). In consulting an interested Indian tribe, the agency must ensure that the section 106 process provides the tribe "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii)(A). Federal agencies must "complete the section 106 process," including all consultation and notices, ***prior to*** approving an undertaking. 36 C.F.R. § 800.1(c); *see also* 54 U.S.C. § 306108.

148. Table Mountain repeatedly requested that it be consulted pursuant to section 106 during Big Sandy's years-long effort to obtain the McCabe Allotment, including in a letter to the BIA Regional Director more than a year before the trust-to-trust transfer was approved.

149. Table Mountain requested to be consulted due to its ancestral, cultural, and sacred sites known to exist on the McCabe Allotment, including historic properties deemed eligible for the NRHP under the BIA. For example, the McCabe Allotment is the site of the historic native village of Chai-chi-yu, inhabited as long as 10,000 years ago. It is also the known burial site of Table Mountain Rancheria ancestors. BIA knows as much, as it was involved in excavations in 2008 that disturbed a gravesite located on the McCabe Allotment, resulting in Table Mountain's participation in the reinterment of ancestral remains.

150. Despite Table Mountain's requests for consultation, and despite Table Mountain's known interest in the McCabe Allotment, Defendants repeatedly ignored Table Mountain's requests for consultation, failed to consult with Table Mountain regarding the trust-to-trust transfer, and did not notify Table Mountain of the transfer until long after the fact. Defendants' refusal to consult with Table Mountain arbitrarily, capriciously, and illegally deprived Table Mountain of a meaningful opportunity to exercise its substantive section 106 consultation rights. After repeated efforts to be recognized as an NHPA consulting party, BIA instructed Table Mountain to reapply for NHPA consulting party status on May 23, 2008, in response to outreach by the Tribe. On December 22, 2008, BIA then invited Table Mountain to be a consulting party.

There is no reason for Table Mountain's status as a consulting party to have changed since that time; and there is no justification for Defendants ceasing consultation with Table Mountain with respect to actions that may affect historic properties on the McCabe Allotment and adjacent properties.

151. Further, even if Defendants had found that no historic properties would be affected, section 106 regulations would still require Defendants to document that finding publicly and provide notice to all consulting parties. 36 C.F.R. § 800.4(d). Defendants approved the trust-to-trust transfer of the McCabe Allotment without completing the section 106 process and without making public any conclusion purporting to find that no historic properties would be affected. Defendants' actions were therefore arbitrary and capricious, an abuse of discretion, and contrary to section 106.

FIFTH CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706
(IGRA, 25 U.S.C. § 2710 and 25 C.F.R. Part 292)

152. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

153. Section 2710 of IGRA authorizes the NIGC Chair to approve a Class III tribal gaming ordinance. 25 U.S.C. § 2710(d)(2)(B). The Chair's approval of a gaming ordinance is a final agency action. *See* 25 U.S.C. § 2714; *Kansas ex rel. Schmidt v. Zinke*, 861 F.3d 1024, 1029 (10th Cir. 2017).

154. In issuing its approval of Big Sandy's gaming ordinance, NIGC "adopt[ed] [its] May 13, 2022 Indian Lands Opinion, its associated record, and its conclusions." 87 Fed. Reg. 38778. NIGC did not address the prior BIA order and IBIA opinions rejecting Big Sandy's proposed land consolidation plan because of concerns about Big Sandy's claims of jurisdiction over individual public domain allotments.

155. The May 13, 2022 Indian Lands Opinion that NIGC adopted determined that the McCabe Allotment constituted "Indian land" for purposes of IGRA, after erroneously concluding

that Big Sandy possessed jurisdiction over the Allotment. 87 Fed. Reg. 38779. In reality, Big Sandy lacked jurisdiction over the McCabe Allotment and had not historically had jurisdiction over the McCabe Allotment, due to its status as a landlocked, undeveloped, off-reservation public domain allotment, located in the heart of Table Mountain territory and some 18 miles from BSR's rancheria. *See, e.g.*, *Estate of Irene Leona McKinley*, 61 IBIA 218, 223-24 (2015).

