

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

**SCOTTS VALLEY BAND OF POMO  
INDIANS,**

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF  
THE INTERIOR, *et al.*,**

Defendants.

Case No. 1:26-cv-02814-TNM  
Judge Trevor N. McFadden

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

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## INTRODUCTION

This case involves the United States Department of the Interior’s (the “Department”) disregard of this Court’s remand instructions and, after a decade of administrative proceedings and two rounds of federal litigation, the Department’s unlawful abandonment of its own final agency determination previously favoring the Scotts Valley Band of Pomo Indians (“Scotts Valley” or the “Band”). The Department’s actions deprive the Band of the gaming eligibility the Department itself recognized only months earlier.

In *Scotts Valley Band of Pomo Indians v. United States Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (“*Scotts Valley I*”) this Court held that a 2019 Decision of the Department finding that the lands in question did not qualify for gaming (the “2019 Decision”) was arbitrary and capricious in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), because it evaluated the Band’s historical evidence supporting the land’s gaming eligibility in a manner inconsistent with the well-established Indian canon of construction and the remedial purposes underlying the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721. The Court concluded that the administrative record contained “ample material” supporting the Band’s position if, as that canon requires, reasonable inferences were drawn in the Band’s favor, and observed that the Department repeatedly identified historical facts supporting the Band’s claim only to “devalue” them. The Court therefore vacated the 2019 Decision and remanded the matter with instructions to reevaluate the administrative record under the proper legal framework.

The Department did exactly that—at first. The Department did not reopen the administrative record or solicit additional historical evidence because nothing in this Court’s remand required it to do so. Instead, the Department reconsidered the existing record through the legal framework this Court required. By decision issued on January 10, 2025 (the “2025 Decision”), the Department accepted 160 acres in the City of Vallejo, California (the “Vallejo

Site”) into trust for the Band under the Indian Reorganization Act and simultaneously concluded, applying the analytical framework prescribed in *Scotts Valley I*, that the property qualified as “restored lands” under IGRA. The Department determined that the Band satisfied every regulatory requirement, including the requirement of a “significant historical connection,” and expressly concluded that the Band could conduct gaming on the Vallejo Site.

Just eleven weeks later, however, the Department abruptly notified the Band that it had decided to reconsider the restored lands component of the 2025 Decision and temporarily rescinded the Vallejo Site’s gaming eligibility while the reconsideration was pending. In *Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1 (D.D.C. 2025) (“*Scotts Valley II*”), this Court vacated that rescission as a violation of the Band’s due process rights, thereby reinstating gaming eligibility under the 2025 Decision, while the reconsideration proceedings continued.

Exercising the rights recognized by the reinstated determination, the Band established its Tribal Gaming Commission, completed its temporary Class II gaming<sup>1</sup> facility, hired and trained employees, entered into agreements with the City of Vallejo, obtained regulatory approvals, and commenced gaming operations on July 24, 2026. The Department was fully aware that the Band was implementing the 2025 determination while reconsideration remained pending. On July 30, 2026, the Department issued a new decision (“2026 Decision” or “Decision”), concluding that the Vallejo Site is not eligible for gaming under IGRA. The Band challenges this Decision.

This motion seeks to preserve the status quo that existed immediately before the challenged Decision, when the 2025 Decision remained in effect, the Vallejo Site was eligible for gaming under IGRA, and the Band was lawfully operating its gaming facility. Because the Band is likely

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<sup>1</sup> IGRA generally divides Indian gaming into three classes. “Class II gaming” includes bingo—whether or not electronic, computer, or other technologic aids are used in connection with the game—as well as certain non-banking card games. 25 U.S.C. § 2703(7)(A).

to succeed on the merits, will continue to suffer irreparable harm absent relief, and because the balance of equities and the public interest favor preserving the last lawful status quo, the Court should grant the requested preliminary injunction.

## **BACKGROUND**

### **I. Scotts Valley Band of Pomo Indians**

Scotts Valley Band of Pomo Indians is a federally recognized Indian tribe “that had its recognition and land stripped away by the federal government and its people scattered to the winds.” *Scotts Valley I*, 633 F. Supp. 3d at 165-66. During the nineteenth century, the Band’s ancestors lived throughout Clear Lake and the North Bay regions of Northern California, including in the vicinity of the present-day Vallejo Site. Declaration of Shawn Davis (“Davis Decl.”) ¶ 3.

In 1851, Scotts Valley’s ancestors entered into a treaty with the United States, ceding territory encompassing the Vallejo Site in exchange for a promised reservation. *Scotts Valley I* at 138. The Senate never ratified the treaty, however, and the reservation was never established. *Id.* Congress later terminated the Band’s federal recognition. *Id.*; Davis Decl. ¶ 4. Although the Band regained its federal recognition through litigation in 1991, no land was restored to it. *See* Notice of Reinstatement, 57 Fed. Reg. 5214 (Feb. 12, 1992); *Scotts Valley I* at 138-39; Davis Decl. ¶ 5-6.

### **II. IGRA and Implementing Regulations**

Congress enacted IGRA to promote “tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1). IGRA generally prohibits gaming on lands acquired in trust after the date of its enactment, October 17, 1988, unless a statutory exception applies. 25 U.S.C. § 2719. Under the “restored lands” exception, the prohibition “will not apply when ... lands are taken into trust as part of ... the restoration of lands for an Indian tribe that is restored to Federal recognition.” 25 U.S.C. § 2719(b)(1)(B)(iii); *see Scotts Valley I* at 136.

The implementing regulations, 25 C.F.R. Part 292 (“Part 292”) require, among other elements, a “significant historical connection” between the restored tribe and the land. 25 C.F.R. § 292.12(b). That connection exists where, in pertinent part, historical documentation demonstrates tribal “villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” 25 C.F.R. § 292.2; *see Scotts Valley I* at 137.

### **III. Administrative and Judicial History**

#### **A. The 2019 Decision and *Scotts Valley I***

In 2016, the Band requested that the Department accept the Vallejo Site in trust and determine that it qualified as “restored lands” under IGRA.<sup>2</sup> *Scotts Valley I* at 139. The Band submitted more than 4,000 pages of historical, genealogical, anthropological, and expert materials documenting its connection to the Vallejo Site and surrounding region. Davis Decl. ¶ 10.

In 2019, the Department denied the request, concluding that the Band satisfied every applicable requirement except the “significant historical connection” requirement. *Scotts Valley I* at 139-40; *see* 2019 Decision (Compl. Ex. C).

