

EXHIBIT A



United States Department of the Interior

OFFICE THE SECRETARY

Washington, D.C. 20240

JUL 30 2026

The Honorable Shawn Davis
Chairman, Scotts Valley Band of Pomo Indians
1005 Parallel Drive
Lakeport, CA 95453

Dear Chairman Davis:

On August 11, 2016, the Scotts Valley Band of Pomo Indians (“Scotts Valley,” “Band,” or “Tribe”) requested that the United States Department of the Interior (“Department”) take 128.32 acres of land in the City of Vallejo, Solano County, California (“Vallejo Site,” “Vallejo Parcel,” or “Parcel”) into trust on the Band’s behalf pursuant to 25 C.F.R. § 151.9.¹ In conjunction with that request, on January 28, 2016, the Band also requested a positive “restored lands” determination regarding the Parcel.² If the Parcel qualified as restored lands, then it would be exempt from the Indian Gaming Regulatory Act’s (“IGRA”) general prohibition on gaming on lands acquired by the Secretary of the Interior (“Secretary”) in trust after October 17, 1988.³

This letter responds to the Band’s restored lands-specific request. As explained below, I conclude that the Parcel does not qualify as restored lands.

I. PROCEDURAL BACKGROUND.

On February 7, 2019, the Department issued an Indian Lands Opinion denying the Band’s request for a positive restored lands determination (“2019 ILO”),⁴ upon concluding that the Band had failed to demonstrate a “significant historical connection” to the Parcel as required by the regulations implementing IGRA and applying to restored lands determinations, codified at 25

¹ Letter and accompanying application from Gabriel Ray, Chairman, Scotts Valley Band of Pomo Indians, to Amy Dutschke, Reg’l Dir., Pac. Reg’l Off., Bureau of Indian Affs., U.S. Dep’t of the Interior (Aug. 11, 2016); *see also* 25 U.S.C. § 5108 (authorizing the Secretary of the Interior to acquire land for the purpose of providing land to Indians). The Band subsequently updated its request to take into trust an additional 32.12 acres. Letter from Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians, to Amy Dutschke, Reg’l Dir., Pac. Reg’l Off., Bureau of Indian Affs., U.S. Dep’t of the Interior (June 4, 2024). The size of the Parcel ultimately taken into trust is 160.33 acres. Memorandum from Wizipan Garriott, Principal Deputy Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior, to Amy Dutschke, Reg’l Dir., Pac. Reg’l Off., Bureau of Indian Affs., U.S. Dep’t of the Interior 1 (Jan. 10, 2025). For additional information about the updated request, *see infra* pages 7–9 (discussing the temporal connection between the date of the acquisition of the Parcel and the date of the Band’s restoration).

² Letter from Gabriel Ray, Chairman, Scotts Valley Band of Pomo Indians, to Lawrence Roberts, Acting Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior (Jan. 28, 2016); *see also* 25 C.F.R. § 292.3(b) (explaining that a tribe that “seeks to game on newly acquired lands that require a land-into-trust application . . . must submit a request for an opinion to the Off. of Indian Gaming”).

³ 25 U.S.C. § 2719(b)(1)(B)(iii) (listing the exception from the prohibition for restored lands).

⁴ Letter from John Tahsuda, Principal Deputy Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior, to Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians 19 (Feb. 7, 2019) [hereinafter “2019 ILO”].

C.F.R. part 292 (“Part 292”).⁵ Following the issuance of the 2019 ILO, the Band challenged it on multiple grounds.⁶ On September 30, 2022, the United States District Court for the District of Columbia (“*Scotts Valley Court*” or “*Court*”) ruled in the Band’s favor, holding that the 2019 ILO was “arbitrary and capricious when considered in accordance with the Indian canon of statutory construction.”⁷ The Court reasoned that the Department had failed to give adequate consideration to the policy underlying IGRA⁸ and to the federal government’s role in weakening the historical connection between the Band and its land.⁹ The Court remanded the 2019 ILO to the Department (“2022 Remand”).

On remand, the Department issued a reconsidered Indian Lands Opinion granting the Band’s request for a positive restored lands determination (“2025 ILO”).¹⁰ As explained in the 2025 ILO, the Department reconsidered the Band’s request in light of the *Scotts Valley* decision, giving additional consideration to (1) the historical circumstances underlying the Band’s landless status and (2) the policy underlying IGRA and the restored lands exception.¹¹ Upon doing so, the Department concluded that the Band satisfied the “restored lands” criteria in 25 C.F.R. § 292.12. The Department explained that the Band had demonstrated not only “modern connections to the land” at issue and “a temporal connection between the date of the acquisition of the land and the date of the tribe’s restoration” but also “a significant historical connection to the land.”¹² The Department then granted the Band’s request to acquire the Parcel in trust.¹³

In early 2025, within weeks of the issuance of the 2025 ILO, Departmental leadership reviewed the 2025 ILO and became concerned that, prior to the ILO’s issuance, the Department “[had] not consider[ed] additional evidence submitted after the 2022 Remand.”¹⁴ That is, although the Department on remand had considered “the extensive documentation in the administrative record for the 2019 ILO,” the Department had “neither solicited nor considered any additional evidentiary materials from outside parties, including the Band and those opposed to the Band’s

⁵ 25 C.F.R. § 292.12.

⁶ Complaint, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-1544 (ABJ)).

⁷ *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior (Scotts Valley I)*, 633 F. Supp. 3d 132, 171 (D.D.C. 2022).

⁸ See *id.* at 156.

⁹ See *id.* at 165.

¹⁰ Letter from Wizipan Garriott, Principal Deputy Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior, to Shawn Davis, Chairman, *Scotts Valley Band of Pomo Indians 2* (Jan. 10, 2025) [hereinafter “2025 ILO”].

¹¹ *Id.* at 2.

¹² *Id.* at 2 (quoting 25 C.F.R. § 292.12).

¹³ *Id.* at 30. Prior to the acquisition, the United States held no land in trust for the Band. 2019 ILO, *supra* note 4, at 1 n.1.

¹⁴ Letter from Scott J. Davis, Senior Advisor to the Sec’y of the Interior, U.S. Dep’t of the Interior, to Shawn Davis, Chairman, *Scotts Valley Band of Pomo Indians 1* (Mar. 27, 2025) [hereinafter “March 2025 Letter”]. Around the same time that the Department issued the letter, several third parties filed lawsuits challenging the 2025 ILO, raising similar concerns. Complaint at 42, ¶ 144, *Yocha Dehe Wintun Nation v. U.S. Dep’t of the Interior*, No. 25-867-TNM (D.D.C. filed Mar. 24, 2025); Complaint at 31, ¶ 122, *United Auburn Indian Cmty. of the Auburn Rancheria v. U.S. Dep’t of the Interior*, No. 25-873-TNM (D.D.C. filed Mar. 24, 2025); Complaint at 4, ¶ 10, *Lytton Rancheria of Cal. v. U.S. Dep’t of the Interior*, No. 25-1088-TNM (D.D.C. filed Apr. 10, 2025). The cases are currently subject to a stay in light of the Department’s reconsideration of the 2025 ILO. See, e.g., Minute Order, *Yocha Dehe Wintun Nation v. U.S. Dep’t of the Interior*, No. 25-867-TNM (D.D.C. Feb. 4, 2026).

request.”¹⁵ Based on that concern, in a letter dated March 27, 2025, the Department announced that the 2025 ILO would be rescinded temporarily and subject to reconsideration. In the same letter, the Department “invite[d] the Tribe and other interested parties to submit evidence and/or legal analysis regarding whether the Vallejo Site qualifies as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. Part 292.”¹⁶ In a subsequent letter, the Department notified the parties that the Department would accept evidence and legal analysis through June 13, 2025 (“June 2025 Submissions”).¹⁷

In response to the Department’s temporary rescission and reconsideration of the 2025 ILO, the Band filed suit in the United States District Court for the District of Columbia, challenging both the rescission and the reconsideration.¹⁸ In an opinion dated October 30, 2025, the Court held that the rescission violated the Band’s Fifth Amendment right to due process, explaining that “[t]he Band learned of the rescission only once it was a fait accompli” and that the Department “never gave the Band the ‘prompt judicial or administrative hearing’ that due process demands.”¹⁹ The Court otherwise “dismiss[ed] Scotts Valley’s complaints about the reconsideration,” explaining that the reconsideration “remain[ed] non-final” and that “[m]erely allowing Scotts Valley and others to weigh in on the parcel’s gaming eligibility does not ‘determine[]’ anyone’s ‘rights or obligations.’”²⁰ While the Court vacated the rescission of the 2025 ILO, the Court also cautioned that the Band “would be ill-served by placing undue reliance” on the vacatur, explaining that “the Court’s remedy does not bar Interior from continuing its reconsideration, nor does it stop the Department from revoking the Band’s gaming eligibility at the end of that process.”²¹

Following the issuance of the Court’s order, the Department proceeded with reconsidering the Band’s restored lands-specific request. In doing so, the Department took steps to ensure that the reconsideration would comport with due process. On or around December 9, 2025, the Department forwarded the June 2025 Submissions to the Band “so that the Tribe [would have] notice of the evidence and legal analysis being added to the record underlying [the Department’s] reconsideration.”²² Departmental officials then discussed a time frame for reconsideration with the Band in December 2025 and January 2026.²³ Following those discussions, the Department gave the Band until May 1, 2026, to review and respond to the June 2025 Submissions.²⁴ Departmental officials also met with the Band on April 17, 2026, at which meeting the Band

¹⁵ 2025 ILO, *supra* note 10, at 3–4.

¹⁶ March 2025 Letter, *supra* note 14, at 1.

¹⁷ Letter from Scott J. Davis, Senior Advisor to the Sec’y of the Interior, U.S. Dep’t of the Interior, to Tribal Leaders and Other Interested Parties (May 20, 2025).

¹⁸ Complaint, *Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1 (D.D.C. 2025) (No. 25-958-TNM).

¹⁹ *Scotts Valley Band of Pomo Indians v. Burgum* (*Scotts Valley II*), 808 F. Supp. 3d 1, 27–28 (D.D.C. 2025) (quoting *Barry v. Barchi*, 443 U.S. 55, 64 (1979)).

²⁰ *Id.* at 13–14 (citations omitted).

²¹ *Id.* at 28.

²² Letter from William H. Kirkland III, Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior, to Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians 1 (Dec. 3, 2025).

²³ Second Declaration Regarding Plan for Reconsideration at 3, ¶ 7, *Yocha Dehe Wintun Nation v. U.S. Dep’t of the Interior*, No. 25-867-TNM (D.D.C. filed Feb. 3, 2026), ECF No. 39-1.

²⁴ Letter from William H. Kirkland III, Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior, to Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians (Jan. 21, 2026).

presented its response to the June 2025 Submissions.²⁵ The Department accepted no further submissions after receipt of the Band's submission.

In the sections below, I first discuss the legal framework applicable to this reconsidered Indian Lands Opinion. I then address the following issues: (1) whether the Band has demonstrated "modern connections" to the Parcel; (2) whether the Band has demonstrated "a temporal connection between the date of the acquisition of the [Parcel] and the date of the tribe's restoration"; and (3) whether the Band has demonstrated "a significant historical connection" to the Parcel.²⁶ Upon reconsideration, I conclude that, although the Band has satisfied the "modern connections" and "temporal connection" requirements, the Band has not established a significant historical connection to the Parcel. Therefore, the Vallejo Parcel does not qualify as restored lands. This reconsidered decision is based on a review of the administrative records for the 2019 ILO and 2025 ILO, the June 2025 Submissions, and the Band's response to June 2025 Submissions.²⁷

II. LEGAL FRAMEWORK.

IGRA was enacted "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."²⁸ IGRA generally prohibits gaming on lands taken into trust after October 17, 1988²⁹ (also known as "newly acquired lands"³⁰). However, Congress expressly carved out an exception to that prohibition—the restored lands exception—authorizing gaming on lands "taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition."³¹ One of the purposes of the restored lands exception is to "ensur[e] that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones."³²

²⁵ Departmental officials that attended the meeting included the Assistant Secretary – Indian Affairs, the Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development, the Acting Director of the Office of Indian Gaming, the Deputy Director of the Office of Indian Gaming, and the Assistant Solicitor for the Branch of Environment and Lands – Division of Indian Affairs, among others.

²⁶ 25 C.F.R. § 292.12.

²⁷ In regard to documents submitted to the Department after the 2022 Remand but before March 27, 2025, the Department emphasized in the letter dated March 27, 2025, that those documents "should be resubmitted," to ensure that the Department has all the relevant materials. March 2025 Letter, *supra* note 14, at 1; *see also* Letter from William H. Kirkland to Shawn Davis, *supra* note 24 (stating that "[t]he purpose of requesting the June 2025 submissions was to gather all the evidence that may not have been considered in reaching the 2025 [ILO]").

²⁸ *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004); *see also* 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

²⁹ 25 U.S.C. § 2719(a).

³⁰ 25 C.F.R. § 292.2 (defining "[n]ewly acquired lands" as "land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988").

³¹ 25 U.S.C. § 2719(b)(1)(B)(iii).

³² *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003); *see also Scotts Valley I*, 633 F. Supp. 3d at 167–68 (explaining that the purpose of the restored lands exception is "to place a tribe on an equal footing with other tribes that had not been rendered as unable to maintain a connection to their own land or that had been restored earlier" (citing *Citizens Exposing Truth About Casinos v. Kempthorne*, 492 F.3d 460, 468 (D.C. Cir. 2007))).

In 2008, the Department promulgated Part 292 “to explain to the public how the Department interprets [IGRA’s] exceptions,” including the restored lands exception.³³ Pursuant to Part 292, for a tribe to game on newly acquired lands under IGRA’s restored lands exception, the tribe must show that:

- (1) the tribe was restored to federal recognition, as defined in 25 C.F.R. §§ 292.7(a)–(c), 292.8–292.10 (“Restored Tribe Criteria”); and
- (2) the lands qualify as restored lands, as defined in 25 C.F.R. §§ 292.7(d), 292.11–292.12 (“Restored Lands Criteria”).

These criteria are discussed in turn below.

A. Restored Tribe Criteria.

In a memorandum dated November 18, 2008, the Department’s Office of the Solicitor (“SOL”) opined that the Band qualifies as a restored tribe for the purpose of the restored lands exception.³⁴ That opinion, previously “incorporated by reference” into a 2012 Indian Lands Opinion regarding a different set of parcels,³⁵ explains that the Band was terminated pursuant to the California Rancheria Termination Act,³⁶ after which the Band was restored to federal recognition pursuant to a stipulation for entry of judgment (“1991 Stipulated Judgment”) in *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*.³⁷ The Department published notice of the Band’s federally recognized status in the *Federal Register* on February 12, 1992.³⁸ Based on the analysis set forth in SOL’s 2008 memorandum, contained within the administrative record and incorporated here by reference, the Band qualifies as a restored tribe under §§ 292.7(a)–(c) and 292.8–292.10.

B. Restored Lands Criteria.

Section 292.11 sets forth the requirements for newly acquired lands to qualify as restored lands. Because the Band was “restored by a Federal court determination in which the United States [was] a party or by a court-approved settlement agreement entered into by the United States” (namely, the 1991 Stipulated Judgment), the Band must satisfy the criteria in § 292.12.³⁹

³³ Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29354, 29354 (May 20, 2008).

³⁴ Memorandum from Edith R. Blackwell, Assoc. Solic., Div. of Indian Affs., Off. of the Solic., U.S. Dep’t of the Interior, to George T. Skibine, Acting Assistant Sec’y for Policy & Econ. Dev., U.S. Dep’t of the Interior (Nov. 18, 2008).

³⁵ Letter from Donald E. Laverdure, Acting Assistant Sec’y – Indian Affs., Dep’t of the Interior, to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians 4 (May 25, 2012) [hereinafter “2012 ILO”], *available at* <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc-018517.pdf>.

³⁶ Act of Aug. 18, 1958, Pub. L. No. 85-671, 72 Stat. 619, *amended by* Act of Aug. 11, 1964, Pub. L. 88-419, 78 Stat. 390.