156. Because BSR lacks jurisdiction over the McCabe Allotment, the McCabe Allotment does not constitute Indian lands on which BSR is eligible to conduct gaming under IGRA. Defendants' approval of Big Sandy's gaming ordinance, to the extent it adopted or relied on the erroneous May 13, 2022 Indian Lands Opinion and its conclusions, was therefore arbitrary, capricious, and contrary to IGRA.

157. Further, OIG failed to conduct the analysis required under 25 C.F.R. Part 292 in connection with the proposed trust-to-trust transfer of the McCabe Allotment, despite knowledge that the transfer was sought in connection with gaming. 25 C.F.R. § 292.3.

158. Both OIG and NIGC also failed to conduct an analysis acknowledging and addressing the effective date of the title to be acquired by way of the trust-to-trust transfer. That effective date is well after the October 17, 1988 date at which, pursuant to IGRA, all newly acquired land is subject to additional limitations on gaming eligibility that Defendants did not analyze or apply. Allowing Indian allottees with off-reservation public domain allotments to transfer those allotments through "trust-to-trust" acquisitions, without engaging in the review required for post-1988 acquisitions, is an improper end-run around federal law and the administrative process.

159. Defendants' failure to provide an Indian Lands Opinion and to evaluate gaming eligibility consistent with IGRA and Part 292 was arbitrary, capricious, and contrary to the law.

SIXTH CLAIM FOR RELIEF

Policy and Trust Obligation to Consult with Affected Tribe

160. Plaintiff incorporates by reference all previous paragraphs as though fully set

forth herein.

161. Defendants are required to consult with tribes potentially affected by their decisions under both the federal government's trust duty to the tribes and under enforceable internal policies and guidelines. Interior Consultation Policy, 512 DM 4 at § 4.4 (Nov. 30, 2022); Interior Consultation Procedures, 512 DM 5 at § 5.4(A) (Nov. 30, 2022); Interior NEPA Procedures, 516 DM 10 at § 10.3(A)(2)(a) (July 28, 2020); *Oglala Sioux Tribe*, 603 F.2d at 721.

162. In establishing these policies and its commitment to consultation with Indian tribes, the federal government created a justified expectation on Table Mountain's part that it would be given a meaningful opportunity to express its views. This opportunity to be heard offers tribes a valuable means of ensuring that substantive federal action accommodates and responds to tribal interests that would otherwise be ignored, such as the cultural, social, environmental, and economic interests threatened by Big Sandy's unlawful and improper acquisition of the McCabe Allotment.

163. In ignoring Table Mountain's repeated requests for consultation regarding the trust-to-trust transfer of the McCabe Allotment, and in failing to consult with Table Mountain prior to issuing an approval of Big Sandy's gaming ordinance that adopted a legally flawed "Indian lands" analysis, Defendants failed to comply with their articulated consultation policies and thereby acted arbitrarily and capriciously in violation of the APA, in addition to violating their trust obligations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court provide relief as follows:

1. Declare that Defendants' approval of the trust-to-trust transfer of the McCabe Allotment violates the APA, NEPA, NHPA, and Defendants' trust obligations to Table Mountain Rancheria.

2. Suspend and hold in abeyance any action in furtherance of the trust-to-trust transfer, and any action facilitating development of the McCabe Allotment, until such time as

Defendants have complied with their obligations under Part 151, Part 152, the APA, NEPA, the NHPA, and pursuant to their trust relationship with Table Mountain Rancheria.

3. Set aside and void the trust-to-trust transfer of the McCabe Allotment.

4. Set aside and vacate NIGC's June 29, 2022 approval of Big Sandy's gaming ordinance.

5. Set aside and vacate the terms of the Big Sandy's tribal-state compact specific to the McCabe Allotment.

6. Enjoin Defendants and their officers, administrators, agents, employees, and those in active concert or participation with them, from approving any future trust-to-trust transfer with respect to the McCabe Allotment unless Defendants have first complied with Part 151, Part 152, the APA, NEPA, the NHPA, and Defendants' policy and trust obligations to the Tribe.

7. Award Plaintiff its reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412 and 54 U.S.C. § 307105.

8. Grant Plaintiff such other and further temporary, preliminary, and permanent relief as the Court may deem just and proper.

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Respectfully submitted,

Dated: July 17, 2025

By: */s/ Nicholas D. Marais*

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** Pro hac vice applications forthcoming*