This Court vacated that decision in *Scotts Valley I*. The Court held that the Department had evaluated the evidence inconsistently with the Indian canon of construction and the remedial purposes of IGRA’s restored-lands exception. *Scotts Valley I* at 166–71. Finding the Department’s reasoning arbitrary and capricious and contrary to IGRA, the Court emphasized that the Department had acknowledged evidence demonstrating the Band’s historical presence in the vicinity of the Vallejo Site, but then “chose to devalue” it. *Id.* at 167–68. The Court remanded for further proceedings consistent with its opinion.

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<sup>2</sup> The Vallejo Site initially comprised approximately 128 acres; the Band amended its application materials in 2024 to add approximately 32 acres of land contiguous to the original tract, for a total of approximately 160 acres.

### **B. The 2025 Decision on Remand**

On remand, the Department reconsidered the existing comprehensive administrative record under the framework prescribed by *Scotts Valley I*. See 2025 Decision (Compl. Ex. B). Pursuant to the 2025 Decision, the Department accepted the Vallejo Site into trust and determined that the property qualified as restored lands under IGRA. *Id.*; Davis Decl. ¶ 13.

Applying “broad understandings” of the terms “occupancy” and “vicinity,” the Department concluded the historical evidence, viewed collectively and in light of the Indian canon, established the required significant historical connection. 2025 Decision at 19-21. The Department therefore determined that “the Band may conduct gaming on the Vallejo Site.” *Id.* at 23.

### **C. Reconsideration and *Scotts Valley II***

On March 27, 2025, less than three months after issuing its final decision on remand, the Department temporarily rescinded the Vallejo Site’s gaming eligibility and commenced reconsideration on the ground that additional materials submitted after the Court’s 2022 remand had not been considered. Davis Decl. ¶ 17; Declaration of Patrick R. Bergin (“Bergin Decl.”) ¶ 4 & Ex. A. The Band challenged that action. Davis Decl. ¶ 18.

In *Scotts Valley II*, the Court held that the January 2025 Decision created a constitutionally protected property interest and that the Department violated due process by rescinding it without providing the Band with notice or an opportunity to be heard. 808 F. Supp. 3d at 16–23. The Court therefore vacated the rescission, restoring the Department’s January 2025 gaming eligibility determination while allowing reconsideration to continue. *Id.*

### **D. The 2026 Decision**

During reconsideration, the Department provided the Band with submissions made by opposing tribes and permitted the Band to respond. See 2026 Decision at 3 (Compl. Ex. A); see *id.* at 21, nn.163-166 (identifying third-party submissions). The Band submitted five expert reports

from six historians, anthropologists, and ethnohistorians, together with legal analysis and additional historical evidence supporting the Band's significant historical connection to the Vallejo Site. *Id.* at 26-30 & n.209.

By Decision dated July 30, 2026, the Department reversed its 2025 determination and concluded that the Band lacked the required significant historical connection. The Department therefore determined that the Vallejo Site no longer qualified as restored lands under IGRA. 2026 Decision at 39. This action followed.

#### **IV. The Band's Class II Gaming Facility**

While the 2025 Decision remained in effect, the Band exercised the gaming rights the Department had recognized. It established a Tribal Gaming Commission, developed a temporary Class II gaming facility on the Vallejo Site (the "Preview Casino"), hired and trained employees, leased and installed gaming equipment, entered into agreements with the City of Vallejo, and satisfied the applicable tribal and federal regulatory requirements for commencing Class II gaming. Davis Decl. ¶¶ 20, 23-36.

The Preview Casino was not merely planned or under construction when the challenged Decision issued. It was operating. The Band commenced gaming on July 24, 2026, initially on a limited basis while completing employee training, systems testing, and operational-readiness activities. The Band planned to expand operations to the general public and increase the number of gaming devices during August 2026. Photographs attached as an exhibit to the Declaration of Shawn Davis illustrate the Preview Casino as it existed immediately before the Department issued the July 30, 2026 Decision. They depict an active gaming facility, operational gaming equipment, employees performing their duties, and patrons using the facility. Davis Decl. ¶¶ 37-38 & Ex. C.

The Band made substantial investments to reach that point. It repurposed and refurbished prefabricated buildings, improved the surrounding site, leased gaming machines, installed and

tested gaming systems, and hired nine employees—all enrolled Band members—who received specialized casino training in Mesquite, Nevada. The Band also established and staffed its Tribal Gaming Commission to regulate the facility pursuant to IGRA, Tribal law, and the Band’s gaming ordinance, approved by the National Indian Gaming Commission (“NIGC”) as required by IGRA. Davis Decl. ¶¶ 25-31, 33-34.

The Band also entered into an intergovernmental agreement with the City of Vallejo providing for substantial payments to support law enforcement, fire protection, utilities, and other municipal services associated with the facility. And before commencing gaming, the Band provided the required notices to the National Indian Gaming Commission and obtained a facility license from its Tribal Gaming Commission. Davis Decl. ¶¶ 32, 36.

These investments were undertaken in reliance on the 2025 Decision and this Court’s remand order in *Scotts Valley I* which it implemented. The Department knew that reliance was occurring. At an in-person meeting in Washington, D.C., on December 22, 2025, the Band expressly informed Department officials that it intended to open a Class II facility on the Vallejo Site. Davis Decl. ¶ 21; *see* Bergin Decl. ¶¶ 10-18. The Department neither objected nor advised the Band that gaming could not commence while reconsideration was pending. Davis Decl. ¶ 22; Bergin Decl. ¶¶ 19-21.

The Preview Casino began generating governmental revenue on July 24, 2026, while also providing employment, workforce training, regulatory experience, and institutional capacity necessary for the Band’s long-term gaming enterprise. Davis Decl. ¶ 24. For a Tribe that had remained landless for decades after restoration of its federal recognition, the facility represented the first exercise of gaming rights that the Department had determined belonged to the Band under IGRA.

One week later, upon receiving the 2026 Decision, the Band immediately ceased gaming operations and closed the Preview Casino. Davis Decl. ¶¶ 48-51. The Decision has therefore interrupted not only the Band's principal economic-development project, but also the operation of its Tribal Gaming Commission, workforce development, and accumulation of the governmental and regulatory experience necessary to implement its long-term gaming enterprise. Those lost opportunities cannot be restored through a favorable judgment months or years from now. Davis Decl. ¶¶ 54-67.