³⁷ No. C-86-3660 WWS (N.D. Cal. Mar. 15, 1991).

³⁸ Notice of Reinstatement to Former Status for the Guidiville Band of Pomo Indians, the Scotts Valley Band of Pomo Indians and Lytton Indian Community of CA, 57 Fed. Reg. 5214 (Feb. 12, 1992).

³⁹ 25 C.F.R. § 292.11(c).

Section 292.12 requires that the Band demonstrate (a) “modern connections” to the newly acquired lands; (b) “a significant historical connection to the land”; and (c) “a temporal connection between the date of the acquisition of the land and the date of the tribe’s restoration.” These criteria are discussed in turn below.

III. DISCUSSION.

A. The “Modern Connections” Requirement.

As a preliminary matter, the Band has demonstrated modern connections to the Parcel. For a tribe to satisfy this criterion, “the newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe’s governmental presence and tribal population.”⁴⁰ Additionally, the tribe must demonstrate at least one of the following modern connections to the land:

- (1) The land is within reasonable commuting distance of the tribe’s existing reservation;
- (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
- (3) The land is within a 25-mile radius of the tribe’s headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
- (4) Other factors demonstrate the tribe’s current connection to the land.⁴¹

Here, the Parcel and the Band are both located in California. Furthermore, the Parcel is less than 20 miles from the Band’s southern office, which the Band has maintained since 2012.⁴² Therefore, the Band has demonstrated the requisite modern connections.

On reconsideration, the Department received a submission from an interested party asserting that the Band’s southern office is not a “tribal governmental facilit[y]” but a “regional TANF (Temporary Assistance for Needy Families) center,” which provides services “not limited to Scotts Valley members.”⁴³ However, the distinction that the party makes is unwarranted; a tribal government facility can also serve as a regional TANF center. Relevant here, the webpage describing the Band’s TANF program states that the Band administers the TANF program not only for Native Americans in Contra Costa County but also for “enrolled members of the Scotts

⁴⁰ 25 C.F.R. § 292.12(a).

⁴¹ *Id.* § 292.12(a)(1)–(4).

⁴² Memorandum from Scotts Valley Band of Pomo Indians 4 n.6 (May 3, 2018); *see also id.* at 22–23 (providing additional details about the Band’s southern office, as well as about the distance between the Parcel and the Band’s membership); Tribal Office Map, Scotts Valley Band of Pomo Indians (May 3, 2018) (identifying the distance between the Parcel and the Band’s governmental office as 19 miles).

⁴³ Letter from Elliot R. Peters, Kecker, Van Nest & Peters LLP, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep’t of the Interior 7 (June 13, 2025) [hereinafter “UAIC Letter”] (citing <https://www.scottsvally-nnsn.gov/tribal-departments/tribal-tanf-temporary-assistance-for-needy-families> (last visited July 17, 2026)).

Valley Band of Pomo Indians who reside in Sonoma, Lake and Mendocino Counties.”⁴⁴ In other words, the southern office is a tribally controlled office that administers a tribally run program that benefits tribal members. It qualifies as a tribal governmental facility for the purpose of the regulation.

B. The “Temporal Connection” Requirement.

The Band has also demonstrated a temporal connection between the date of the acquisition of the Parcel and the date of the Band’s restoration. To demonstrate this connection, the tribe must show that either:

- (1) the land is included in the tribe’s first request for newly acquired lands since the tribe was restored to federal recognition; or
- (2) the tribe submitted an application to take the land into trust within 25 years after the tribe was restored to federal recognition and the tribe is not gaming on other lands.⁴⁵

The Band cannot satisfy the first condition above because the Parcel was not included in the Band’s first request for newly acquired lands. The Band previously submitted a fee-to-trust application for a different set of parcels in 2005, alongside a request for a positive restored lands determination.⁴⁶ Therefore, the Band must satisfy the second condition.

In the 2019 ILO and 2025 ILO, the Department concluded that the Band had satisfied the second condition.⁴⁷ The Department explained that the Band had submitted its application to take the Parcel into trust on August 11, 2016, within 25 years of the Band’s restoration to federal recognition on September 6, 1991.⁴⁸ The Department also noted that the Band was not gaming on other lands.⁴⁹

On reconsideration, the Department has reviewed this conclusion in light of relevant comments in the June 2025 Submissions, as well as in the Band’s response to the June 2025 Submissions. In a letter to the Department dated June 13, 2025, the United Auburn Indian Community of the Auburn Rancheria of California (“UAIC”), a federally recognized tribe that opposes the Band’s request, argued that “Scotts Valley has no temporal connection to the Vallejo Site” because “Scotts Valley *added acreage* to the Vallejo Site . . . more than 25 years after Scotts Valley was restored to federal recognition.”⁵⁰ According to UAIC, “[a]t a minimum, that added acreage . . .

⁴⁴ <https://www.scottsvally-nns.gov/tribal-departments/tribal-tanf-temporary-assistance-for-needy-families> (last visited July 17, 2026).

⁴⁵ 25 C.F.R. § 292.12(c).

⁴⁶ See 2012 ILO, *supra* note 35, at 3.

⁴⁷ 2019 ILO, *supra* note 4, at 3 & n.19; 2025 ILO, *supra* note 10, at 6 & nn.48–50.

⁴⁸ 2025 ILO, *supra* note 10, at 6 & nn.48–49.

⁴⁹ 2025 ILO, *supra* note 10, at 6; see also Memorandum of Law in Support of Affirmance of the January 10, 2025, Gaming Eligibility Determination, Scotts Valley Band of Pomo Indians 32 (May 1, 2026) [hereinafter “Scotts Valley Memorandum”] (confirming that “[t]he Band is not gaming on other lands”).

⁵⁰ UAIC Letter, *supra* note 43, at 5 (emphasis in original).

cannot be accepted as restored land under IGRA.”⁵¹ The Yocha Dehe Wintun Nation, California (“Yocha Dehe”), another federally recognized tribe that opposes the Band’s request, similarly distinguished the “Western Parcel” described in the Band’s 2016 fee-to-trust application from three, subsequently added “Eastern Parcels” described in a 2024 amendment to its fee-to-trust application.⁵² Yocha Dehe contends that the 2025 ILO’s conclusion that “the entire Vallejo Site – all four parcels – qualif[y] for the restored lands exception . . . is clearly erroneous” and “should be reconsidered and reversed.”⁵³

In response, the Band argues that the 2024 amendment of its fee-to-trust application does not threaten its satisfaction of the temporal connection requirement. The Band describes the 2024 amendment as “part of a continuous, timely application process involving adjacent land intended for the same use and subject to the same environmental and administrative review” as the land identified in the 2016 fee-to-trust application.⁵⁴ According to the Band, the 2024 amendment “arise[s] out of the same ‘conduct, transaction, or occurrence’ as the original submission,” and the amendment thus “relates back to the date of [the Band’s] 2016 trust application.”⁵⁵ The Band further argues that “it is reasonable – and consistent with both the regulation and IGRA’s purposes – to treat amendments to a timely application as relating back to the date of the original filing date, so long as the amendment does not materially alter the nature or timing of the trust acquisition.”⁵⁶

After reviewing the arguments on reconsideration, I agree with the Band that the 2024 amendment relates back to the date of the 2016 fee-to-trust application. The Band’s letter requesting the additional acreage (totaling 32.12 acres) indicates that its purpose is to “secure[] better access to the original 128.32-acre parcel.”⁵⁷ Allowing the Band to amend its fee-to-trust application for a practical purpose aligns with the expressly “practical” purpose of the temporal connection requirement.⁵⁸ That requirement was included in Part 292 to “address[] . . . concerns about a tribe’s open ended ability to acquire lands for gaming.”⁵⁹ Nothing about the Band’s amendment gives rise to those concerns. As the Band noted, the amendment did not materially alter the nature or timing of the trust acquisition, much less give the Band an open-ended ability to acquire lands for gaming in the future.

Furthermore, a broad understanding of the provision containing the 25-year time limit furthers IGRA’s goal of placing the restored tribe “on an equal footing with other tribes.”⁶⁰ Accordingly, the Department will continue to read that provision, 25 C.F.R. § 292.12(c)(2), as requiring that

⁵¹ *Id.* at 5.

⁵² Letter from Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep’t of the Interior 9 (June 13, 2025).

⁵³ *Id.*

⁵⁴ Scotts Valley Memorandum, *supra* note 49, at 3.

⁵⁵ *Id.* at 35 (quoting *Mayle v. Felix*, 545 U.S. 644, 659 (2005)).

⁵⁶ *Id.* at 33.

⁵⁷ Letter from Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians, to Amy Dutschke, Reg’l Dir., Pac. Reg’l Off., Bureau of Indian Affs., U.S. Dep’t of the Interior (June 4, 2024); *see also* UAIC Letter, *supra* note 43, at 5 (stating that the purpose of the additional acreage is “to facilitate access to an otherwise landlocked parcel”).

⁵⁸ 73 Fed. Reg. at 29367.

⁵⁹ *Id.*

⁶⁰ *Scotts Valley I*, 633 F. Supp. 3d at 167.

the tribe's underlying fee-to-trust application be submitted within 25 years of the date of the tribe's restoration but not as prohibiting reasonable amendment of the application while it remains under review. I conclude that the Band has satisfied the temporal connection requirement.

C. The "Significant Historical Connection" Requirement.

Beyond demonstrating modern and temporal connections, the Band must also demonstrate a significant historical connection to the Parcel under § 292.12. Section 292.2 defines "significant historical connection" to mean either:

- (1) the land at issue is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty; or
- (2) a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy, or subsistence use in the vicinity of the land.

As discussed below, neither definition applies here, and the Band has not demonstrated a significant historical connection to the Parcel.

1. The Parcel is not located within the boundaries of the Band's last reservation under a ratified or unratified treaty.

The Band cannot establish the requisite connection through the first definition above because the Parcel is not located within the boundaries of the Band's last reservation. As the Department explained in both the 2019 ILO and 2025 ILO,⁶¹ the Band's predecessors-in-interest were tribal signatories to an unratified treaty with the United States signed in 1851 ("1851 Treaty").⁶² The tribal signatories "jointly and severally" ceded "their right, title, claim, or interest of any kind" to lands in California.⁶³ In exchange, the United States designated a tract of land to be set apart as a reservation on the western shore of Clear Lake, Lake County, California.⁶⁴ In the late 1800s, cartographer Charles Royce compiled maps purporting to depict Indian land cessions in the United States, including the land that would have been ceded under the 1851 Treaty, as well as tracts set apart for reservations, including the reservation at Clear Lake.⁶⁵ The area numbered "296" in the map below ("Area 296") purports to show the ceded territory, while the area numbered "295" ("Area 295") shows the Clear Lake reservation.

⁶¹ 2019 ILO, *supra* note 4, at 4–6; 2025 ILO, *supra* note 10, at 6–9.

⁶² Treaty with Ca-la-na-po, etc. (Aug. 20, 1851), in 4 Indian Affs., Laws and Treaties (Charles J. Kappler ed., 1927) [hereinafter "1851 Treaty"], available at <https://dc.library.okstate.edu/digital/collection/kapplers/id/24015>.

⁶³ *Id.* art. 3.

⁶⁴ *Id.* art. 4.

⁶⁵ Charles C. Royce & Cyrus Thomas, *Indian Land Cessions in the United States* (1899), available at <https://www.loc.gov/resource/g3701em.gct00002> (select "Image 7 of 67" ("California 1")).



The Parcel is located in the southwestern portion of Area 296, south of Napa, outside of the boundaries of the reservation set apart under the 1851 Treaty. The Parcel is similarly outside of the boundaries of the rancheria that the United States acquired for the Band in 1911 (“Sugar Bowl Rancheria” or “Scotts Valley Rancheria”), which Area 295 encompasses. Therefore, the first definition above does not apply, and the Band must establish the requisite connection through the second definition.

2. The Band has not demonstrated by historical documentation the existence of the Band’s villages, burial grounds, occupancy, or subsistence use in the vicinity of the Parcel.

The Band has not demonstrated a significant historical connection to the Parcel through evidence of the Band’s villages, burial grounds, occupancy, or subsistence use in the vicinity of the Parcel. The Band does not assert that the Parcel is in the vicinity of the Band’s villages or burial grounds.⁶⁶ Therefore, the Band must show occupancy or subsistence use in the vicinity of the

⁶⁶ See Legal Analysis by Steven J. Bloxham, Fredericks Peebles & Morgan LLP 20 (Jan. 29, 2016) (stating that, prior to the 1850s, “the area in and around what is now the City of Vallejo and adjacent portions of southern Napa and Solano counties were part of the territory of the Patwin people” and that “the record indicates that by 1851 there were no surviving Patwin (or any other Indian) villages, and not independent bands or tribes, in southern Napa and Solano Counties” (emphasis added) (citations omitted)).

Parcel. Evidence of occupancy or use by the Band's predecessors, including the Ca-la-na-po and Mo-al-kai,⁶⁷ is relevant to the Department's analysis.⁶⁸

The Band argues that its documented, historical connection to the Vallejo Parcel has existed since the 1840s or earlier, upon the advent of the ranching economy in the San Pablo Bay region.⁶⁹ In support of the Band's claim, the Band submitted documentation regarding an individual named Augustine, a "chief of the Hoolanapo Indians" who lived and worked in the North Bay region during the mid-1800s.⁷⁰ "Many in the Scotts Valley Tribe trace ancestry back to Augustine,"⁷¹ and the Band asserts that Augustine's biography helps establish the Band's significant historical connection to the Parcel. According to Dr. Albert Hurtado, a historian commissioned by the Band, Augustine's whereabouts and activities are representative of those of the Band's ancestors in general and shed light on their shared experiences.⁷² Furthermore, Augustine's life is relatively well-documented, which is unique given the disruption in Pomoan village life, economy, and culture that occurred during the timeframe at issue.⁷³ The Band's documentation includes contemporaneous accounts and anecdotal evidence tracking Augustine's movement, as well as genealogical data about his family.⁷⁴ The following sections discuss Augustine's life and the surrounding historical context, recapitulating information presented in the 2019 ILO and 2025 ILO.

⁶⁷ See 2019 ILO, *supra* note 4, at 4–5; 2025 ILO, *supra* note 10, at 6–8 (identifying the Ca-la-na-po and the Mo-al-kai as the Band's predecessors-in-interest).

⁶⁸ See 2012 ILO, *supra* note 35, at 7 ("The tribe's history of use and occupancy inherently includes the use and occupancy of its tribal predecessors, even if those tribes had different political structures and were known under different names.").

⁶⁹ Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 42, at 11 (stating that "the record is clear that between 1842 and 1847, Clear Lake Indians became a significant source of labor on all of the ranchos north of San Francisco").

⁷⁰ Lyman L. Palmer, *History of Napa and Lake Counties* 49 (1881).

⁷¹ Dorothea J. Theodoratus et al., *Clear Lake Indian Census Data Early 1800s to 1911 (Emphasis on Eastern Pomo)* 81 (2018) (stating that by 1958, "when the tribe was terminated under the Rancheria Act, 90.1% of the tribe were Augustine descendants"); see also Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region by Albert L. Hurtado et al. 15 (May 3, 2018) [hereinafter "Hurtado Supplemental Report"] (explaining how that percentage was calculated).

⁷² See Albert L. Hurtado, *Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians* 11 (2018) [hereinafter "2018 Hurtado Report"] ("Augustine's history illustrates a significant connection between [the Band's ancestors] and the region that includes the [Vallejo Parcel].").

⁷³ See Theodoratus et al., *supra* note 71, at 5 (stating that, in the mid-1800s, "[a]lthough some concentrated village life continued to exist among Indian communities, many previous Indian village-life patterns were forced into a new, somewhat dispersed, living pattern accompanied by new labor patterns"); see also Lowell J. Bean & Dorothea J. Theodoratus, Western Pomo and Northeastern Pomo, in 8 *Handbook of North American Indians* 299 (Robert F. Heizer ed., 1978) (explaining that, in the 1830s, "diseases, plus displacement, enslavement, massacres, raids, and the beginnings of Anglo-American migration set the stage for the ever more rapid decline of the Pomo people and their cultural heritage" in the ensuing decades).

⁷⁴ See generally 2018 Hurtado Report, *supra* note 72 (containing excerpts from such material); Theodoratus et al., *supra* note 71, at 29–31 (summarizing census data pertaining to Augustine and his family).

a. *Narrative Presented in the 2019 ILO: Augustine and the Agricultural Economy in the North Bay Region.*

According to the Band, the earliest reference to Augustine seems to be on a list of Indian children baptized in 1837 at Mission San Francisco Solano, located in the city of Sonoma, 17 miles from the Parcel.⁷⁵ The list includes a six-year-old child named Agustín who “could have been [the Band’s ancestor] Augustine, but this is not verified.”⁷⁶ The Band asserts that 29 other Pomo children were baptized at the mission at that time, at least 14 of whom were from the same village as Augustine, and at least two of whom were ancestors of the present-day Band.⁷⁷ Children at the mission “were instructed in the Roman Catholic faith and trained to do manual labor, including ranch work.”⁷⁸

Based on an 1880 interview with historian Lyman Palmer, Augustine was in the Clear Lake area around 1840, where he observed Salvador Vallejo take “formal possession” of the valley where the Band’s ancestors lived.⁷⁹ Salvador Vallejo’s older brother was Mariano Vallejo, a Mexican military commander who, according to Hurtado, “exercised nearly absolute personal and official power over land and life in the North Bay region.”⁸⁰ Mariano Vallejo acquired huge swaths of land formerly associated with Mexican missions,⁸¹ including Ranchos Suscol and Petaluma.⁸² Dr. Andrés Reséndez, a historian commissioned by Yocha Dehe, states that Rancho Suscol, the rancho within which the Vallejo Parcel is located, was an 84,000-acre property, and Rancho Petaluma was 66,000 acres.⁸³ Hurtado estimates that by 1846 the Vallejo family’s landholdings totaled 220,000 acres “from the Pacific Ocean to Suisun Bay and north to Clear Lake.”⁸⁴

The livestock operations on the ranchos were labor-intensive, and, according to Reséndez, a study of Rancho Petaluma estimates that “at any one time there may have been between 600 and 1000 Indian laborers living there.”⁸⁵ Although Rancho Suscol was located in or near traditional

⁷⁵ 2019 ILO, *supra* note 4, at 13 (citing Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 42, at 14–15).

⁷⁶ Theodoratus et al., *supra* note 71, at 29.

⁷⁷ Hurtado Supplemental Report, *supra* note 71, at 7–8.

⁷⁸ *Id.* at 8.

⁷⁹ Palmer, *supra* note 70, at 49; *see also* Scotts Valley Band of Pomo: Preliminary Report for “Indian Lands Determination,” Vallejo, Solano County, California from Stephen D. Beckham to United Auburn Indian Cmty. 106 (Nov. 7, 2016) [hereinafter “Beckham Report”] (discussing Palmer’s interview with Augustine); Comments on Reports Submitted by the Yocha Dehe Nation Regarding SVBI Request for Determination from Albert L. Hurtado, Historian, to Lawrence Roberts, Acting Assistant Sec’y - Indian Affs. 8 (Nov. 14, 2016) [hereinafter “Hurtado Comments”] (explaining that Salvador Vallejo oversaw the creation of Rancho Lup-Yomi in an area known as Big Valley, near Clear Lake).

⁸⁰ Report by Albert L. Hurtado, Historian 23 (Jan. 29, 2016) [hereinafter “2016 Hurtado Report”].

⁸¹ Hurtado Comments, *supra* note 79, at 7.

⁸² 2016 Hurtado Report, *supra* note 80, at 42–43.

⁸³ Comments About the Historical Basis for the Scotts Valley Band of Pomo Indians’ Request for Indian Lands Determination in the City of Vallejo by Andrés Reséndez, Professor, Dep’t of History, Univ. of Cal., Davis 3 (Nov. 2016) [hereinafter “Reséndez Comments”].

⁸⁴ 2016 Hurtado Report, *supra* note 80, at 43.

⁸⁵ Reséndez Comments, *supra* note 83, at 3.

Patwin territory,⁸⁶ and Rancho Petaluma was located in traditional Coast Miwok territory.⁸⁷ Salvador Vallejo raided Pomo Indian communities “to force them to work on the ranchos owned by the Vallejos and others.”⁸⁸ Ultimately, Indians from the Clear Lake area, Coast Miwok, Southern Patwin, and Wappo labored on ranchos established in what had been Coast Miwok and Patwin territory.⁸⁹ According to Hurtado and Dr. Dorothea Theodoratus (an anthropologist commissioned by the Band), the Band’s ancestors, including Augustine, helped “tend the thousands [of] animals that roamed in Big Valley” and drove cattle to slaughter grounds on San Pablo Bay.⁹⁰ In 1847, Salvador Vallejo sold Rancho Lup-Yomi to new owners,⁹¹ who at one point used Augustine and other Indians as forced labor to build adobe houses in Sonoma.⁹² Augustine escaped after about a month and fled back to Clear Lake, where his wife and infant child resided.⁹³

Augustine next appears in an 1850 census that identifies him as a “Kulanapo” chief,⁹⁴ living at Clear Lake in an Eastern Pomo village.⁹⁵ The historical record is then scant in regard to Augustine’s whereabouts and activities between 1850 and 1870. During those decades, farming became an increasingly important part of the economy, and Indians from the Clear Lake area started engaging in a pattern of migrant labor on ranchos south of their aboriginal territory.⁹⁶ By the 1860s, Clear Lake Indians mixed seasonal work on ranchos in Napa Valley and elsewhere in the North Bay region with subsistence farming and fishing at Clear Lake.⁹⁷

The next reference to Augustine seems to be in the 1870 census data for Napa City Township, Napa County, which suggests that, at 38 years old, Augustine was living in a household of 17 Indians of varying ages, a “collection of native people working out from the household.”⁹⁸ The Band has identified a few other possible or confirmed ancestors living in Napa in 1870 as well.⁹⁹ In total, the 1870 census lists 43 Indians living in Napa County at the time, compared with 17 in

⁸⁶ Hurtado Comments, *supra* note 79, at 6; *see also* Jennifer Whiteman, *Native American Ethnogeography and Ethnohistory in the Vicinity of Vallejo, California* 33 (2016) [hereinafter “Whiteman Report”] (“The Yocha Dehe and Cortina Indian Rancheria are recognized by the Native American Heritage Commission (NAHC) as Most Likely Descendants for the City of Vallejo and vicinity.”); Letter from Leland Kinter, Chairman, Yocha Dehe Wintun Nation, to Lawrence Roberts, Acting Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior (June 29, 2016) (“Solano County is within the [Yocha Dehe Wintun] Nation’s ancestral territory . . .”).

⁸⁷ Reséndez Comments, *supra* note 83, at 3.

⁸⁸ Hurtado Comments, *supra* note 79, at 8.

⁸⁹ Reséndez Comments, *supra* note 83, at 5.

⁹⁰ Hurtado Supplemental Report, *supra* note 71, at 4–5.

⁹¹ 2016 Hurtado Report, *supra* note 80, at 57.

⁹² *Id.* at 64.

⁹³ *Id.*

⁹⁴ Theodoratus et al., *supra* note 71, at 29.

⁹⁵ *Id.* at 5.

⁹⁶ Hurtado Supplemental Report, *supra* note 71, at 13.

⁹⁷ *Id.* at 14 (quoting a federal agent who witnessed the “integration of wage labor in Napa Valley and subsistence farming at Clear Lake”).

⁹⁸ Theodoratus et al., *supra* note 71, at 30.

⁹⁹ Addendum to the Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region by Albert L. Hurtado et al. 7–8 (Dec. 2018) [hereinafter “Addendum to Hurtado Supplemental Report”].

Lake County (with only one in Big Valley and one in Lakeport).¹⁰⁰ According to the Band, Augustine and the other Indians in the household may have been working at nearby Rancho Tulucay at the time,¹⁰¹ approximately 11 miles north of the Vallejo Parcel.¹⁰² The name listed next to Augustine's on the census is that of Chi-Bem, who may have signed the 1851 Treaty on behalf of the How-ru-ma (one of eight tribal signatories to the 1851 Treaty).¹⁰³

Augustine's name next appears in the 1880 census data for Lakeport Township, Lake County, which places him, at 50 years old, in a household with his wife Mary, his brother or Mary's brother, and two younger males, ages 15 and 40.¹⁰⁴ The 1880 Lakeport census lists many other households occupied by Indian families in the area, including the household next to Augustine's consisting of Augustine's brother Pete, Pete's wife, and their son.¹⁰⁵ By 1911, when the United States acquired the Sugar Bowl Rancheria for the Band, "a number of Augustine descendants and relatives were present at the rancheria" and "continued to reside at Lakeport" through the mid-1900s,¹⁰⁶ though the Band contends that it also maintained a connection with Napa County through 1918, as demonstrated by a contemporaneous record indicating that several "Scotts Valley people" contracted the Spanish influenza there.¹⁰⁷ Augustine died around 1919 at or near the age of 89.¹⁰⁸

b. *Additional Historical Context Presented in the 2025 ILO.*

In the 2025 ILO, the Department supplemented the narrative above with additional historical context.¹⁰⁹ The Department did so in response to the *Scotts Valley* Court's observation that the Department in the 2019 ILO had given insufficient consideration to "the government's role in weakening the historical connection between the Band and its land."¹¹⁰ What follows is a reproduction of that additional historical context.

The narrative on Augustine above begins in 1837, during a time of upheaval for California's Indian tribes. Mission San Francisco Solano, where the Band claims Augustine was baptized,

¹⁰⁰ *Id.* at 10. The 1870 census data, which documents a sizeable Indian presence in the North Bay region but a noticeable absence around Clear Lake, is consistent with the conclusion drawn by Hurtado and Theodoratus that "the period from 1837 to 1870 was an era of diaspora" for the Band's ancestors, followed by a period of repatriation to the Clear Lake area. Hurtado Supplemental Report, *supra* note 71, at 4.

¹⁰¹ 2018 Hurtado Report, *supra* note 72, at 9 (stating that the census recorded Augustine living "just one household away" from Cayetano Juarez, the owner of Rancho Tulucay); *see also* Beckham Report, *supra* note 79, at 112 (stating that the 17 Indians in the household "were probably workers on Rancho Tulucay," and that, in regard to Augustine, "[i]t is not known if he was identical to the Augustine of the Scotts Valley Rancheria or was another Indian named Augustine").

¹⁰² Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 42, at 15.

¹⁰³ Theodoratus et al., *supra* note 71, at 53.

¹⁰⁴ *Id.* at 30, 78.

¹⁰⁵ *Id.* at 30, 71–78.

¹⁰⁶ *Id.* at 31.

¹⁰⁷ Addendum to Hurtado Supplemental Report, *supra* note 99, at 8–9.

¹⁰⁸ Report by Dorothea J. Theodoratus, Anthropological Consultant 11 (Jan. 29, 2016).

¹⁰⁹ 2025 ILO, *supra* note 10, at 15–17.

¹¹⁰ *Id.* at 15 (quoting *Scotts Valley I*, 633 F. Supp. 3d at 165).

was the last of 21 missions established in California between 1769 and 1823.¹¹¹ The missions ostensibly served religious purposes, to Christianize the Indigenous peoples of California, but they also functioned as “large agricultural operations,”¹¹² “where Indians were enslaved to provide labor and produce goods for the Spanish presidios and economy.”¹¹³

In a report prepared for the Band, Hurtado explained that extensive livestock grazing during the mission period “alter[ed] the environment and affect[ed] Indian society.”¹¹⁴ According to Hurtado, “[e]ach mission owned thousands of animals that grazed on tens of thousands of acres that Indians had formerly used for gathering plant foods and hunting,” and, consequently, “the once abundant landscape became less productive of customary foods.”¹¹⁵ The mission economy disrupted the traditional Native economy and interfered with the Indians’ ability to acquire food, forcing many to work in the mission economy (for example, tending the missions’ vast livestock herds).¹¹⁶ The Indians’ exposure to diseases introduced by the Spaniards (smallpox and measles, among others) also had devastating impacts on tribal populations and greatly reduced their numbers.¹¹⁷

After Mexico established independence from Spain in 1821, the Mexican government secularized the missions, and large, private landholders known as *rancheros* or *Californios* took possession of the missions’ vast rangelands.¹¹⁸ Rangelands associated with Mission San Francisco Solano, for example, came under the control of Mariano Vallejo through a government-issued land grant and became Rancho Petaluma.¹¹⁹ As noted in the narrative on Augustine above, Vallejo also acquired the lands that became Rancho Suscol (the boundaries of which surrounded the Vallejo Parcel), among other lands, and “exercised nearly absolute personal and official power over land and life in the North Bay region.”¹²⁰

The disruption to “long standing patterns of Indian land use and tenure throughout California” that started during the mission period became worse during the period of Mexican rule.¹²¹ According to Hurtado, “private *rancheros* exacerbated these changes with demands for more land and Indian labor.”¹²² Violence against California Indians increased during the Mexican period, with Mariano Vallejo’s brother, Salvador Vallejo, raiding Pomo Indian communities and forcing

¹¹¹ William Wood, *The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias*, 44 TULSA L. REV. 317, 321 & n.10 (2008).

¹¹² 2016 Hurtado Report, *supra* note 80, at 6.

¹¹³ Wood, *supra* note 111, at 321.

¹¹⁴ 2016 Hurtado Report, *supra* note 80, at 7.

¹¹⁵ *Id.* at 6; *see also id.* at 8 (explaining that “[l]arge livestock herds permanently altered the California environment by destroying native plants through overgrazing and spreading new plants with seeds in their dung and hair,” so much so that “[b]y the 1840s wild oats were so common that observers thought that they were a native species” (citation omitted)).

¹¹⁶ *Id.* at 7–8.

¹¹⁷ *Id.* at 7; *see also* Whiteman Report, *supra* note 86, at 21 (“Missionization, casualties from military and settler retribution, raids for Indian labor, and disease resulted in the decimation [of] the native population of central California.”).

¹¹⁸ 2016 Hurtado Report, *supra* note 80, at 18.

¹¹⁹ *Id.* at 22.

¹²⁰ *Supra* page 12 (quoting 2016 Hurtado Report, *supra* note 80, at 23).

¹²¹ 2016 Hurtado Report, *supra* note 80, at 2.

¹²² *Id.*

the inhabitants to work on Vallejo-owned ranchos.¹²³ The Vallejos' raids left "Indian babies . . . without parents," and Indian children were sometimes taken from their villages and educated "in the trades associated with farming, ranching, and domestic services."¹²⁴

After the United States took control of California around 1846,¹²⁵ "these excesses grew even worse."¹²⁶ Federal authorities in the early American period "established two classes of Indians in California": "livestock thieves," who "could be shot on sight," and "laborers," who, like Augustine, could be forced to work under "deplorable conditions."¹²⁷ The gold rush in the late 1840s only "further dislocated native people and forced them to adapt to yet another set of changed circumstances as thousands and then tens of thousands of newcomers invaded Indian homelands."¹²⁸

Compounding the devastation that those events wrought, the United States Senate, "under pressure from the California congressional delegation," refused to ratify numerous treaties that the federal government had entered with the tribes in 1851 and 1852, including the 1851 Treaty with the Band's predecessors.¹²⁹ According to the Advisory Council on California Indian Policy ("Advisory Council"), a council established by Congress in 1992 to conduct a study of the status of California Indians,¹³⁰ the tribes' "fate as landless Indians was . . . sealed when the Senate refused to ratify the treaties."¹³¹ "Deprived of protected legal title to their lands by treaty or formal claim, the California Indians, with [certain exceptions], became homeless."¹³² The consequences of violent displacement for California's Indian tribes were dire; according to the Advisory Council, the state's Indian population declined from a conservative estimate of 100,000 in 1851 to 15,293 in 1890, an 85% decline.¹³³

¹²³ See *supra* page 13 (citations omitted); see also S.A. Barrett, *The Ethno-Geography of the Pomo and Neighboring Indians*, 8 UNIV. OF CAL. PUBL'NS IN AM. ARCHAEOLOGY & ETHNOLOGY 1, 45 (1908) (stating that "[i]n the days of the early Mexican settlers it was not uncommon for a ranchero . . . to surround a rancheria, kill any Indians who resisted, and then select from the remainder those most suited to his purpose").