On July 31, 2026, the Band requested that the Department voluntarily stay the Decision pending judicial review, explaining the immediate harm the Decision would cause and the absence of comparable harm from maintaining the existing gaming eligibility determination. Bergin Decl. ¶ 23 & Ex. D. On August 3, 2026, the Department declined to stay the Decision. *Id.* ¶ 24 & Ex. E.

The Band therefore seeks an injunction restoring the legal and factual circumstances that existed immediately before the challenged agency action: a valid gaming eligibility determination and an operating Class II facility. The requested relief would preserve, rather than alter, the status quo while this Court determines whether the Department's reversal was lawful; it would serve the public interest, and it would be consistent with the governing law, for, as shown below, the Band is likely to succeed on the merits.

### **LEGAL STANDARD**

Federal Rule of Civil Procedure 65 and the APA, 5 U.S.C. § 705, authorize the Court to issue preliminary injunctions to preserve the status quo pending final adjudication on the merits. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *M.G.U. v. Nielsen*, 316 F.Supp.3d 518, 520 (D.D.C. 2018). A plaintiff seeking preliminary relief must demonstrate: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of hardships tips in its favor, and (4) the injunction is in the public interest. *Winter*

*v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *League of Women Voters v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016); *Dist. of Columbia v. U.S. Dep’t of Agric.*, 444 F. Supp.3d 1, 15 (D.D.C. 2020) (preliminary injunction factors also govern issuance of § 705 stay). The D.C. Circuit makes no distinction between a mandatory and prohibitory injunction. *League of Women Voters* at 7.

Courts evaluate interim relief by reference to the state of affairs which preceded the pending controversy, not by treating the challenged governmental action itself as the status quo. *See Nken v. Holder*, 556 U.S. 418, 429 (2009) (“status quo” means “the state of affairs before the [agency decision] was entered”); *District 50, United Mine Workers of Am. v. Int’l Union, United Mine Workers of Am.*, 412 F.2d 165, 168 (D.C. Cir. 1969). The D.C. Circuit applied that principle to challenged governmental action in *Huisha-Huisha v. Mayorkas*, rejecting as “backwards” the government’s contention that the status quo was the state of affairs produced by the challenged action. 27 F.4th 718, 733-34 (D.C. Cir. 2022). Instead, the court held the relevant status quo was “the regime in place before” the challenged governmental orders. *Id.* at 733. Thus, the fact that challenged agency action has already taken effect does not make the resulting state of affairs the status quo for purposes of preliminary relief. Rule 65 and section 705 permit a court to restore and preserve the conditions existing before the challenged action altered the parties’ rights while the legality of that action is adjudicated. *See id.* at 733-34; *District 50*, 412 F.2d at 168.

The Band is likely to succeed because the 2026 Decision is arbitrary, capricious, contrary to law, violative of the Band’s due process rights, and otherwise unlawful under 5 U.S.C. § 706(2). As demonstrated below, multiple independent grounds support that conclusion. And absent preliminary relief, the Decision will continue to cause the Band irreparable harm, while temporarily restoring the prior status quo will impose no comparable harm on the federal government or the public interest.

## ARGUMENT

### **I. The Band is likely to succeed on the merits of its claims.**

The Band need not establish that it will ultimately prevail, only that it is likely to succeed on the merits. Here, the challenged Decision suffers from multiple independent legal defects. Most fundamentally, the Department disregarded the analytical framework required by *Scotts Valley I* and that the Department adopted in its 2025 Decision. Rather than faithfully applying the Indian canon of construction, IGRA's remedial purposes, and the cumulative historical evidence in the administrative record, the Department imposed a materially different interpretation of Part 292 and effectively reinstated the same analytical approach from its 2019 Decision that this Court previously held unlawful. The Decision is arbitrary and capricious for that reason alone. It is independently unlawful because the Department failed to provide a reasoned explanation for abandoning its 2025 Decision, fundamentally altered the basis for reconsideration during the administrative proceedings, disregarded substantial reliance interests, and violated the Band's right to due process.

#### **A. The 2026 Decision disregards the District Court's remand order and therefore is contrary to law.**

The Band is likely to succeed because the 2026 Decision disregards the legal framework this Court required the Department to apply on remand in *Scotts Valley I*. Although the Department elected to reopen the administrative process and consider additional historical evidence submitted by interested parties after March 2025, that procedural choice did not relieve the Department of its obligation to decide the restored lands question under the legal principles established by this Court. The remand governed the Department's evaluation of the evidence—whether old or new—in making a restored lands determination under IGRA.

“Under the law of the case doctrine, on remand, an agency must abide by a district court’s remand order.” *Miami Tribe of Okla. v. United States*, 656 F.3d 1129, 1138 (10th Cir. 2011). Similarly, the “rule of mandate renders ... an administrative agency, ‘without power to do anything ... contrary to the letter or spirit of’ a higher court’s ‘mandate construed in the light of the opinion of the court deciding the case.’” *Am. Waterways Ops. v. Regan*, 590 F. Supp. 3d 126, 137 (D.D.C. 2022) (quoting *City of Cleveland v. Fed. Power Comm’n*, 561 F.2d 344, 346 (D.C. Cir. 1977)). In short, administrative agencies “may not deviate from a supervising court’s remand order.” *Alaska v. Nat’l Marine Fisheries Serv.*, 171 F.4th 1145, 1155 n.2 (9th Cir. 2026) (quoting *Cal. Pub. Util. Comm’n v. FERC*, 29 F.4th 454, 462 (9th Cir. 2022)). “Failure to apply the court’s directive about what the law is and which factors the agency must consider would be ‘legal error.’” *Id.* (quoting *Sullivan v. Hudson*, 490 U.S. 877, 886 (1989)).

The remand in *Scotts Valley I* identified a narrow legal error. The Court did not hold that the Department lacked evidence necessary to resolve the restored lands question. Nor did it suggest that the Department should solicit additional historical submissions. Rather, the Court held that Interior’s application of the ambiguous “significant historical connection” requirement could not be sustained because, under the Indian canon of construction, ambiguities and reasonable inferences had to be resolved in the Band’s favor, and the agency failed to give fair consideration to the historical circumstances that severed the Band’s connection to its land and left the Band disadvantaged relative to other Indian tribes. *Scotts Valley I*, 633 F. Supp. 3d at 166–68, 171.

The Court emphasized that the problem was not an absence of evidence supporting the Band’s position. Quite the contrary. It explained: “there is ample material in the [2019 Decision] to support a finding in the Band’s favor if all inferences are resolved to its benefit. The agency cited facts that weighed in the Band’s favor, but then chose to devalue them.” *Id.* at 168. That

observation defines the scope of the remand. The Court did not require additional evidence; it required a different legal analysis. The Department was instructed to evaluate the historical record—including evidence that favored the Band—through the lens of the Indian canon and the remedial purposes of IGRA, rather than discounting that evidence through an unduly restrictive interpretation of the restored lands regulations.

The 2025 Decision faithfully implemented those instructions. It expressly stated that it reconsidered the matter by 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.” 2025 Decision at 2.

The 2026 Decision, however, turns that correct analysis on its head. Although the Department acknowledges this Court’s remand and recognizes that the 2025 Decision implemented that remand by broadly construing “occupancy” and “vicinity” in light of IGRA’s remedial purposes and the historical circumstances underlying the Band’s landless status, it nevertheless abandons the analytical approach of the 2025 Decision that properly implemented this Court’s remand order.

Instead, the Department has now rejected the favorable inferences it previously drew from the record of historical evidence under this Court’s instructions. The Department applies the restored lands exception in a manner that undermines the point of the exception, which was “to provide some recompense—to place a tribe on 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.” *Scotts Valley I* at 167-68; see *City of Roseville v. Norton*, 348 F.3d 1020, 1030-31 (D.C. Cir. 2003) (holding that IGRA exceptions ensure “that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones,” and that restored lands are ultimately

“the lands the Secretary takes into trust to re-establish the tribe’s economic viability”). Returning to the logic of the 2019 Decision that this court rejected in *Scotts Valley I*, the 2026 Decision once again discounts or minimizes the categories of historical evidence that this Court held the Department had improperly “devalue[d].” *Scotts Valley I* at 168. In short, rather than faithfully implementing this Court’s remand, the 2026 Decision returns, in substance, to the same restrictive evaluation of the historical evidence that this Court previously held arbitrary and capricious. *Id.* Because the 2026 Decision repeats that same analytical error—even after supplementing the record—it fails to implement this Court’s remand, is contrary to law, and is arbitrary and capricious under the APA.

**B. The Department’s treatment of the historical evidence violates *Scotts Valley I*.**

Rather than concluding that the historical evidence relied upon in the 2025 Decision was inaccurate or that the Department had misunderstood the historical record, the 2026 Decision accepts much of the same underlying evidence but simply assigns it less weight. The Department thus reaches the opposite conclusion not because the historical record materially changed, but because it once again discounts favorable evidence and refuses to draw the reasonable inferences that this Court held must be afforded to the Band.

The Department does not reject the principal historical facts underlying the Band’s restored lands request. To the contrary, it acknowledges that Chief Augustine is a significant ancestor of the Band; that more than ninety percent of today’s Band members descend from him; that his life is unusually well documented because the disruption of Pomo village life left comparatively few historical records; that his experiences illuminate those of the Band’s ancestors generally; and that historical records place him in the North Bay during the period in which Clear Lake Indians were

working throughout the regional ranching economy (i.e., “in the vicinity of” the Vallejo Site). 2026 Decision at 11; *see also id.* at 12-17.

Nor does the Department dispute the broader historical circumstances this Court held were critical to the analysis. The 2026 Decision recognizes that the nineteenth-century ranching economy depended upon Indian labor, that Clear Lake communities were raided and displaced, that traditional village life was disrupted, and that these historical forces explain why direct documentary evidence of the Band’s connection to the Vallejo Site is necessarily incomplete. Indeed, the Decision reproduces the additional historical context incorporated into the 2025 Decision precisely because this Court instructed the Department to account for “the government’s role in weakening the historical connection between the Band and its land.”<sup>3</sup>

Having accepted those historical facts, however, the Department minimizes their significance and disregards the inferential evidence surrounding the historical circumstances, thereby imposing a higher degree of proof than *Scotts Valley I* allowed. The same pattern appears throughout the 2026 Decision. First, it rejects the established inference of a significant historical connection based on the fact that the Band’s ancestors ceded lands encompassing the Vallejo Site in the 1851 treaty as depicted in the authoritative Royce map. This violates the canon of construction and the Department’s own long-standing acceptance of the Royce map as reliable evidence of the land ceded by the tribal signatories. Next, the Decision makes a negative finding about the 1837 baptismal record, and presents the matter as having been definitively resolved in

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<sup>3</sup> The Decision selectively omits the following sentence from the portion of the 2025 Decision that is otherwise reproduced almost verbatim: “The result was that ‘Indian people were forced off their land, relocated away from populated areas, and often served as a source of indentured labor for the largely White population,’” 2025 Decision at 17 (quoting Advisory Council on Cal. Indian Pol’y: Final Reports and Recommendations to Congress 4 (1997)). *See* 2026 Decision at 16 (omitted sentence would follow footnote 128). The Decision does not explain whether the Department now finds that observation untrue or insignificant, or if so, why.

the 2025 Decision and as key to it – but it was neither. The Department’s reversal violates the *Scotts Valley I* directive that the evidence be viewed as a whole and assessed in light of the historical setting that precludes certainty. Third, the Department violates the *Scotts Valley I* analytical framework by its rigid, demanding construction of the “in the vicinity” requirement.

**1. The Vallejo Site’s location within territory ceded to the United States by Scotts Valley’s ancestors.**

The Decision finds the Vallejo Site is not located in territory ceded by the Band’s ancestors, based principally on the Department’s rejection of the Royce map depicting the Vallejo Site within that ceded territory. The Decision’s refusal to credit Royce Area 296 fails to apply the Indian canon of construction in construing the 1851 treaty, fails to account for the federal government’s role in drafting the treaty and the limitations of the surviving historical record, and fails to consider the historical evidence cumulatively, as *Scotts Valley I* required

The 2025 Decision’s reliance on Royce Area 296 was consistent with the 1851 treaty and its negotiating history. The Royce map reflected the territory the federal representatives understood to have been ceded. 2026 Decision at 33; *see id.* at 10 (map). The federal negotiator assured the Band that its men could continue traveling into and working within that territory, and the treaty designated Vallejo as the location where the Band could obtain provisions promised by the treaty.<sup>4</sup> Those contemporaneous materials corroborated the broader historical evidence of the

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<sup>4</sup> Report of the Secretary of the Interior, Communicating, in Compliance with a Resolution of the Senate, a Copy of the Correspondence Between the Department of the Interior and the Indian Agents and Commissioners in California, S. Exec. Doc. No. 4, at 135–37 (1853) (recording Treaty Negotiator Redick McKee’s assurance that the Band’s “young men may hire out to work upon the different ranches”); Treaty Made and Concluded at Camp Lu-Pi-Yu-Ma, Clear Lake, California, art. V (Aug. 20, 1851) (providing that the United States would furnish subsistence to the treaty tribes “*at or near Vallejo*”) (emphasis added).