¹²⁴ 2016 Hurtado Report, *supra* note 80, at 30–31; see also *id.* at 95 (mentioning the appearance of orphaned, possibly kidnapped Indian children in an 1852 census of Solano County, which fit a "pattern that was well established before the United States took control of California").

¹²⁵ See *id.* at 2.

¹²⁶ Barrett, *supra* note 123, at 45.

¹²⁷ 2016 Hurtado Report, *supra* note 80, at 57–58. This classification was reflected in the negotiation of the 1851 Treaty, in which federal agent Redick McKee explained that the Indians had to agree to "never move" off-reservation "without the President's permission," except that "young men [could] hire out to work upon the different ranches." *Id.* at 82 (citation omitted).

¹²⁸ *Id.* at 2–3.

¹²⁹ ADVISORY COUNCIL ON CAL. INDIAN POL'Y: FINAL REPORTS AND RECOMMENDATIONS TO THE CONGRESS OF THE UNITED STATES PURSUANT TO PUBLIC LAW 102-416 3 (1997) [hereinafter "Advisory Council Report"].

¹³⁰ See Advisory Council on California Indian Policy Act of 1992, Pub. L. No. 102-416, §§ 4–5, 106

Stat. 2131, 2132–33.

¹³¹ Advisory Council Report, *supra* note 129, at 4.

¹³² *Id.*

¹³³ *Id.* (citations omitted); see also Wood, *supra* note 111, at 332–33 (stating that, "[b]y the turn of the twentieth century California Indians [had been] reduced through starvation, disease and murder to a population of only about 17,000—representing a 90 percent decline in population from estimated 1848 figures" (second alternation in original) (citation and internal quotation marks omitted)).

c. *The Department's Reconsideration of the 2019 ILO Based on Further Review of the Historical Context Surrounding Augustine's Life.*

In the 2025 ILO, the Department reconsidered the historical connection between the Band and the Parcel in light of the historical “backdrop” reproduced above.¹³⁴ In part, the Department reconsidered whether, in light of that backdrop, certain evidence associated with Band ancestor Augustine should be attributed to the Band as a whole, helping the Band demonstrate occupancy in the vicinity of the Parcel. In a section of the 2025 ILO titled “Additional analysis on remand,” the Department explained why further consideration of the historical circumstances surrounding Augustine’s life warranted “attribute[ing] at least some of Augustine’s experiences in the North Bay region to the Band as a whole.”¹³⁵ The Department wrote:

The historical circumstances underscore the devastating impact that changes in the North Bay region had on countless tribal communities, including those associated with the Band by Clear Lake. Although the narrative on Augustine originally presented in the 2019 ILO primarily focuse[d] on his individual experiences, those experiences, viewed in light of the government’s role in displacing local tribes, are representative of what many Indigenous peoples across the region endured during the relevant time periods. In particular, Augustine’s possible baptism at Mission San Francisco Solano in the late 1830s is consistent with a broader, documented practice of the removal of Indian children from their villages and their placement in the missions. Additionally, his dwelling among other Indians in Napa in 1870, at a time when virtually no Indians were residing in the Band’s ancestral territory by Clear Lake, is consistent with the pervasive displacement of the region’s Indian tribes during the American period.¹³⁶

The Department in the 2025 ILO also discussed the *Scotts Valley* opinion, which “faulted the 2019 ILO for ‘declin[ing] to attribute Augustine’s connections . . . to the Band as a whole’ and for ‘characterizing the evidence as if it related to just one man, when even the information it described clearly indicated the presence of others in the region.’”¹³⁷ As stated in the 2025 ILO, “[t]he Court specifically cited evidence of Augustine’s baptism as an example of evidence properly attributable to the Band, highlighting documentation corroborating the Band’s claim that other children from Augustine’s village were baptized at Mission San Francisco Solano at the same time that he was.”¹³⁸ The Court also highlighted evidence of Augustine’s dwelling in Napa as “evidence that other ‘possible or confirmed Band ancestors [were] living in Napa in 1870’ and may have been working at a rancho approximately 11 miles north of the Vallejo Parcel.”¹³⁹

Consistent with the Court’s observations in the *Scotts Valley* opinion, the Department in the 2025 ILO concluded that it was “reasonable to attribute at least some of Augustine’s experiences in

¹³⁴ 2025 ILO, *supra* note 10, at 17–18.

¹³⁵ *Id.*

¹³⁶ *Id.* at 17 (citation omitted).

¹³⁷ *Id.* at 18 (alterations in original) (quoting *Scotts Valley I*, 633 F. Supp. 3d at 168).

¹³⁸ *Id.* (citing *Scotts Valley I*, 633 F. Supp. 3d at 168).

¹³⁹ *Scotts Valley I*, 633 F. Supp. 3d at 168 (alteration in original) (quoting 2019 ILO, *supra* note 4, at 14–15).

the North Bay region to the Band as a whole, especially his possible baptism at Mission San Francisco Solano in 1837 and his dwelling in Napa in 1870.”¹⁴⁰ In reaching that conclusion, the Department “expressly depart[ed] from the 2019 ILO, which [had] concluded that ‘Augustine’s varied and singular experiences,’ including ‘his possible baptism at Mission San Francisco Solano in 1837 . . . [and] his dwelling in Napa in 1870,’ [were] of limited evidentiary value in establishing the significant historical connections of [the] Band *in toto*.”¹⁴¹

d. *The Department’s Reconsideration of the 2019 ILO Based on Further Review of IGRA’s Policy Goals.*

Next, the Department in the 2025 ILO reconsidered the historical connection between the Band and the Parcel in light of IGRA’s policy goals.¹⁴² The Department did so in response to the *Scotts Valley* Court’s observation that the Department in the 2019 ILO had “failed to consider the fundamental remedial nature of the [IGRA].”¹⁴³ According to the Court, “the fundamental remedial nature of the restored lands exception and the Indian canon of construction” required the Department in the 2019 ILO to:

constru[e] the law liberally and interpret[] any ambiguous provision to the tribe’s benefit, especially when one considers all of the things the Band could have done with its land in the years that went by before the United States acquired the Sugar Bowl Rancheria for the Band in 1911, or after 1958, when the government stripped the Band of that reservation and the recognition it had to litigate to restore.¹⁴⁴

In the *Scotts Valley* opinion, the Court concluded that the 2019 ILO fell short of satisfying that requirement.¹⁴⁵

In response, the Department on remand “constru[ed] key terms in Part 292 in a way that reflect[ed] greater consideration of the policy behind the exception.”¹⁴⁶ Specifically, the Department adopted broad understandings of the terms “occupancy” and “vicinity” within Part 292’s definition of “significant historical connection.”¹⁴⁷ Upon doing so and reevaluating the evidence, the Department concluded that “the presence of the Band’s ancestors at Mission San Francisco Solano in Sonoma in the late 1830s and in Napa in the early 1870s demonstrate[d] occupancy in the vicinity of the Parcel.”¹⁴⁸

¹⁴⁰ 2025 ILO, *supra* note 10, at 17–18.

¹⁴¹ *Id.* at 18 (third and fifth alterations in original) (quoting 2019 ILO, *supra* note 4, at 17).

¹⁴² *Id.* at 18–23.

¹⁴³ Transcript of Bench Ruling at 4, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, No. 19-1544 (ABJ) (D.D.C. May 8, 2023); *see also Scotts Valley I*, 633 F. Supp. 3d at 156 (stating that “[t]he agency’s application of Part 292 to the Band’s request” in the 2019 ILO was “inconsistent with the policy underlying the IGRA”).

¹⁴⁴ *Scotts Valley I*, 633 F. Supp. 3d at 165–68.

¹⁴⁵ *Id.* at 168.

¹⁴⁶ 2025 ILO, *supra* note 10, at 19.

¹⁴⁷ *Id.* at 19–20 (citing 25 C.F.R. § 292.2).

¹⁴⁸ *Id.* at 20.

First, the Department explained why the presence of the Band's ancestors at Mission San Francisco Solano constituted occupancy. The Department noted that the term "occupancy" can be defined broadly to mean "the fact or condition of . . . residing in or on something"¹⁴⁹ and then explained:

Here, the Band has met this broad definition of occupancy through historical documentation of residency at Mission San Francisco Solano in Sonoma in the 1830s, the years leading up to the Vallejos' takeover of the Band's ancestral territory. . . . [T]he record suggests that Augustine was taken to the mission as a child, where, according to the Band's historian, he would have resided in a dormitory while receiving education in various trades, and for the reasons provided in the preceding section, that experience is attributable to the Band as a whole.¹⁵⁰

The Department similarly concluded that "Augustine's residency in Napa in the 1870s," where he lived in a house with other Indian workers, "is consistent with a broad understanding of the term ['occupancy']" and is likewise attributable to the Band as a whole.¹⁵¹

Next, the Department explained why the Band's presence at the mission and in Napa was "in the vicinity" of the Parcel.¹⁵² The Department wrote:

Mission San Francisco Solano is approximately seventeen miles from the Vallejo Parcel, and Napa is approximately eleven miles from the Parcel. Both fall within the bounds of what might be considered the vicinity of the Parcel, particularly if the term "vicinity" is interpreted broadly, in line with the *Scotts Valley* Court's directive to "constru[e] the law liberally" in furtherance of IGRA's policy goals.¹⁵³

The Department further explained that "[w]hat constitutes an area in the vicinity of or surrounding a parcel is relative, but '[i]n a sparsely settled region a person residing fifteen miles from a road might be regarded as being in the vicinity of it.'"¹⁵⁴ Consistent with that observation, the Department wrote:

Given the historically rural nature of the region, characterized by agricultural operations, it is reasonable to conclude that the area in the vicinity of the Vallejo Parcel extends as far north and west as Napa and Sonoma. That is especially true given that Augustine and other ancestors of the Band may have been laboring on large swaths of land located between Napa and the Parcel (on Rancho Tulucay)

¹⁴⁹ *Id.* (alteration in original) (quoting *Occupancy*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/occupancy> (last visited July 17, 2026)).

¹⁵⁰ *Id.* at 20–21 (citations omitted).

¹⁵¹ *Id.* at 21 (citations omitted).

¹⁵² *Id.* (quoting 25 C.F.R. § 292.2).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 22 (quoting *Vicinity*, BALLENTINE'S LAW DICTIONARY (3d ed. 1969) (citing *Sterling v. Carter*, 185 P. 11 (Kan. 1919))).

and Sonoma and the Parcel (on Rancho Petaluma) while living in those places. To the extent that the 2019 ILO suggested that only land within Rancho Suscol (the boundaries of which would have encompassed the Parcel) would qualify as in the vicinity of the Parcel, that warrants revision based on the broad interpretation of the term “vicinity” described above.¹⁵⁵

Finally, the Department explained why the evidence not only demonstrated occupancy in the vicinity of the Parcel but also supported a “natural inference” that the Band occupied the Parcel itself.¹⁵⁶ The Department explained that the Parcel “is located within Area 296, a fact that entitles the Band to a ‘favorable inference’ of occupancy”¹⁵⁷ (even though the 1851 Treaty “d[id] not specifically describe the land that its [tribal] signatories used, occupied, or purposed to cede”¹⁵⁸). The Department also stated that “Vallejo’s designation in the 1851 Treaty as a pick-up site for promised provisions and the subsequent collection of provisions at that site supports the inference” because the designation is “consistent with Royce’s inclusion of Vallejo within Area 296.”¹⁵⁹ Lastly, the Department stated that “the historical circumstances support the inference.”¹⁶⁰ The Department explained that, “[a]lthough no documentation links the Band’s ancestors specifically to Rancho Suscol (the boundaries of which would have encompassed the Parcel), it is reasonable to assume that the Band’s ancestors worked there after Vallejo acquired it in 1843 and used or occupied the Parcel in the process.”¹⁶¹ In reaching that conclusion, the Department expressly departed from the conclusion in the 2019 ILO that “an inference granting the presence of the Band’s ancestors on Ranch[o] Suscal ‘cannot serve as the basis to connect the Band with the Parcel itself.’”¹⁶²

Based on the reasoning above, the Department in the 2025 ILO determined that the Band had demonstrated a significant historical connection to the Vallejo Parcel, and the Department acquired the Parcel in trust for the Band. The Department has now reconsidered and reversed that conclusion after reviewing the administrative records for the 2019 ILO and 2025 ILO, the June 2025 Submissions, and the Band’s response to the June 2025 Submissions. What follows is an explanation of the Department’s review on reconsideration.

¹⁵⁵ *Id.* (citations omitted). The Department also cited precedent indicating that evidence of occupancy 15 to 20 miles from a parcel was sufficiently “in the vicinity” to help establish the requisite historical connection. *Id.* at 21–22 (discussing a 2013 record of decision for the Cowlitz Indian Tribe and a 2007 Indian Lands Opinion for the Mooretown Rancheria of Maidu Indians of California).

¹⁵⁶ *Id.* at 22 (quoting 2019 ILO, *supra* note 4, at 18).

¹⁵⁷ *Id.* (quoting 2019 ILO, *supra* note 4, at 10).

¹⁵⁸ *Id.* at 23 (alterations in original) (quoting Brief of the Yocha Dehe Wintun Nation as *Amicus Curiae* in Support of the Federal Defendants at 11, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-1544 (ABJ))).

¹⁵⁹ *Id.* (citation omitted).

¹⁶⁰ *Id.*

¹⁶¹ *Id.* (citation omitted).

¹⁶² *Id.* (quoting 2019 ILO, *supra* note 4, at 18).

e. *The Department's Reconsideration of the 2025 ILO Based on Additional Evidence and Legal Analysis.*

On reconsideration, the Department received submissions from numerous interested parties, including federally recognized tribes,¹⁶³ state and local governments,¹⁶⁴ individual Band members,¹⁶⁵ and a former congressman.¹⁶⁶ (These are the June 2025 Submissions.) The Department also received the Band's response to the June 2025 Submissions on May 1, 2026. The June 2025 Submissions, the Band's response, and the Department's analysis on reconsideration are discussed in turn below.

i. *June 2025 Submissions.*

Nearly all of the interested parties that submitted materials on reconsideration oppose the Band's request.¹⁶⁷ They do so for a number of reasons; however, as a preliminary matter, several of the issues raised by the parties in their submissions do not fall within the scope of the Department's reconsideration. For example, complaints about the Department's Environmental Assessment and obligations under the National Historic Preservation Act do not fall within the scope. The Department's reconsideration is solely focused on "whether the Vallejo Site qualifies as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. Part 292."¹⁶⁸

Comments in the June 2025 Submissions relating to the "modern connections" and "temporal connection" requirements in § 292.12 are discussed in preceding sections.¹⁶⁹ Comments relating to Part 292 "significant historical connection" requirement are discussed below.

¹⁶³ See, e.g., Letter and accompanying materials from Andy Mejia, Chairperson, Lytton Rancheria of Cal., to Doug Burgum, Sec'y of the Interior (Apr. 8, 2025); Letter and accompanying materials from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to Scott J. Davis, Senior Advisor to the Sec'y of the Interior (May 7, 2025); Letter from Maria Elliott, Vice Chairperson, Cloverdale Rancheria of Pomo Indians of Cal., to Scott Davis, Acting Assistant Sec'y – Indian Affs., U.S. Dep't of the Interior (June 4, 2025); Letter from Chris Wright, Chairman, Dry Creek Rancheria Band of Pomo Indians, to Scott Davis, Acting Assistant Sec'y – Indian Affs., U.S. Dep't of the Interior (June 5, 2025); Letter from Charlie Wright, Chairman, Kletsel Dehe Wintun Nation, to Dir., Off. of Indian Gaming, U.S. Dep't of the Interior (June 12, 2025) [hereinafter "Kletsel Dehe Letter"]; Letter and accompanying materials from John Williams, Tribal Chairman, United Auburn Indian Cmty. of the Auburn Rancheria, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep't of the Interior (June 13, 2025); Letter and accompanying materials from Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep't of the Interior (June 13, 2025).