Band’s labor, travel, subsistence, and other connections throughout Royce Area 296 and provided direct evidence connecting the Band to Vallejo and the surrounding ceded territory.

Rejecting the Royce map, the 2026 Decision reasons that reliance on the map would be “unfair” to successors of other Native communities that may also have occupied portions of the depicted territory but did not participate in the treaty negotiations. 2026 Decision at 33. That reasoning substitutes an exclusivity and title-based inquiry for the historical-connection inquiry required by Part 292. The relevant question is whether the treaty, its negotiations, and the federal government’s depiction of the ceded territory constitute historical evidence of the Band’s connection to the Vallejo Site and its vicinity—not whether the Band possessed exclusive ownership of, or exclusive authority to cede, every acre depicted in Royce Area 296.

The Decision’s treatment of the territory ceded in the 1851 treaty also fails to apply the settled canon governing Indian treaties. Indian treaties must be construed as the tribal signatories would naturally have understood them, with ambiguities and doubtful expressions resolved in their favor. *Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985) (“it is well established that treaties should be construed liberally in favor of the Indians, ... with ambiguous provisions interpreted to their benefit”); *Antoine v. Washington*, 420 U.S. 194, 199 (1975) (“The canon of construction applied over a century and a half by this Court is that the wording of treaties and statutes ratifying agreements with the Indians is not to be construed to their prejudice.”); *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432 (1943). Notwithstanding ample evidence in the record, the Decision does not evaluate how the Band’s ancestors would have understood the ceded territory or address the negotiations’ express contemplation that Band members could continue traveling into and working within that territory.

Nor does the Decision reconcile its new conclusion with the treaty's express designation of Vallejo as the location where the Band could obtain provisions. That provision directly connected the Band to Vallejo and reflected the parties' understanding that Vallejo fell within the territorial and subsistence framework memorialized by the treaty. Reverting to the 2019 decision's view that the designation of a Vallejo location was merely for the federal government's convenience, the Decision fails to grapple with the larger body of evidence showing that the treaty's pick-up designation, like the government's effort to obtain the cession depicted in Royce Area 296, formed part of a larger pattern of the Band's labor, travel, subsistence, and other connections to the vicinity of the Vallejo Site—connections that, given the historical circumstances, were rarely documented by official recordkeepers.

The Department's dismissal of Royce Area 296 misunderstands the historical role Royce's work has played in federal Indian law. For more than a century, the federal government has relied on the *Indian Land Cessions in the United States* as the authoritative depiction of treaty cession boundaries. The Indian Claims Commission—the federal tribunal created by Congress in 1946 to adjudicate Indian land claims—described Royce's work as an “indispensable reference for all subsequent students of Indian land areas” because it translated “the often vague treaty calls into precise boundaries.” U.S. Indian Claims Comm'n, Final Report 127 & n.1 (1978). The Commission likewise recognized that Royce's maps were not intended to establish the precise extent of an Indian tribe's ownership or exclusive occupancy of every parcel within a ceded area. *Id.* Rather, Royce mapped treaty cessions, while questions of actual ownership were resolved through historical, anthropological, and ethnographic evidence. The 2026 Decision therefore errs by discounting Royce Area 296 on the grounds that it did not, in the Department's view, accurately

reflect ownership of the area. That is not the function Royce's maps have ever served in federal Indian law.

The Department's treatment of Royce Area 296 presents a particularly stark instance of unexplained agency inconsistency. "Reasoned decisionmaking requires treating like cases alike; an agency may not casually ignore its own past decisions." *Hall v. McLaughlin*, 864 F.2d 868, 872 (D.C. Cir. 1989). And an agency's "failure to follow its own well-established precedent without explanation is the very essence of arbitrariness." *Nat'l Treasury Emps. Union v. Fed. Labor Relations Auth.*, 404 F.3d 454, 457-58 (D.C. Cir. 2005).

The Department had repeatedly treated Area 296 as meaningful evidence identifying the territory ceded by the Band's ancestors. Most significantly, the Department relied on that very boundary against the Band in its May 25, 2012 restored lands determination concerning a different parcel of land. The Department recognized that the Band's Ca-la-na-po ancestors' ceded lands could extend throughout Royce Area 296, and rejected that parcel in part because it "lay outside of that ceded territory." May 25, 2012 Decision at 14; *see* Davis Decl. ¶ 7. Thus, in 2012, the Department treated the Royce boundary as legally and evidentially significant in determining whether historical use or occupation of surrounding lands could support the inference required by Part 292.

The Band reasonably took the Department at its word. Having been denied a restored lands determination in material part because the Richmond parcels lay outside the ceded territory depicted in Area 296, the Band focused its subsequent efforts on a site located within that territory. Davis Decl. ¶ 7. The Vallejo Site cured precisely the geographic deficiency the Department had identified. And when the Department considered the Vallejo Site in 2019 and again in January

2025, it continued to treat the Site’s location within Royce Area 296 as evidence supporting an inference of the Band’s historical connection to the area.

The 2026 Decision reverses that premise without adequately acknowledging, much less explaining, the reversal. The resulting asymmetry is untenable: when the Band sought a restored-lands determination for property *outside* Area 296, the Department relied on the Royce boundary to reject the application; after the Band turned to property *inside* Area 296, the Department declared the same boundary unreliable. An agency cannot move the evidentiary goalposts in that manner without a reasoned explanation, particularly after the regulated party has structured its conduct around the agency’s prior determination. *Hall*, 864 F.2d at 872. The Decision provides no reasoned explanation for treating the same historical source as sufficiently reliable to establish where the Band’s ceded territory did not extend in 2012, but insufficiently reliable to establish where that territory did extend in 2026. Nor does it address the Band’s reliance on the Department’s prior treatment of the Royce boundary. That unexplained reversal is arbitrary and capricious.