¹⁶⁴ See, e.g., Letter and accompanying materials from Lee Axelrad, Deputy Gen. Couns., Off. of Cnty. Couns., Solano Cnty., to Dir., Off. of Indian Gaming, U.S. Dep't of the Interior (May 28, 2025); Letter from Andrew Murray, City Manager, City of Vallejo, to Dir., Off. of Indian Gaming, U.S. Dep't of the Interior (May 29, 2025); Letter from Matthew Lee, Senior Advisor for Tribal Negot. & Deputy Legal Affs. Sec'y, Off. of the Governor (May 30, 2025).

¹⁶⁵ Tribal Member Statement on Scotts Valley Band of Pomo Indians (undated) [hereinafter "Tribal Member Statement"].

¹⁶⁶ Letter from Doug LaMalfa, Member, House of Representatives, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep't of the Interior (June 13, 2025).

¹⁶⁷ But see Tribal Member Statement, *supra* note 165 (writing in support of the Band's request and sharing information about the Band's experience during the second half of the twentieth century and today).

¹⁶⁸ March 2025 Letter, *supra* note 14, at 1.

¹⁶⁹ *Supra* pages 6–9.

First, the interested parties that oppose the Band's request argue that the Department should not interpret IGRA in a way that advantages the Band if doing so disadvantages other tribes. The Federated Indians of Graton Rancheria, California ("FIGR"), a federally recognized tribe that opposes the Band's request, states that "IGRA is designed to treat restored and non-restored tribes equally"¹⁷⁰ and that "[i]t would be antithetical to . . . the plain meaning of IGRA's statutory language to benefit one tribe to the detriment of another."¹⁷¹

FIGR asserts that the proposed gaming operation on the Parcel would have a detrimental impact on its gaming operation and, by extension, on its ability to provide services for its tribal members.¹⁷² The Lytton Rancheria of California ("Lytton"), another federally recognized tribe that opposes the Band's request, similarly states that its gaming operation "almost exclusively draws its customers from the San Francisco Bay Area" and that it would "see steep cuts with the approval of Scotts Valley's project."¹⁷³ UAIC likewise asserts that the Band's proposed gaming operation "threatens UAIC's good-faith investments in legally compliant, on-reservation gaming."¹⁷⁴

The tribes that oppose the Band's request also allege harm to their cultural interests. For example, the Kletsel Dehe Wintun Nation of the Cortina Rancheria ("Kletsel Dehe"), a Patwin tribe that does not operate a gaming facility,¹⁷⁵ states that the Parcel "is surrounded by documented Patwin villages and sacred places, including one directly impacted by [the Band's] project."¹⁷⁶ Additionally, FIGR asserts that "[i]t is wrong" for the Band to claim that the children baptized at Mission San Francisco Solano in 1837 (which FIGR refers to as the "Baptismal Cohort") include Band ancestors given evidence indicating that those children "are from the same Southern Pomo communities with which FIGR's ancestors . . . are culturally affiliated."¹⁷⁷

The interested parties that oppose the Band's request dispute several claims made by the Band in support of its request. As noted above, FIGR contends that the 1837 Baptismal Cohort did not

¹⁷⁰ Letter from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to Scott J. Davis, Senior Advisor to the Sec'y of the Interior 2 (May 7, 2025); *see also* Expert Comments by Jonodev Chaudhuri, Exhibit A, Letter from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to Wizipan Garriott, Principal Deputy Assistant Sec'y – Indian Affs., U.S. Dep't of the Interior 4 (Jan. 6, 2025) [hereinafter "Chaudhuri Comments"] ("[T]he restored lands exception has little to do with atoning for the awful history of United States law and policy against tribal nations and everything to do with ensuring that restored and non-restored tribes are treated equally, so far as IGRA applies.").

¹⁷¹ Chaudhuri Comments, *supra* note 170, at 1; *id.* at 5–6 (asserting that "the Indian canon is inapplicable when 'all tribal interests are not aligned'" (quoting *Rancheria v. Jewell*, 776 F.3d 706, 713 (9th Cir. 2015))).

¹⁷² Letter from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to Lawrence Roberts, Acting Assistant Sec'y – Indian Affs., U.S. Dep't of the Interior 8 (Nov. 10, 2016) ("A new mega-casino located a short distance from our reservation could jeopardize our ability to pay off our debt and provide services to our nearly 1400 tribal citizens.").

¹⁷³ Letter from Andy Mejia, Chairperson, Lytton Rancheria of California, to Wizipan Garriott, Principal Deputy Assistant Sec'y – Indian Affs., U.S. Dep't of the Interior 2 (Dec. 1, 2024).

¹⁷⁴ Letter from John Williams, Tribal Chairman, United Auburn Indian Cmty. of the Auburn Rancheria, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep't of the Interior 1 (June 13, 2025).

¹⁷⁵ UAIC Letter, *supra* note 43, at 5.

¹⁷⁶ Kletsel Dehe Letter, *supra* note 163, at 3.

¹⁷⁷ Supplemental Response to the Scotts Valley Band's Request for a Restored Lands Opinion by the Federated Indians of Graton Rancheria 2 (Sept. 4, 2024) [hereinafter "FIGR's Supplemental Response"].

include Band ancestors but consisted of “Southern Pomo children from the Healdsburg region of Sonoma County” with “distinctively Southern Pomo names” and “family members that are directly traceable to specific Southern Pomo villages.”¹⁷⁸ Consistent with that position, FIGR characterizes one of the Band’s claimed connections to the Baptismal Cohort as “rank speculation, not a reasoned conclusion based on an analysis of the historical record.”¹⁷⁹ Yocha Dehe similarly challenges the Band’s claimed connection to the Baptismal Cohort. The tribe asserts that Salvador Vallejo did not occupy Rancho Lup-Yomi near Clear Lake until 1843, making it unlikely that Augustine and other Band ancestors were brought to Mission San Francisco Solano from Clear Lake before then.¹⁸⁰

Yocha Dehe also challenges the Band’s claimed connection to Cayetano Juarez and Rancho Tulucay, asserting that “the factual record overwhelmingly demonstrates that the Indian Rancheria at Rancho Tulucay was *Patwin*, not Pomo.”¹⁸¹ According to Jennifer Whiteman, an anthropologist commissioned by Yocha Dehe, “primary sources document a Patwin Village at Tulucay whose residents dominated the work force at Cayetano Juarez’s Rancho Tulucay beginning in 1840 and still present in 1877.”¹⁸² Consistent with that assertion, Whiteman highlights documentation indicating that “[m]embers of the Juarez family spoke both Spanish and Patwin.”¹⁸³

More generally, Whiteman disputes the Band’s contention that Clear Lake Pomo replaced Patwin people who had been allegedly “swept away” from their traditional territory in the San Pablo Bay region following a smallpox epidemic in 1837.¹⁸⁴ She argues that “[t]he labor force for [Mariano] Vallejo’s Ranchos in Sonoma and Petaluma were primarily supplied by Francisco Solano (Patwin) and Camilo (Coast Miwok),” not Clear Lake Indians.¹⁸⁵ Moreover, she argues, Patwin use and occupancy of the San Pablo Bay region continued after Solano’s death.¹⁸⁶

The parties that oppose the Band’s request also dispute the value of the Band’s evidence relating to Augustine and other Clear Lake Indians who labored in the North Bay region. Yocha Dehe argues that, even assuming that the Augustine listed in the 1870 census data for Napa City Township was the same individual as the Band’s ancestor by that name (an assumption that

¹⁷⁸ *Id.* at 25.

¹⁷⁹ *Id.* at 7.

¹⁸⁰ Letter from Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation, to Wizipan Garriott, Principal Deputy Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior 18–19 (Nov. 12, 2024) [hereinafter “Yocha Dehe Letter”]; see also Jennifer Whiteman, *Supplemental Report on the Ethnohistory of North San Pablo Bay, Vallejo, and Vicinity* 40 (2024) [hereinafter “Whiteman Supplemental Report”].

¹⁸¹ Yocha Dehe Letter, *supra* note 180, at 30 (emphasis in original).

¹⁸² Whiteman Supplemental Report, *supra* note 180, at 58.

¹⁸³ *Id.*; see also *id.* at 31 (discussing the documentation).

¹⁸⁴ *Id.* at 24 (citing 2016 Hurtado Report, *supra* note 80, at 39); see also FIGR’s Supplemental Response, *supra* note 177, at 9 (arguing that Hurtado’s contention that “Indians from Clear Lake like Augustine provided an ample source of replacement labor” following the smallpox epidemic is “factually incorrect” (citation and internal quotation marks omitted)).

¹⁸⁵ Whiteman Supplemental Report, *supra* note 180, at 58.

¹⁸⁶ *Id.* at 22 (discussing the area around Rancho Suisun in particular).

Yocha Dehe does not concede¹⁸⁷), Augustine would have been present in Napa “individually, without his Scotts Valley kin,” and “*there would be no basis to conclude that the 1870 census demonstrates Scotts Valley use or occupancy of the Vallejo Property.*”¹⁸⁸

Other interested parties similarly dismiss attribution of evidence relating to Augustine to the Band as a whole. FIGR asserts that the Band’s evidence of “sporadic, temporary labor in a geographic area by one or more individual members of a tribe cannot by any stretch constitute occupancy of that area by a Tribe.”¹⁸⁹ Kletsel Dehe likewise distinguishes evidence relating to a “single ancestor” (namely, Augustine) from “evidence of tribal presence,”¹⁹⁰ as do UAIC¹⁹¹ and the State of California.¹⁹²

More generally, Dr. Peter A. Nelson, an anthropologist commissioned by FIGR, argues that the Band “cannot carve out a significant historical connection to [the San Pablo Bay region] simply because historically they have economic ties to this area through performing seasonal, migrant labor in Napa County during temporary periods of dispossession and exploitation.”¹⁹³ On a related note, Whiteman emphasizes the time-limited nature of the Clear Lake Indians’ work in the North Bay region. By about 1870, she writes, “SVBI ancestors and other Clear Lake Indians returned to the Clear Lake area because conditions had improved,”¹⁹⁴ “slave raiding had abated,”¹⁹⁵ and Chinese labor in the area “became prevalent.”¹⁹⁶

The parties that oppose the Band’s request also discuss the dearth of evidence linking the Band with the Parcel and Rancho Suscol, more generally. Referring to the Band’s ancestors, Yocha Dehe states that, “while some men sought individual wage employment in the Napa and Sonoma Valleys during certain times of year, there is no mention of similar agricultural work in or around

¹⁸⁷ See Yocha Dehe Letter, *supra* note 180, at 26–28; see also Whiteman Supplemental Report, *supra* note 180, at 33 (stating that “[t]here does not appear to be any evidence that the ‘Augustine’ in the 1870 census is the same as the ‘Chief Augustine’ who is a Scotts Valley ancestor” and that “‘Augustine’ was an extremely common name in California during the relevant time period”).

¹⁸⁸ Yocha Dehe Letter, *supra* note 180, at 28 (emphasis in original); see also Whiteman Supplemental Report, *supra* note 180, at 34 (stating that “[t]here is no documented evidence that the other residents of Dwelling #720 were Chief Augustine’s kin or other Scotts Valley ancestors”).

¹⁸⁹ Letter from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to John Tahsuda III, Principal Deputy Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior 5 (Feb. 19, 2019).

¹⁹⁰ Kletsel Dehe Letter, *supra* note 163, at 2.

¹⁹¹ UAIC Letter, *supra* note 43, at 6 (distinguishing between “the transitory presence of certain alleged tribal members in Sonoma” and “tribal occupancy in Vallejo” (emphasis in original)).

¹⁹² Letter from Matthew Lee, Senior Advisor for Tribal Negot. & Deputy Legal Affs. Sec’y. Off. of the Governor 3 (May 30, 2025) (distinguishing between the “inconsistent, if not transitory, presence by specific individuals, late in history,” and “a tribe’s exercise of collective sovereignty over its homeland” (citation and internal quotation marks omitted)).

¹⁹³ Response to Albert L. Hurtado’s Document and Albert L. Hurtado and Dorothea Theodoratus’s Report, by Peter A. Nelson, Exhibit B, Letter from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to John Tahsuda III, Principal Deputy Assistant Sec’y – Indian Affs., U.S. Dep’t of the Interior 5 (Feb. 19, 2019) [hereinafter “Nelson Response”].

¹⁹⁴ Whiteman Supplemental Report, *supra* note 180, at 50 (quoting Hurtado Supplemental Report, *supra* note 71, at 3).

¹⁹⁵ *Id.* (quoting Hurtado Supplemental Report, *supra* note 71, at 3).

¹⁹⁶ *Id.* at 55.

Vallejo or Solano County.”¹⁹⁷ Whiteman likewise observes that, while “172 Indians from the Clear Lake area . . . were forced to build adobe houses in Sonoma” in 1848, “[t]here does not appear to be any evidence, in Hurtado’s (2018) report or elsewhere, that these 172 individuals were forced to labor at the proposed Project Site.”¹⁹⁸ Yocha Dehe further explains that “by 1870 the Project Site was a small family farm owned and worked by non-Indian labor”¹⁹⁹ and that, before that, Rancho Suscol had been set aside as a “‘Rancho Nacional,’ . . . for *military* use, and therefore distinct from the other ranchos controlled by the Vallejos.”²⁰⁰ According to Whiteman, “there are many references that the laborers at Rancho Suscol were Mexican soldiers” but “no specific mention of Indian labor at Rancho Suscol in the primary documentation,”²⁰¹ and “[t]here does not appear to be any evidence that cattle were driven back and forth between Rancho Suscol and other ranchos.”²⁰²

Finally, the parties that oppose the Band’s request challenge the reasonableness of the inference linking the Band with the Parcel based on the Parcel’s location within Area 296. Dr. Stephen Dow Beckham, a historian commissioned by UAIC, explains that the 1851 Treaty “failed to describe the ceded lands,” only the reservation to be set aside at Clear Lake.²⁰³ According to Beckham, Charles Royce’s description of the ceded lands in his map amounted to a “guess.”²⁰⁴ Beckham points out that none of the tribes residing along the north side of San Francisco and San Pablo bays entered into treaty negotiations with the United States, stating:

Article 3 [of the 1851 Treaty] provided no geographical description either of the cession of the Clear Lake Basin, or any territory in the Russian River Valley, and certainly no cession of the hundreds of thousands of acres extending south nearly 100 miles to San Pablo and San Francisco bays. The Lake Miwok, Hill Patwin, Southern Patwin; Coast Miwok, and the Karkin, the tribes who lived between the Pomo of Clear Lake and San Francisco Bay, did not attend the council of August 20, 1851, nor did they participate in any treaty conferences with Commissioner Redick McKee.²⁰⁵

¹⁹⁷ Letter from Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep’t of the Interior 7 (June 13, 2025).

¹⁹⁸ Whiteman Supplemental Report, *supra* note 180, at 42.

¹⁹⁹ Letter from Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep’t of the Interior 4 (June 13, 2025); *see also* Yocha Dehe Letter, *supra* note 180, at 28 (stating that, by 1870, the Vallejo Parcel had been carved out of Rancho Suscol and divided into much smaller parcels, with the western part owned by John Carrington and the eastern part owned by James Hunter, and that “there is no evidence that either Carrington or Hunter used Indian labor to work the land”).

²⁰⁰ Yocha Dehe Letter, *supra* note 180, at 22 (emphasis in original).

²⁰¹ Whiteman Supplemental Report, *supra* note 180, at 26–27.

²⁰² *Id.* at 28.