## **2. 1837 baptisms at Mission San Francisco Solano**

The 2026 Decision concludes that Augustine probably was not the child baptized at Mission San Francisco Solano in 1837 and therefore withdraws one factual assumption made in the 2025 Decision. The Decision addresses the baptism issue as a choice between two possibilities: “either this was not the Band’s Augustine, or there were errors in the record,” and it finds that “the former is more likely.” 2026 Decision at 31-32 (cleaned up). The Decision then states reasons that “suggest[]” support for the former possibility, but it does not acknowledge any of the evidence in the record that supports the latter possibility, nor does it acknowledge the historical context in which Indian children taken from their homelands for missionization may have been misidentified in mission records. *Id.* at 32. What the Decision presents as a “reasoned judgment” based on fairly

evaluating the two alternatives actually ignores and devalues facts that weigh in the Band's favor while arbitrarily giving dispositive weight to opponents' objections.

Furthermore, the 2025 Decision never treated that baptismal identification as dispositive. Opponents have long attempted to reduce the Band's historical showing to a single dispute over the 1837 baptismal record, but the 2025 Decision expressly acknowledged that Augustine's baptism at Mission Solano was only a possible identification and relied upon it as one piece of a much broader historical mosaic that included Augustine's documented presence in Napa, the migration of Clear Lake Indians into the North Bay labor system, the regional ranching economy, genealogical evidence, and the historical displacement of the Band's ancestors.

The 2025 Decision did not treat the Augustine evidence in isolation. It considered that evidence together with independent historical documentation placing other Band ancestors in Napa, the broader documented pattern of the Band's ancestors' displacement and labor throughout the North Bay, and the Vallejo Site's location within the territory ceded by the Band's predecessors. In the 2025 Decision, the Department thus evaluated the historical record cumulatively—reasoning from the evidence “[t]aken together”—rather than demanding that any single historical record independently establish the Band's connection to the Site. 2025 Decision at 17. The 2026 Decision, however, effectively adopts the opponents' approach in direct contravention of *Scotts Valley I*. By allowing uncertainty surrounding one historical detail to overshadow the remainder of the record, the Department abandons the holistic inquiry required by this Court and instead fragments the historical evidence into isolated components, each of which it finds insufficient when viewed alone.<sup>5</sup>

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<sup>5</sup> The Department's reproduction of a portion of the 2025 Decision makes another alteration: the 2025 Decision states “the Band claims Augustine *may have been* baptized” at Mission San

### 3. Scotts Valley's occupancy of ranchos near the Vallejo Site and Indian labor at the rancho encompassing the Vallejo Site

The Department maintains its prior finding that Chief Augustine and other Band ancestors worked on ranchos in the North Bay region and acknowledges that the historical record demonstrates extensive movement of Clear Lake Indians into the regional ranching economy. 2026 Decision at 32-33. It likewise accepts that Augustine likely worked at Rancho Tulucay near the Vallejo Site. *Id.* at 33. It finds that Chief Augustine's residence in Napa constituted "occupancy" and that such occupancy was attributable to the Band as a whole. *Id.* And it finds that "Indians likely worked on Rancho Suscol (the rancho surrounding the Parcel)." *Id.* at 35. Yet it finds that that acknowledged occupancy does not support the Band's significant historical connection to land in the vicinity of the Vallejo Site by selectively crediting assertions by the Band's opponents while discounting evidence relied upon by the Band. *Id.* at 35-38. The Department credits and relies upon the asserted presence of a Patwin population in the North Bay to minimize the significance of the conceded presence of the Band in the same region. *Id.* at 36. It rejects reliable primary source evidence showing that references to "Clear Lake Indians" were references to the Band, based merely on the fact that multiple Pomo tribes reside at Clear Lake today. *Id.*

The Decision finds that the Band's occupancy of ranchos in the North Bay as a labor force, together with the presence of Indians as laborers at Rancho Suscol specifically (the location of the Vallejo Site), does not support an inference of the Band's use or occupancy of the Vallejo Site, because Rancho Suscol had a "unique status" making it "different from other ranchos in the

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Francisco Solano. 2025 Decision at 15 (emphasis added). The 2026 Decision states "the Band claims Augustine *was* baptized" at the Mission. 2026 Decision at 14 (emphasis added). This overstates the Band's reliance on the baptism, exaggerating the importance of the 2026 Decision's finding that Chief Augustine was not among those baptized.

region.” 2026 Decision at 37-38. Rancho Suscol was unique, in the Department’s view, in that it alone among the Vallejo ranchos was never home to the Band’s ancestors as a labor force. *Id.* This finding is based on an unjustified preference for opponents’ evidence and arguments over the evidence submitted by the Band and its experts, a failure to fully consider the relevant evidence in the Band’s expert reports, and a consistent resolution of ambiguities in the record and in the legal standards against the Band, in violation of *Scotts Valley I*.

For example, the Decision declares the Indian laborers on Rancho Suscol were “predominantly Patwin,” 2026 Decision at 37. That assertion is contrary to evidence presented by the Band’s experts, Drs. Hurtado, Johnson, and Thorne, that the Patwin population in the area had been substantially reduced decades earlier by missionization and disease, and that Clear Lake Indians were brought in to fill the labor void. Even assuming the assertion were true, *it does not mean the Band’s Pomo ancestors were not also among the Indian laborers at Rancho Suscol*, particularly in light of the accepted fact that the Band’s ancestors did work on ranchos in the North Bay region, *id.* at 32, and the historical factors that create inevitable gaps and distortions in the documented historical record, *id.* at 37. The Decision also observes that Mariano Vallejo’s claim to privately own Rancho Suscol was rejected in court by 1862, *id.* at 37-38, but this says nothing about the preceding decades in which Vallejo ran the ranch as his own property, and would have used Clear Lake Pomo laborers there as they were used on the other Vallejo ranches.

The Decision refuses to credit inferential or circumstantial evidence in favor of the Band if any conceivable reason could be found to question such evidence. The Department gives no weight to the aborted attack against Indians at Rancho Suscol in retaliation for recent violence by Clear Lake Indians – circumstances that strongly suggest the Band’s ancestors were the targets, and therefore that they were occupants of Rancho Suscol – based on an ambiguous circumstantial

inference that these might have been different Indians. As support for this conclusion, the Decision notes evidence that “east Pomo Indians at Big Valley” would “go down into Napa and Sonoma Valleys” “in the springtime and harvest,” then uses the imprecise seasonal description, “springtime,” to refute that the attack “in early 1850” – reported on March 16, 1850 — could have involved these springtime laborers. This mode of analysis violates *Scotts Valley I*.