²⁰³ Stephen D. Beckham, *The Quest of the Scotts Valley Pomo for a Casino Site: The Absence of Its “Significant Historical Connection” at Vallejo, Solano County, California* 3 (2025) [hereinafter “Beckham Supplemental Report”].

²⁰⁴ *Id.* at 4.

²⁰⁵ *Id.* at 15 (emphasis omitted); *see also id.* at 36, 39 (depicting maps showing the ancestral territory of the Patwin and Coast Miwok peoples, respectively, as well as that of the Karkin people).

Yocha Dehe similarly notes the absence of any description of the ceded lands in the 1851 Treaty, as well as the lack of information regarding the boundaries of Area 296.²⁰⁶ Additionally, Yocha Dehe notes that, although Royce's maps were convenient for "identify[ing] the areas in question in proceedings before the Indian Claims Commission," they are not "binding authority."²⁰⁷

ii. *The Band's Response.*

In response to the June 2025 Submissions, the Band submitted a memorandum in support of affirmance of the 2025 ILO,²⁰⁸ as well as five expert reports.²⁰⁹ Among the arguments that the Band makes, the Band contends that the interested parties opposing its request "do not identify any clear legal error, evidentiary deficiency, or analytical flaw sufficient to justify reversal."²¹⁰ According to the Band, the opponents "challenge particular inferences while leaving untouched the larger historical pattern the Department found persuasive," and "[t]hat is insufficient to displace a reasoned agency determination grounded in the record as a whole."²¹¹ The Band's submission of five reports, providing multiple perspectives on the Band's claim to a "significant historical connection to the land,"²¹² reflects its position that the evidence, taken as a whole, demonstrates a longstanding pattern of contact between its ancestors at Clear Lake and the North Bay region sufficient to establish the requisite connection.

Most of the Band's claims and evidence relate to "historical developments that occurred after contact with Europeans and Euro-Americans."²¹³ However, the Band and the experts also discuss evidence that long predates that contact. In particular, Dr. Brian I. Daniels, an anthropologist commissioned by the Band, discusses indirect evidence of "aboriginal trail routes between Clear Lake and Vallejo" that date back to antiquity, including obsidian found in Solano County that originated in Napa Valley and across the Clear Lake region.²¹⁴ According to Daniels, "[t]hese finds point toward the fact that regular travel to and from the Pomo tribelets areas around Clear Lake and its environs for purposes of trade was an historical fact in deep antiquity up to the historic period."²¹⁵ He acknowledges that the "[a]rchaeological evidence cannot confirm the historical events discussed by [Hurtado in a separate report], but it can provide the necessary

²⁰⁶ Yocha Dehe Letter, *supra* note 180, at 34–35.

²⁰⁷ *Id.* at 36 (quoting *Devils Lake Sioux Tribe v. North Dakota*, 917 F.2d 1049, 1052 n.2 (8th Cir. 1990) (internal quotation marks omitted)).

²⁰⁸ Scotts Valley Memorandum, *supra* note 49.

²⁰⁹ Report by Rose M. Beebe & Robert M. Senkewicz (undated) [hereinafter, "Beebe & Senkewicz Report"]; Comment on Albert L. Hurtado's Analysis of Connections between Clear Lake and Vallejo by the Ancestors of Scotts Valley Band of Pomo Indians by Brian I. Daniels (undated) [hereinafter "Daniels Report"]; Response to Reports by Yocha Dehe, Kletsel Dehe, United Auburn Indian Cmty., and Federated Indians of Graton Rancheria by Albert L. Hurtado (undated) [hereinafter "Hurtado Response"]; John R. Johnson, *Contributions to the Ethnohistory of the Scotts Valley Band of Pomo Indians* (2026) [hereinafter "Johnson Report"]; Tanis C. Thorne, *Time of Some Choice: The Scotts Valley Ancestors' Adaptation in 19th Century California* (2026) [hereinafter, "Thorne Report"].

²¹⁰ Scotts Valley Memorandum, *supra* note 49, at 47.

²¹¹ *Id.* at 46; *see also id.* at 37 (stating that the Department in the 2025 ILO resolved the historical questions at issue "by applying a totality-of-the-evidence framework consistent with IGRA's remedial purpose").

²¹² 25 C.F.R. § 292.12(b).

²¹³ Hurtado Response, *supra* note 209, at 12–13.

²¹⁴ Daniels Report, *supra* note 209, at 3–4.

²¹⁵ *Id.* at 4.

context for informed analysis and interpretation about the significant historical connections he analyzes.”²¹⁶

Hurtado and the Band’s other experts otherwise focus on developments in the 1800s to demonstrate the requisite connection. Their reports discuss the “intertwined ecological, economic, and social factors” that “disrupted the lives of North Bay Natives”²¹⁷ and created the conditions for increased interaction between Clear Lake Indians and the North Bay region. Dr. John R. Johnson, an anthropologist commissioned by the Band, explains that, as early as 1820, “territories inhabited by original Indigenous groups [the Huchiun-Aguasto, Napa, and Carquin/Karkin communities²¹⁸] became vacated by [the groups’] incorporation into Bay Area missions,”²¹⁹ which, in turn, “opened up the lands to be distributed as grants during the Mexican Rancho Period” and the “resettlement of California Indians from a variety of tribal backgrounds to find work there as agricultural laborers.”²²⁰

According to the Band’s experts, a smallpox epidemic then swept through the region between 1837 and 1839, devastating the local Patwin population.²²¹ Indians were then resettled from elsewhere as the region’s ranching economy expanded and “local labor supplies diminished.”²²² Dr. Tanis C. Thorne, a historian commissioned by the Band, writes that “[t]he Clear Lake people filled the vacuum as laborers left by the Patwin and Wappo, whose experiences were cataclysmic.”²²³ Johnson further explains that, as Pomo peoples from the Clear Lake area migrated to the Bay Area to find work on ranchos, “[i]ntertribal marriages occurred as a result of these increased contacts,” and “Scotts Valley Pomo genealogies . . . include[] ancestors who were from Coast Miwok and Wappo groups, including a number who were said to be ‘Napa Indians.’”²²⁴

Beyond recounting the historical circumstances summarized above, the Band and the experts also respond to “the discrete historical debates emphasized by opponents,” relating to specific, contested facts.²²⁵ For example, in response to the opposing parties’ claims that the 1837

²¹⁶ *Id.*

²¹⁷ Thorne Report, *supra* note 209, at 58–59.

²¹⁸ Scotts Valley Memorandum, *supra* note 49, at 39 (citing Johnson Report, *supra* note 209, at 5–6).

²¹⁹ Johnson Report, *supra* note 209, at 5; *see also* Hurtado Response, *supra* note 209, at 29 (stating that, “[b]y the early 1830s, . . . all tribal lands within 30 miles to the north San Francisco Bay . . . were empty of villages” (citation and internal quotation marks omitted)).

²²⁰ Johnson Report, *supra* note 209, at 5.

²²¹ Scotts Valley Memorandum, *supra* note 49, app. A at 7 (citing Thorne Report, *supra* note 209, at 51 (citing 2016 Hurtado Report, *supra* note 80, at 39)).

²²² Scotts Valley Memorandum, *supra* note 49, at 38 (citing Hurtado Response, *supra* note 209, at 7–8, 15–16, 41); *see also* Hurtado Response, *supra* note 209, at 39 (“If the extensive cattle ranching industry that was the foundation of the Mexican California economy was to persist, dead, sick, and runaway workers had to be replaced.”); Thorne Report, *supra* note 209, at 34 (“There are multiple examples of large and small groups being taken voluntary and involuntarily to work in places distant from Clear Lake.”).

²²³ Thorne Report, *supra* note 209, at 65; *see also id.* at 74 (“It is highly dubious local Patwin are supplying all the labor to the ranchos multiplying in their territory from 1835 to 1845.”); *id.* at 3 (“The SVPBI ancestors were the first of the lake to grow crops, herd animals, and build adobe houses, skills they could market as a free, seasonal labor force on farms and ranches southward in Napa, Solano, and Sonoma Counties.”).

²²⁴ Johnson Report, *supra* note 209, at 6 (citation omitted).

²²⁵ Scotts Valley Memorandum, *supra* note 49, at 36.

Baptismal Cohort did not include Augustine (among other Band ancestors), the Band maintains that the baptism of Augustine and other Band ancestors at the mission is nevertheless “plausible.”²²⁶ The Band disputes Yocha Dehe’s claim that, because Salvador Vallejo did not establish Rancho Lup-Yomi near Clear Lake until after 1840, Augustine could not have been taken to Mission San Francisco Solano and baptized before then. Thorne writes that, although “[t]he timing of Salvador Vallejo’s first attack on Clear Lake and the acquisition of [the Band’s] ancestors as captives is a hotly contested point[,] . . . [t]here is much evidence that Vallejo arrived in 1836,” even if he “probably did not begin stocking his Lup-Yomi Ranch . . . until 1840–41.”²²⁷ Dr. Rose M. Beebe, a professor of Spanish literature, and Dr. Robert M. Senkewicz, a historian, both commissioned by the Band, similarly mark the time of Vallejo’s arrival at Clear Lake as the mid-1830s.²²⁸

Additionally, the Band disputes FIGR’s claim that Augustine, who was Eastern Pomo,²²⁹ could not have been baptized at the mission because the relevant historical documentation identifies the Baptismal Cohort as Southern Pomo.²³⁰ Accordingly to the Band, the “ethnic designation” associated with Agustín’s name in the baptismal record—“Cainamero”—was used to refer “to people speaking Pomoan languages,” not “specific[ally] to the Southern Pomo.”²³¹ Hurtado also notes that an “[a]nalysis of the Mission Solano records reveals that during its entire history only five Agustíns were baptized” and that “*the only possible match for Chief Augustine at Mission Solano is the Agustín baptized in 1837.*”²³² At the same time, both he and Johnson concede that “[w]hether evidence of a prior baptism indicates that Augustine was indeed that six year-old “Cainamero” (Pomo) boy christened ‘Agustín’ in 1837 at Mission San Francisco Solano cannot be answered definitively.”²³³ Johnson states that another “possibility is that he could have been baptized later, after St. Turibius was established in 1867” at Clear Lake.²³⁴ Ultimately, the Band argues that “Scotts Valley’s showing does not . . . depend on proving one exact baptismal match” and that “Augustine’s North Bay connection exists apart from the baptismal record itself,” for

²²⁶ *Id.* at 46.

²²⁷ Thorne Report, *supra* note 209, at 23; *see also* Hurtado Response, *supra* note 209, at 23 (“In 1836 Salvador first saw Lup-Yomi . . .”).

²²⁸ Beebe & Senkewicz Report, *supra* note 209, at 4 (stating that, in 1835, “Salvador Vallejo led a group up to Clear Lake in retaliation for raids on Mexican ranchos that had been occurring” and that “Vallejo returned to Sonoma with a large number of Native prisoners”).

²²⁹ *See, e.g.*, Hurtado Response, *supra* note 209, at 46 (“Augustine was born c. 1832 in the Kulanapo village of Bohanapwene, an Eastern Pomo-speaking group . . .” (quoting 2018 Hurtado Report, *supra* note 72, at 2–3)).

²³⁰ *See* FIGR’s Supplemental Response, *supra* note 177, at 14 map 17 (highlighting the respective locations of Southern Pomo and Eastern Pomo communities).

²³¹ Johnson Report, *supra* note 209, at 24; *see also* Scotts Valley Memorandum, *supra* note 49, app. A at 12 (citing Johnson Report, *supra* note 209, at 24).

²³² Hurtado Response, *supra* note 209, at 47 (emphasis in original).

²³³ Johnson Report, *supra* note 209, at 15 (emphasis in original); *see also* Hurtado Response, *supra* note 209, at 41 (stating that “it is important to understand that there [were] many Indians who were baptized in missions whose ethnic identity is completely unknown” and that “[t]hese people could have come from anywhere, including Clear Lake”).

²³⁴ Johnson Report, *supra* note 209, at 15.

example, through his “work[] on Salvador Vallejo’s ranch in the vicinity of Napa” and “continued return[] to the Napa area as late as 1870.”²³⁵

In regard to Augustine’s work in the North Bay region (and the work of the Band’s ancestors there, more generally), Thorne explains that “[t]here is only one piece of direct evidence that proves that Augustine, the progenitor of the Scotts Valley band, worked in the North Bay: The 1870 Census places him near the Cayetano Juarez rancho in the Napa Valley.”²³⁶ Nevertheless, she asserts, “there is a great deal of circumstantial evidence that for many years he served as a labor broker in the North Bay.”²³⁷ She criticizes what she describes as the opposing parties’ “sweeping denial of [the Band’s] ancestors’ work force participation in the Napa, Sonoma, and Solano regions” and asserts that “[c]onsiderable evidence now exists on this subject from oral testimony, anthropological sources, census records, newspapers, eyewitness accounts, and numerous secondary sources.”²³⁸ “While not definitely proving a Clear Lake presence at Suscol in the mid-nineteenth century,” she states, “more recent evidence proves [the Band’s] work on farms and ranches in Napa and Sonoma in the second half of the nineteenth century.”²³⁹

Thorne highlights several examples of interactions between Clear Lake Indians and the North Bay region.²⁴⁰ She discusses, for example, “new evidence” that Salvador Vallejo took Clear Lake people captive in 1841 to harvest crops in Napa Valley because “there weren’t enough Napa Natives to do it.”²⁴¹ She discusses the historical memoir of a man named William Heath Davis who, in his memoir, wrote that “[t]o the north of the bay of San Francisco, wild Indians, from the Clear Lake country, assisted in farm work” in the 1840s.²⁴² She mentions other primary sources indicating that “east Pomo Indians at Big Valley . . . [i]n the springtime and harvest” went “down into Napa and Sonoma valleys, and hire[d] themselves, at good wages to farmers there” in the 1850s²⁴³ and that “hundreds of Indians from the north would come to Napa and camp with their families about the town” in the late 1850s and early 1860s.²⁴⁴ She identifies a man named William Benson as a “Clear Lake Pomo man” who worked for Salvador Vallejo and was a “resident of Sonoma.”²⁴⁵ Additionally, she writes of a gang that “tried to cross the Suscol ferry to attack the Indians at Mariano Vallejo’s Suscol Ranch” to avenge the killings of Rancho Lup-

²³⁵ Scotts Valley Memorandum, *supra* note 49, at 51–52; *see also id.* at 45 (stating that Johnson “places Augustine—a principal Scotts Valley ancestor—in the Vallejo ranching system as head vaquero on repeated cattle drives between Sonoma and Rancho Lup-Yomi during the 1840s” (citing Johnson Report, *supra* note 209, at 9–10)).

²³⁶ Thorne Report, *supra* note 209, at 49.

²³⁷ *Id.*

²³⁸ *Id.* at 78.

²³⁹ *Id.*

²⁴⁰ *See generally id.* at 39–41 (“Table 2: Clear Lake Labor Participation”); *id.* at 29–32 (discussing additional instances of contact between Clear Lake Indians and the North Bay region).

²⁴¹ *Id.* at 24 (citation omitted).

²⁴² *Id.* at 25.

²⁴³ *Id.* at 39 (emphasis omitted); *see also id.* at 24 (discussing a newspaperman who, at the time of the 1851 Treaty, noted that “Big Valley chiefs . . . had been working on southern ranches a decade before the 1851 Treaty”).

²⁴⁴ *Id.* at 41 (emphasis omitted); *see also id.* at 40 (“The testimony of the early settlers of Napa and Sonoma Valleys is that large numbers of the Lake Indians would come down every season and engage in work Many of the adobe houses of old Sonoma were built by the Indians, although the whole valley around the place was full of natives.” (emphasis omitted) (quoting Palmer, *supra* note 70, at 25–26)).

²⁴⁵ *Id.* at 32–33.

Yomi's owners by Clear Lake Indians, asking rhetorically, "Why would [the gang] attack . . . southern ranches unless it was known that there were Clear Lake workers there?"²⁴⁶

In response to the opposing parties' arguments that the type of evidence on which the Band relies is insufficient to connect the Band with the Parcel, the Band notes that 25 C.F.R. § 292.2 "expressly permits a tribe to establish a significant historical connection through 'villages, burial grounds, occupancy or subsistence use in the vicinity of the land,'" not only through "proof of a permanent ancestral village, fixed residential settlement, or continuous parcel-specific habitation."²⁴⁷ According to the Band, "patterns of travel beyond fixed village sites—whether for labor, trade, ceremony, or subsistence—are part of the relevant historical footprint for assessing both occupancy and vicinity."²⁴⁸

Hurtado responds to the opponents' arguments by asserting that "since the Vallejos used [the Band's] ancestors to work on their other properties it is reasonable to assume that Mariano Vallejo employed them on Suscol."²⁴⁹ In response to Whiteman's assertion that "Rancho Suscol 'was used for military and government purposes' and that 'Mexican soldiers, not Indians, were primarily responsible for the livestock' there,"²⁵⁰ he retorts that "[Mariano] Vallejo and his son-in-law John Frisbie (who bought the property) used the land as their own" into the 1860s, until a federal court described the ranch's purpose and rejected Vallejo's claim to it.²⁵¹

Finally, the Band and the experts respond to the opposing parties' arguments questioning the evidentiary value of the Parcel's location within Area 296. Hurtado contends that "Royce's map was not a wrong guess, but a correct assessment of the agents' understanding of what they had done when they negotiated the treaties."²⁵² That is, he asserts that Area 296 is an accurate depiction of what Redick McKee and the other federal agents understood to be the territory ceded in the 1851 Treaty. According to Hurtado, even though "it is true that Patwin, Costanoan, Wappo, and Coast Miwok groups did not formally assent to the land cession,"²⁵³ McKee "saw no need to negotiate with the smaller number (as he saw it) of Indians 'around the bay,'" in part because he believed that "the Indian living in the North Bay region had already been legally dispossessed under Mexican law" and in part because he believed "there were only a few hundred Native scattered over the North Bay region," all destined for removal to the Clear Lake reservation described in the 1851 Treaty (Area 295).²⁵⁴

The Band and the experts also challenge the opponents' assertion that, as the Band put it, "Pomo signatories could not have ceded lands historically associated with Patwin peoples."²⁵⁵

²⁴⁶ *Id.* at 27 (citation omitted).

²⁴⁷ Scotts Valley Memorandum, *supra* note 49, at 53–54.

²⁴⁸ *Id.* at 54.

²⁴⁹ Hurtado Response, *supra* note 209, at 92.

²⁵⁰ *Id.* at 56 (quoting Whiteman Supplemental Report, *supra* note 180, at 29).

²⁵¹ *Id.* at 56–57.

²⁵² *Id.* at 71.

²⁵³ *Id.*

²⁵⁴ *Id.* at 74.

²⁵⁵ Scotts Valley Memorandum, *supra* note 49, at 55.

Specifically, they contest “Whiteman’s claim that Vallejo was Southern Patwin territory.”²⁵⁶ Johnson asserts that that view “is outdated and no longer accepted”²⁵⁷ and that, instead, “Huchiun-Aguasto and Karkin village-communities both existed there.”²⁵⁸ The Band also argues that the outcome of the 2025 ILO did not hinge on the Parcel’s location within Area 296 and that, rather, “the Department treated treaty-related evidence as one corroborative factor within a broader historical record.”²⁵⁹

iii. *The Department’s Analysis on Reconsideration.*

At the outset, I emphasize a point made in the 2025 ILO that is relevant to this reconsidered decision: “On remand, the Department maintains its ability to exercise its discretion in weighing the evidence.”²⁶⁰ In its submission, the Band asserts that the Department in the 2025 ILO “gave [the Band] the benefit of the doubt” when “faced with necessarily incomplete or ambiguous documentation.”²⁶¹ However, that misstates the appropriate standard. As the Department clarified in the 2025 ILO, although the Indian canon requires that ambiguous *laws* be interpreted in favor of the Indians, the canon “has no applicability to the weighing of evidence, for example, regarding occupancy or use of a given plot of land.”²⁶²

In the analysis below, I revisit several factual questions that inform this reconsidered Indian Lands Opinion. They include (1) whether Augustine and other Band ancestors were baptized at Mission San Francisco Solano; (2) whether Augustine and other Band ancestors worked on ranchos in the North Bay region; and (3) whether the Parcel is located in territory ceded by the Band’s predecessors. I then discuss why the evidence is insufficient to demonstrate the Band’s occupancy or subsistence use in the vicinity of the Parcel.

Discussion of Certain Facts

First, in regard to whether Augustine and other Band ancestors were baptized at Mission San Francisco Solano, I find for the purpose of this decision that they were not. Regardless of what year Salvador Vallejo might have first visited Clear Lake, the names of the parents of the Agustín listed in the relevant baptismal register, as well as the name of his village, are different from those associated with the Band’s ancestor Augustine.²⁶³ Hurtado acknowledges as much, stating that “the baptismal record gave different names for the parents,” so “either this was not [the Band’s] Augustine, or there were errors in the record.”²⁶⁴ Based on my review, the former is

²⁵⁶ Johnson Report, *supra* note 209, at 4.

²⁵⁷ *Id.*; see also Hurtado Response, *supra* note 209, at 29 (“[T]he shallow peninsula that includes Vallejo . . . was not Patwin territory, but Costanoan.”).

²⁵⁸ Johnson Report, *supra* note 209, at 4; see also *id.* at 45 fig. 2.

²⁵⁹ Scotts Valley Memorandum, *supra* note 49, at 55.

²⁶⁰ 2025 ILO, *supra* note 10, at 10 (citing *N. Air Cargo v. U.S. Postal Serv.*, 674 F.3d 852, 861 (D.C. Cir. 2012); *Scotts Valley I*, 633 F. Supp. 3d at 168 (“[I]t is not [the Court’s] role to scour through the ILO and substitute its judgment for that of the agency.”)).

²⁶¹ Scotts Valley Memorandum, *supra* note 49, app. A at 5.

²⁶² 2025 ILO, *supra* note 10, at 10 (citations omitted); see also *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (clarifying that “judicial review of agency policymaking and factfinding [is] deferential”).

²⁶³ Yocha Dehe Letter, *supra* note 180, at 17.

²⁶⁴ Hurtado Response, *supra* note 209, at 46.

more likely. Yocha Dehe and FIGR persuasively argue that “the names of the 1837 [Baptismal Cohort], the names of the parents of the 1837 [Baptismal Cohort], and the village of origin of the 1837 [Baptismal Cohort] are all distinctively Southern Pomo,”²⁶⁵ not Eastern Pomo like the Band’s ancestors. For example, FIGR explains that one “tool for distinguishing Southern Pomo individuals from members of other tribal communities in the California Mission records” is “the ‘-men’ suffix” at the end of female names, and, here, there is a “consistent presence of the ‘-men’ suffix in the names of the female children in the Baptismal Cohort,” indicating that they hailed from Southern Pomo communities.²⁶⁶

On reconsideration, the Department reverses the finding that Augustine and other Band ancestors were baptized at Mission San Francisco Solano, replacing an assumption to the contrary in the 2025 ILO.²⁶⁷ In the 2025 ILO, the Department stated that “Augustine’s possible baptism at Mission San Francisco Solano” constituted occupancy and, furthermore, that that occupancy is attributable to the Band as a whole.²⁶⁸ Because the evidence suggests that the Agustín listed in the relevant baptismal register and other members of the Baptismal Cohort were not Band ancestors, I have determined that that evidence does not support the Band’s claim to a significant historical connection to the Parcel. As noted above, the Indian canon does not compel a different result. The Department will not resolve this factual ambiguity in the Band’s favor over its own reasoned judgment, as well as over the objection of other federally recognized tribes that identify as Southern Pomo, including FIGR and Lytton,²⁶⁹ both of which were restored to federal recognition.²⁷⁰

Second, in regard to whether Augustine and other Band ancestors worked on ranchos in the North Bay region, I maintain the Department’s previous finding that they did so. The extensive history recounted above makes clear that the livestock operations on the ranchos were labor-intensive, involving hundreds of Indian laborers,²⁷¹ and that the Vallejos and other settlers raided Pomo communities, including at Clear Lake, to work on the ranchos. Consistent with what the Department found in the 2025 ILO, the documentation suggests that Augustine worked at Cayetano Juarez’s Rancho Tulucay (even if, as Whiteman asserts, Patwin people otherwise

²⁶⁵ Yocha Dehe Letter, *supra* note 180, at 17; *see also* FIGR’s Supplemental Response, *supra* note 177, at 11–25 (discussing the Southern Pomo origin of the children’s names, ethnicity, and village).

²⁶⁶ FIGR’s Supplemental Response, *supra* note 177, at 15.

²⁶⁷ *See* 2025 ILO, *supra* note 10, at 18 n.166 (stating that “we assume for the purposes of this analysis that the six-year-old Agustín at the mission was the Band’s ancestor Augustine.”).

²⁶⁸ *Id.* at 17–18.

²⁶⁹ *See supra* page 22–23; Complaint at 12, ¶ 45, *Lytton Rancheria of Cal. v. U.S. Dep’t of the Interior*, No. 25-1088-TNM (D.D.C. filed Apr. 10, 2025) (“Plaintiff Lytton is a Southern Pomo Indian tribe based in Sonoma County, California.”).

²⁷⁰ *See* Graton Rancheria Restoration Act, Pub. L. No. 106-568, §§ 1401–1408, 114 Stat. 2868, 2939–42 (2000) (restoring FIGR’s recognized status after termination by the California Rancheria Act of 1958); 57 Fed. Reg. at 5214 (announcing the restoration of Lytton’s status, alongside the Band’s); *see also* Auburn Indian Restoration Act, Pub. L. No. 103-434, §§ 201–208, 108 Stat. 4526, 4533–36 (1994) (restoring UAIC’s recognized status after termination by the California Rancheria Act of 1958).

²⁷¹ *See* Reséndez Comments, *supra* note 83, at 3 (noting “between 600 and 1000 Indian laborers” living on nearby Rancho Petaluma); Whiteman Supplemental Report, *supra* note 180, at 31 (noting that, “[a]t the Tulocay Rancho, over 400 indigenous people raised cattle and crops”).

“dominated the work force” there²⁷²). The documentation also suggests that other Clear Lake Indians, including Band ancestors, worked there or around the Napa City Township.²⁷³

On reconsideration, I confirm that Augustine’s residency in Napa in the 1870s constituted occupancy, as defined in the 2025 ILO. Additionally, the Department leaves in place the determination that that occupancy is attributable to the Band as a whole, for the reasons stated in the 2025 ILO.²⁷⁴ However, as discussed farther below, I conclude that that occupancy does not lead to a natural inference that the Band occupied or used the Parcel.

Third, in regard to whether the Parcel is located in territory ceded by the Band’s predecessors, I find for the purpose of this decision that it was not. Even if, as Hurtado asserts, Area 296 depicts what the federal agents who negotiated the 1851 Treaty understood to be the boundaries of the ceded territory, no one seems to argue that the Band, its predecessors, or the other tribal signatories had the authority to cede the land around Vallejo at the time of the treaty. Additionally, nothing in the extensive record before the Department suggests that they had that authority. Therefore, regardless of what might have informed Royce’s map, it appears, as Yocha Dehe contends, to have been “nothing substantial”²⁷⁵ or reliable. Favorable treatment of Royce’s map in this analysis would not only be ahistorical but also unfair to any successors-in-interest of the original inhabitants of those territories, who did not participate in the negotiation of the 1851 Treaty.²⁷⁶

On reconsideration, I find that the Parcel is not located in territory ceded by the Band’s ancestors, replacing an assumption to the contrary in both the 2019 ILO and 2025 ILO. As discussed below, the correction of that mistaken assumption is significant because, in both the 2019 ILO and the 2025 ILO, the Department determined that the Parcel’s location within ceded territory entitled the Band to a “favorable inference” of occupancy of the Parcel, helping the Band establish the requisite connection.²⁷⁷ Below, I discuss why, without that inference or other inference “of historic[al] use or occupancy,”²⁷⁸ the Band has not established a significant historical connection to the Parcel.

²⁷² Whiteman Supplemental Report, *supra* note 180, at 58.

²⁷³ See Nelson Response, *supra* note 193, at 4 (explaining that “Augustine . . . served as a labor negotiator with the Vallejos and Juarez to provide work in the Napa region on the Rancho Tulucay for his people from Clear Lake after 1870” (citing 2018 Hurtado Report, *supra* note 72, at 9)); Addendum to Hurtado Supplemental Report, *supra* note 99, at 7–8 (discussing evidence of “occupation of other Scotts Valley ancestors in other households in Napa township near Augustine”).

²⁷⁴ See 2025 ILO, *supra* note 10, at 20–21.

²⁷⁵ Yocha Dehe Letter, *supra* note 180, at 34–36.

²⁷⁶ Hurtado Response, *supra* note 209, at 71 (stating that “it is true that Patwin, Costanoan, Wappo, and Coast Miwok groups did not formally assent to the land cession”).

²⁷⁷ 2019 ILO, *supra* note 4, at 10; 2025 ILO, *supra* note 10, at 22 (citation omitted); see also *Scotts Valley I*, 633 F. Supp. 3d at 168 (stating in dictum that the Parcel’s location within ceded territory “is certainly a ‘significant’ circumstance under any ordinary understanding of the meaning of the word”).

²⁷⁸ 2019 ILO, *supra* note 4, at 18 (citing Memorandum from Acting Gen. Couns., Nat’l Indian Gaming Comm’n, to Chairman, Nat’l Indian Gaming Comm’n 12–13 (Aug. 5, 2002)).

Discussion of Inferences

Pursuant to 25 C.F.R. § 292.2, a tribe can establish a significant historical connection by “demonstrat[ing] by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” Relevant to the question of whether the Band’s occupancy or subsistence use was in the vicinity of the Parcel, “[t]he Secretary has interpreted ‘vicinity’ in . . . the . . . restored-lands context to mean ‘those circumstances’ of use and occupancy ‘lead[ing] to the natural inference that the tribe also made use of the’ parcel in question.”²⁷⁹ The United States Court of Appeals for the District of Columbia Circuit has characterized the Secretary’s interpretation as “the correct standard” given that the regulation governing the restored lands exception “necessitate[s] ‘a significant historical connection to the land.’”²⁸⁰

In the 2019 ILO, the Department provided “an instructive example of direct evidence leading to a natural inference of historic use or occupancy,” as presented in an Indian Lands Opinion for the Bear River Band of the Rohnerville Rancheria, California (“Bear River ILO”).²⁸¹ The Department explained:

Like the Scotts Valley Band, the Bear River Band of the Rohnerville Rancheria, a restored California Tribe, sought to game on a parcel located outside the boundaries of the reservation contemplated by the tribe’s unratified treaty. The Bear River Band demonstrated that the parcel in question is located among many sites known to have been used by the tribes’ ancestors. Based on the presence of such surrounding sites, the [National Indian Gaming Commission] concluded that it could assume that the parcel, too, was used by the tribes’ ancestors.²⁸²

Surrounding sites that created the necessary inference in the Bear River ILO included:

[W]ithin a one-mile radius of the parcel, “a mythic pond that is the setting of an old tribal story” and “two (2) aboriginal villages . . . that were major [tribal ancestor] settlements in 1850”; within a three-mile radius of the parcel, “five (5) aboriginal villages”; and, within a six-mile radius of the parcel, “the first [tribal

²⁷⁹ *Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 566 (D.C. Cir. 2016) (citation omitted); see also 2012 ILO, *supra* note 35, at 15 (explaining that, in the absence of “direct evidence of actual use or ownership of the parcel itself,” the Department “permit[s] a finding of restored land . . . where the particular location and circumstances of available direct evidence on other lands cause a natural inference that the tribe historically used or occupied the subject parcel as well”).