The Decision accepts the historical disruption of the Band’s homeland, yet faults the Band for the absence of parcel-specific historical records—the very absence that those historical disruptions explain. 2026 Decision at 37. In *Scotts Valley I*, this Court stated, “It is not clear from the [2019] ILO how the Band could ever attain a different result given how completely it was dispersed or what harm would flow to the United States from doing what is in its power to make up for the disadvantages the tribe now faces through no fault of its own.” *Scotts Valley I* at 167. The 2026 Decision turns the Court’s criticism on its head, and states that “the Band might ‘attain a different result’” if only the evidence of the places to which it was dispersed were as strong as the evidence of its presence elsewhere. 2026 Decision at 37. The Decision thus imposes a higher standard than what Part 292 requires—shutting the Band out of sites where the documentation supports an inference of occupation and use, and limiting it to hypothetical sites with direct documentation—to once again avoid “grappl[ing] with the inescapable historical fact that Scotts Valley was a tribe that had its recognition and land stripped away by the federal government and its people scattered to the winds.” *Scotts Valley I* at 165-66.

The Decision reflects the exact methodology this Court rejected in *Scotts Valley I*. The Court held that Interior had improperly cited favorable evidence only to “devalue” it and had failed to resolve reasonable inferences in the Band’s favor. 633 F. Supp. 3d at 168. The 2026 Decision repeats that same error. It accepts the historical record documenting the Band’s ancestry,

movement throughout the North Bay, participation in the regional ranching economy, and historical displacement, but then discounts each category of evidence until none remains sufficient. The Department violates *Scotts Valley I*, IGRA and Part 292, and the Decision thereby violates the APA as arbitrary, capricious, and not in accordance with law.

**C. The Department reversed its prior decision without explanation.**

The APA requires an agency to provide a reasoned explanation when it changes its interpretation of governing law or departs from the analytical framework underlying a prior final decision. An agency must “display awareness that it is changing position” and “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). These principles apply with particular force where, as here, an agency departs from the interpretation it previously adopted to implement a federal court’s remand order.

The 2026 Decision silently abandons the legal framework required by *Scotts Valley I* and implemented in the 2025 Decision. Rather than applying the broad interpretation of Part 292 adopted in January 2025, the Department applies a materially narrower interpretation of “significant historical connection,” discounts the cumulative force of the historical record by evaluating individual categories of evidence in isolation, rejects Royce Area 296 and other evidence previously relied upon, and effectively reinstates the restrictive methodology this Court rejected in *Scotts Valley I*. Yet nowhere does the Department acknowledge that it is changing its interpretation of Part 292 or explain why the analytical framework it adopted only eighteen months earlier no longer represents the proper implementation of IGRA and Part 292 as required by this Court’s remand. Contrary to the mandate of *Fox Television*, it never meaningfully explains why the 2025 Decision was wrong.

The 2026 Decision never concludes that the 2025 Decision misinterpreted Part 292. It never states that the 2025 Decision misunderstood the Indian canon of construction, improperly

applied IGRA's remedial purposes, or incorrectly interpreted this Court's remand instructions. Nor does it explain why the legal framework the Department expressly adopted in 2025 no longer represented the proper implementation of *Scotts Valley I*. Instead, the Department simply applies a materially different interpretation of the governing regulation without acknowledging that any change has occurred.

These failures are fatal under the APA. An agency cannot silently abandon the legal interpretation it previously adopted—particularly one adopted for the express purpose of complying with a federal court's remand—and substitute a different interpretation without providing a reasoned explanation for doing so. *Fox Television*, 556 U.S. at 515; *Motor Vehicle Mfrs. Assoc. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 42-43 (1983). The Department's unexplained departure from its 2025 interpretation of Part 292 is therefore arbitrary, capricious, and contrary to law.

#### **D. The Department had no lawful basis to reopen the 2025 Decision.**

The Department's decision to reopen the 2025 restored lands decision rests on a legally erroneous premise. Throughout the reconsideration proceedings, the Department asserted that reconsideration was necessary because it had not considered certain submissions made after this Court's remand and that "not taking those submissions into consideration in this particular case could be deemed legal error." Letter from William H. Kirkland III, AS-IA, to Chairman Shawn Davis at 1 (Dec. 3, 2025), Bergin Decl. ¶ 5 & Ex. B. That statement supplied the sole articulated basis for reopening a completed agency proceeding and reconsidering a final agency decision.

The premise is incorrect. Nothing in *Scotts Valley I* or any other legal authority required the Department to reopen or supplement the administrative record following remand. Rather, the decision whether to reopen the record after remand remained committed to the Department's discretion absent a specific judicial directive. *Stewart v. Spencer*, 344 F. Supp.3d 147, 154 (D.D.C.

2018) (“it is the agency’s discretion to decide how, in light of organizational considerations, it may best proceed upon remand”) (quoting *New Life Evangelistic Center, Inc. v. Sebelius*, 753 F.Supp.2d 103, 115 (D.D.C. 2010)); *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1278 (Fed. Cir. 2012) (“the decision to reopen the record is best left to the agency”). As reflected in the 2025 Decision, the Department clearly had no basis to do so, and it did not abuse its discretion in making that choice.

To the contrary, in light of the extensive record developed during the original restored lands proceedings and the nature of the *Scotts Valley I* remand order, the Department’s decision not to reopen the record after remand was eminently reasonable. *See Essar Steel* at 1277 (“To allow constant reopening and supplementation of the record would lead to inefficiency and delay in finality.”); *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 555 (1978).

The Department explained that it implemented this Court’s remand using the extensive administrative record developed during the original proceedings and that it “neither solicited nor considered any additional evidentiary materials from outside parties.” 2025 Decision at 4. Instead, the Department limited its analysis to the two considerations identified by the Court: “(1) the historical circumstances underlying the Band’s landless status; and (2) the policy underlying IGRA and the restored lands exception.” *Id.* at 2.

The Department provided no explanation why its decision not to consider post-remand submissions “could,” in its words, “be deemed legal error.” Ltr. from W. Kirkland to S. Davis (Dec. 3, 2025). It never identified any statute, regulation, judicial decision, or remand instruction requiring the record to be reopened. It never contended that the 2025 Decision represented an abuse of discretion. Indeed, it never actually found legal error at all. Rather, it suggested only that legal error *could* exist, without explaining why. Because the Department never identified any abuse of

discretion—or explained how its discretionary decision not to reopen the record in 2025 could itself constitute legal error—its bare assertion of possible error could not provide a reasoned basis for reopening the completed 2025 Decision.