²⁸⁰ *Grand Ronde*, 830 F.3d at 567–68 (emphasis in original) (quoting 25 C.F.R. § 292.12(b)); see also *id.* at 566 (contrasting the regulation implementing the restored lands exception, which requires “a significant historical connection to the land itself,” with the regulation implementing IGRA’s initial-reservation exception, which requires only that the land at issue be “within an area where the tribe has significant historical connections” (emphasis in original) (citations and internal quotation marks omitted)); 2012 ILO, *supra* note 35, at 15 (explaining that “Part 292’s inclusion of the word ‘vicinity’ was not meant to expand IGRA’s definition of ‘restored land,’ which always has been limited to lands that a tribe used or occupied” (citations omitted)).

²⁸¹ 2019 ILO, *supra* note 4, at 18.

²⁸² *Id.* (citations omitted).

ancestor] town established after European contact; eleven aboriginal villages . . . and the Rohnerville Rancheria.²⁸³

Based on the understanding of “vicinity” discussed above, the Department in the 2025 ILO explained that, absent direct evidence of occupancy or use on the Parcel, the evidence should nonetheless “lead[] to a natural inference of historic use or occupancy on the Parcel itself.”²⁸⁴ In the 2025 ILO, the Department concluded that a natural inference existed based on (1) the Parcel’s location within Area 296; (2) Vallejo’s designation in the 1851 Treaty as a pick-up site for promised provisions; and (3) the “historical circumstances,” more generally.²⁸⁵ On reconsideration, I have determined that those reasons lack merit.

First, for the reasons set forth above, the Band is not entitled to a favorable inference of occupancy based on the Parcel’s location within Area 296, and that fact does not lead to a natural inference of the Band’s historic use or occupancy of the Parcel. Area 296 is an unreliable—if not outright inaccurate—indicator of the territory that the Band’s predecessors and the other tribal signatories ceded in the 1851 Treaty.

Second, Vallejo’s designation as a pick-up site in the 1851 Treaty does not lead to the natural inference that the Band also made use of the Parcel. In the 2025 ILO, the Department stated that the reference to Vallejo supports the inference because it is “consistent with Royce’s inclusion of Vallejo in Area 296.”²⁸⁶ However, just as the Parcel’s location within Area 296 does not support the inference, neither does Vallejo’s location within that area. More convincing than that explanation is the one in the 2019 ILO, which explained that Vallejo’s designation as a pick-up site had less to do with the Band’s patterns of movement than with what was “convenient for federal officials who were reluctant to deliver provisions to the Clear Lake bands in the mountainous territory where they lived.”²⁸⁷ The 2025 ILO failed to engage with that alternative, documented explanation for the reference to Vallejo in the 1851 Treaty.

Finally, the historical circumstances do not support the inference. The evidence is too attenuated to lead to a natural inference of the Band’s historic use or occupancy of the Parcel. Although Indians likely worked on Rancho Suscol (the rancho surrounding the Parcel), little to no documentation in the record indicates that those Indians included the Band’s ancestors, much less that the Band’s ancestors established a significant historical connection there. Even Thorne,

²⁸³ *Id.* at 18 n.129 (alterations in original) (citation omitted).

²⁸⁴ 2025 ILO, *supra* note 10, at 22 (quoting 2019 ILO, *supra* note 4, at 18 (internal quotation marks omitted)). In the 2025 ILO, the Department imprecisely separated the “natural inference” discussion from the “vicinity” analysis, but the case law quoted above clarifies that the former is part of the latter and informs the reasonableness of what “vicinity” means in a given context. As the Band itself notes, “[v]icinity” is not measured by modern cartographic precision or a fixed radius around a single point, but relative to the scope of the Tribe’s demonstrated historical patterns of movement and occupation.” Scotts Valley Memorandum, *supra* note 49, at 54.

²⁸⁵ 2025 ILO, *supra* note 10, at 22–23.

²⁸⁶ *Id.* at 23.

²⁸⁷ 2019 ILO, *supra* note 4, at 12 (citations omitted); *see generally id.* at 10–12 (explaining that “Vallejo’s designation in the 1851 Treaty as a pick-up site for promised provisions and the subsequent collection of provisions at that site do not demonstrate occupancy or subsistence use in the vicinity of the Parcel by the Band or its ancestors”).

who asserts that “Indian laborers were at Suscol,”²⁸⁸ concedes that the laborers on that rancho “were largely of unknown ethnicity” and that, at best, “Clear Lake people may have been among them.”²⁸⁹

Unable to provide direct evidence of occupancy or use to support its claim, the Band asks the Department to infer that its ancestors occupied or used the Parcel. It does so, in part, based on the contention that Clear Lake Indians served as replacement labor in the North Bay region after “territories inhabited by original Indigenous groups became vacated by [those groups’] incorporation into Bay Area missions” and their subsequent exposure to disease.²⁹⁰ While the record indicates the presence of Clear Lake Indians in the North Bay region (as discussed above), it also indicates the presence of a Patwin population there, including in the area around Vallejo, through at least the 1840s.²⁹¹ For example, in discussing an 1849 gold-mining expedition in which Clear Lake Indians served as labor, Thorne explains that the organizers of the expedition had to bring “presumably Patwin-speaking Indians along” because “the party would cross Patwin territory, and the Pomo would not be safe without an escort.”²⁹² That anecdote suggests that Clear Lake Indians did not replace Patwin tribes or other tribes indigenous to the area around Vallejo during the time period in question.

Moreover, the Department cannot infer from the record that references to “Clear Lake Indians” in the primary and secondary sources cited by the Band’s experts are the same as references to the Band’s ancestors. Rebutting Thorne’s claim that “[t]he term ‘Clear Lake’ is a specific referent to the [Band’s] ancestors,”²⁹³ Whiteman notes that, today, “[t]here are seven federally recognized Pomo Tribes that currently reside at Clear Lake.”²⁹⁴ They include, aside from the Band, the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; the Habematolel Pomo of Upper Lake, California; the Koi Nation of Northern California; the Middletown Rancheria of Pomo Indians of California; and the Robinson Rancheria.²⁹⁵ Those tribes’ presence at Clear Lake today parallels the existence of multiple, distinct groups at Clear Lake in historical times as well, consistent with Hurtado’s observation that “[a]mong Pomo speakers, . . . a single village could be considered an independent polity.”²⁹⁶

The points noted above—(1) that references to Indians in the area around Vallejo during the historical period were just as likely, if not more likely, to be references to non-Clear Lake Indians; and (2) that references to Clear Lake Indians are not the same as references to the Band’s ancestors—help explain why Thorne’s anecdote about an aborted attack on an Indian

²⁸⁸ Thorne Report, *supra* note 209, at 66.

²⁸⁹ *Id.* at 32.

²⁹⁰ Johnson Report, *supra* note 209, at 5–6.

²⁹¹ Whiteman Supplemental Report, *supra* note 180, at 58.

²⁹² Thorne Report, *supra* note 209, at 79.

²⁹³ *Id.* at 42 (emphasis omitted).

²⁹⁴ Whiteman Supplemental Report, *supra* note 180, at 43.

²⁹⁵ *Id.*

²⁹⁶ Hurtado Response, *supra* note 209, at 5; *cf.* Johnson Report, *supra* note 209, at 8 (explaining that “the Clear Lake Pomo village-communities existed in an area of high linguistic diversity,” with “Eastern Pomo speakers liv[ing] near peoples who spoke six other, not mutually intelligible, Pomoan languages” and “four unrelated languages” (citation omitted)).

population at Rancho Suscol, in response to the killings of Rancho Lup-Yomi's owners, has limited to no evidentiary value. Thorne asks rhetorically why the gang threatening to attack Rancho Suscol would do so "unless it was known that there were Clear Lake workers there"²⁹⁷ (given that Rancho Lup-Yomi was located by Clear Lake). However, even if the Department were to grant that there were, in fact, Clear Lake Indians on Rancho Suscol at the time (which is doubtful given that the attack occurred in early 1850²⁹⁸ and the Clear Lake Indians' pattern was to travel to the North Bay region "[i]n the springtime and harvest"²⁹⁹), the Department would then have to assume that those Indians were the Band's ancestors. Furthermore, the Department would have to assume that those Indians' presence on the rancho led to or otherwise supported a natural inference of occupancy or use of the Parcel itself.

The shortcomings relating to the anecdote above illustrate the shortcomings in the Band's evidence, more generally. Faced with "gaps in written documentation,"³⁰⁰ the Band asks that the Department grant inference upon inference to establish the requisite connection. In doing so, the Band correctly notes that "[h]istorical inquiries of this kind frequently involve incomplete records, changing place names, mobile labor populations, and fragmented documentation."³⁰¹ However, as the preamble of the final rule promulgating Part 292 explains, "a significant historical connection would be documented."³⁰² Here, what is striking is the discrepancy between the evidence of a Band presence elsewhere during the time period in question, in places where the Band might "attain a different result,"³⁰³ and the lack of evidence indicating a Band presence on Rancho Suscol, much less the Parcel.³⁰⁴

Contrary to leading to a natural inference of use or occupancy, the evidence (or the lack of it) suggests that Rancho Suscol was indeed different from other ranchos in the region, as the opposing parties contend.³⁰⁵ According to Hurtado, Mariano Vallejo "claimed Suscol and ran it as his own property beginning at least as early as 1843."³⁰⁶ However, to the extent that there were Indian laborers there (as Thorne asserts, over Whiteman's argument to the contrary³⁰⁷), the record suggests that they were predominantly Patwin "into the 1850s."³⁰⁸ Furthermore, according to Hurtado, by 1862, the Supreme Court had rejected Vallejo's claim to the rancho, clarifying the rancho's role as a government property occupied by soldiers.³⁰⁹ By 1870, when the census

²⁹⁷ Thorne Report, *supra* note 209, at 27 (citation omitted).

²⁹⁸ *Id.* at 39.

²⁹⁹ *Id.*

³⁰⁰ Tribal Member Statement, *supra* note 165, at 1.

³⁰¹ Scotts Valley Memorandum, *supra* note 49, at 21; *see also* Thorne Report, *supra* note 209, at 31 ("Indian rancho workers were an illiterate, homeless, noncitizen underclass, whose ethnic identities, numbers, movements, and pay rates were rarely recorded.").

³⁰² 73 Fed. Reg. at 29366.

³⁰³ *Scotts Valley I*, 633 F. Supp. 3d at 167.

³⁰⁴ *See* Letter from Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation, to Philip Bristol, Acting Dir., Off. of Indian Gaming, U.S. Dep't of the Interior 7 (June 13, 2025) ("[W]hile some men sought individual wage employment in the Napa and Sonoma Valleys during certain times of year, there is no mention of similar agricultural work in or around Vallejo or Solano County.").

³⁰⁵ *Supra* page 25.

³⁰⁶ Hurtado Response, *supra* note 209, at 91.

³⁰⁷ *Compare* Thorne Report, *supra* note 209, at 66, *with* Whiteman Supplemental Report, *supra* note 180, at 28–29.

³⁰⁸ Whiteman Supplemental Report, *supra* note 180, at 58.

³⁰⁹ Hurtado Response, *supra* note 209, at 91.

identifies Augustine near Napa, the land containing the Parcel was already in private ownership, with no evidence of Indian labor on it.³¹⁰ Rancho Suscol's unique status may help explain the dearth of evidence connecting Clear Lake Indians to the rancho and undermines any natural inference of occupancy or use required to establish the requisite connection.

Finally, the Band claims a connection to the Parcel through evidence of intermarriage, asserting that the Band is "linked to ancestors from other groups who spoke different Indigenous languages."³¹¹ Specifically, Johnson asserts that "[a] significant number of connections are to Coast Miwok and Napa vicinity ancestors, whose Miwokan language was spoken in the immediate vicinity where the City of Vallejo is located today."³¹² Thorne similarly notes that "part of [the Band's] ancestry comes from the Wappo-Big Valley intermarriages."³¹³ Evidence of intermarriage may reflect "communication and movement" between communities (for example, "between Big Valley and Wappo territory in the Napa Valley").³¹⁴ Here, however, the Band's evidence of intermarriage (some of which were apparently formed in modern times³¹⁵) reveals nothing about the Band's connection to the Parcel. The Band does not articulate how specific marriages between Band member and individuals of Coast Miwok, Wappo, or Patwin descent (who may or may not have been in tribal relations at the time) confer the Band with connections to the ancestral territory of those tribes, much less a connection to the Parcel. The Band does not claim to be a successor-in-interest to any historical tribe associated with the San Pablo Bay region through intermarriage. Rather, according to Johnson, the Band is "at its core . . . descended from the original people of Yima and Khulanapo."³¹⁶ Based on that explanation, as well as the "inconsistencies" described in Beckham's report regarding the Band's claim to Patwin ancestry in particular,³¹⁷ the Department does not attribute significance to it.

In closing, the Band asserts that the "cumulative force of the record" reflects "longstanding ties to the Bay economy and geography" and is sufficient to establish a significant historical

³¹⁰ See *supra* page 25.

³¹¹ Johnson Report, *supra* note 209, at 25–26.

³¹² *Id.*

³¹³ Thorne Report, *supra* note 209, at 15.

³¹⁴ *Id.* Other evidence of communication and movement that Thorne, like Daniels, discusses is evidence of an aboriginal trade network between Clear Lake and San Pablo Bay. *Id.* at 49. In that discussion, Thorne notes that the Wappo, inhabitants of the land between Clear Lake and the Bay, "would have been the intermediaries in the chain" between Clear Lake and the Bay. *Id.* That evidence does not shed light on or otherwise help advance the Band's connection to the Parcel, particularly in light of Departmental precedent describing the transitory nature of trade-based interaction. See Letter from Larry Echo Hawk, Assistant Sec'y – Indian Affs., U.S. Dep't of the Interior, to Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians 14–15 (Sept. 1, 2011), available at <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc015051.pdf>.

³¹⁵ See Johnson Report, *supra* note 209, at 25 (mentioning twentieth-century intertribal ceremonies that "brought people of different tribal backgrounds into contact with each other").

³¹⁶ *Id.*; see also *id.* at 10 (explaining the formation of the Band as follows: "a group of Khulanapo and Habenapo families by the late nineteenth century relocated to Scotts Valley [from the Big Valley and Kelsey Creek areas] where they merged with the Yima . . . , a tribelet that itself was a merged group living in community, composed of the Eastern Pomo Boalki . . . tribelet and the Komli . . . , a Northern Pomo group who had migrated into the area from the Russian River Valley just prior to the Historic Period" (citation omitted)).

³¹⁷ Beckham Supplemental Report, *supra* note 203, at 4; see also Yocha Dehe Letter, *supra* note 180, at 9 (contesting what Yocha Dehe describes as the Band's repeated attempts "to appropriate the lands and history of other tribes").

connection.³¹⁸ However, that Band ancestors “worked, resided, and died on North Bay ranches and farms”³¹⁹ does not give rise to a natural inference that they used the Parcel.³²⁰ The Band emphasizes the quantity of its evidence and that evidence’s interconnectedness, but the problem here for the Band is qualitative; none of the documentation, whether considered individually or within the context of the entire administrative record and the history summarized above, establishes the requisite connection.

IV. CONCLUSION.

For the reasons stated above, I have determined the Band has not demonstrated the requisite significant historical connection. Consequently, the Vallejo Parcel does not qualify as restored lands within the meaning of applicable law, and the Band may not conduct gaming on the Parcel pursuant to IGRA’s restored lands exception. I provide no opinion on whether the Band may game on the Parcel pursuant to another exception, including the exception described in 25 U.S.C. § 2719(b)(1)(A).

Sincerely,



William Henry Kirkland III
Assistant Secretary – Indian Affairs

³¹⁸ Scotts Valley Memorandum, *supra* note 49, at 50.

³¹⁹ Thorne Report, *supra* note 209, at 88.

³²⁰ *Cf. Federated Indians of Graton Rancheria v. U.S. Dep’t of the Interior*, No. 24-8582-RFL, 2025 U.S. Dist. LEXIS 170755, at *42 (N.D. Cal. Sep. 2, 2025) (“That tribal members lived and died in Sonoma County generally does not give rise to a natural inference that they used the privately owned Shiloh Parcel.”).