The cornerstone of the APA is reasoned decision-making. This was not. *Int'l Ladies' Garment Union v. Donovan*, 722 F.2d 795, 815 (D.C. Cir. 1983). An agency must “cogently explain why it has exercised its discretion in a given manner.” *State Farm*, 463 U.S. at 48. Here, the Department never explained why its prior discretionary decision not to reopen the administrative record became unlawful, or even arguably unlawful. In short, without identifying any legal error in the 2025 Decision, the Department lacked a reasoned basis for reopening that final decision.

The 2026 Decision only perpetuates this defect. Although it proceeds to reconsider the merits on a supplemented record, the Decision never explains why the 2025 Decision was legally deficient for relying on the existing administrative record. It does not, for example, identify any materials submitted before the 2025 Decision which the Department was required by law to have considered. Nor does it explain why the Department’s earlier discretionary decision not to reopen the record became an abuse of discretion after the fact. The Department simply assumes that reconsideration was warranted and proceeds from that premise. The APA requires considerably more, and without more, the decision to reopen the 2025 Decision for reconsideration is arbitrary and capricious.

**E. The Department shifted the stated basis for reconsideration without explanation.**

The Department’s reconsideration process was also arbitrary and capricious because the rationale it gave for reopening the 2025 Decision materially changed during the administrative proceedings without explanation. In its December 3, 2025 letter to the Band, the Department

asserted that reconsideration was necessary because the 2025 Decision had not considered certain submissions received after this Court’s September 30, 2022, remand and that “not taking those submissions into consideration in this particular case could be deemed legal error.” Ltr. from W. Kirkland to S. Davis at 1 (Dec. 3, 2025), Bergin Decl. Ex. B. Thus, the asserted procedural defect concerned materials the Department believed should have been considered *before* issuing the 2025 Decision. The reconsideration, however, did not proceed on that basis.

In a January 21, 2026 letter responding to the Band’s concerns, the Department materially changed the scope of the reconsideration. Rather than reviewing the submissions received between this Court’s remand and the 2025 Decision – the very submissions that allegedly necessitated reconsideration — the Department announced that it would **not** consider those materials unless they were resubmitted. Instead, the Department would consider only documents submitted **after** the 2025 Decision, up to a June 2025 deadline. According to the Department, those documents represented “all the evidence that may not have been considered in reaching the 2025 Gaming Eligibility Determination.” Letter from William H. Kirkland III, AS-IA, to Chairman Shawn Davis at 1 (Jan. 21, 2026), Bergin Decl. ¶ 6 & Ex. C. The Department therefore advised the Band that it “need only review and respond to the June 2025 submissions.” *Id.* Thus, the universe of documents making up the new administrative record was at once narrowed, because it would not necessarily include all the unreviewed material submitted before the January 2025 Decision, and expanded, because it could now include any new material from any person interested in reversing that decision.

The Department never reconciled these two positions. If reconsideration was necessary because the 2025 Decision failed to consider submissions made after the Court’s remand but before

January 10, 2025, the Department never explained why those submissions were ultimately excluded from the reconsideration record unless their proponents chose to submit them again.

Conversely, if the June 2025 submissions were the proper focus of reconsideration, the Department never explained how review of those submissions was necessary to correct an asserted legal error in the 2025 Decision. Many of those materials necessarily could not have been omitted from the Department's 2025 analysis for the simple reason that they were not before it. *See* Bergin Decl. ¶¶ 7-8. Yet the Department never explained why evidence created months after the 2025 Decision – or legal arguments developed in direct response to the decision – could be relevant to the procedural concern that supposedly justified reopening the proceeding in the first place.

Nor were the June 2025 submissions merely duplicate historical materials. By that point, the opponents possessed the benefit of the Department's 2025 Decision and were able to tailor their submissions to attack its factual findings, legal analysis, and interpretation of Part 292. They supplemented prior advocacy with new expert reports, revised legal arguments, additional declarations, and materials created after the 2025 Decision. The Department never explained why providing opponents with that renewed opportunity to reopen and freshly litigate a final agency decision was necessary to remedy the asserted procedural defect, or how doing so was consistent with the finality ordinarily afforded a decision issued on judicial remand. Altogether, the Department's conduct suggests that it used the pretext of having left valuable submissions out of the record “as a way to bootstrap de novo review” of the entire restored lands issue. *See Prieto v. United States*, 655 F. Supp. 1187, 1192 (D.D.C. 1987).

An agency may change course, but the APA requires an agency to “articulate a satisfactory explanation for its action.” *State Farm*, 463 U.S. at 43. Here, the Department never articulated a coherent explanation connecting the procedural defect it identified in December 2025 to the

reconsideration process it ultimately conducted. Nor did it explain why evidence created after the 2025 Decision—or revised advocacy crafted in response to that Decision—could justify reopening a completed remand determination. This unexplained disconnect further demonstrates that the Department’s reconsideration process was arbitrary and capricious and that the Band is likely to succeed on the merits of its APA challenge.

**F. The Department’s reversal of the 2025 Decision on the basis of a reconsideration undertaken for opaque and shifting reasons violates the Band’s due process rights.**

The 2026 Decision violates the Band’s rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, which provides that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The U.S. Supreme Court has long recognized that Indian tribes can assert constitutional rights against the federal government, including under the Fifth Amendment. In *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980), the Court held that the federal government’s taking of tribal property without just compensation violated the Fifth Amendment’s Takings Clause. This recognition of the Band as a “person” for purposes of property protections equally extends to due process claims, particularly when the federal government takes action that directly interferes with the Band’s vested interests. *See Scotts Valley II*, 808 F. Supp. 3d at 23-28 (holding government’s rescission of gaming eligibility decision violated Band’s due process rights).

Due process requires notice and an “opportunity to be heard at a ‘meaningful time and in a meaningful manner’” prior to the deprivation of a property or liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 339-43 (1976); *accord, Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 599 (D.C. Cir. 1993) (“[d]ue process requires ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections’”) (internal quotations and citations omitted). Before taking

action against the Band's property interests, the Constitution required the Department to give the Band "notice of the specific reasons" for the proposed action; otherwise the Band is left to guess, losing its ability to effectively dissuade the Department from acting. *Scotts Valley II* at 26 (quoting *Gray Panthers v. Schweiker*, 652 F.2d 146, 168-69 (D.C. Cir. 1980)).

As explained above, the Department failed to provide the Band adequate notice of the specific basis for its decision to reopen the 2025 Decision, and failed to give the Band a meaningful opportunity to present its objections to that course of action. When the Department subsequently altered its reconsideration procedure by excluding all pre-January 10, 2025, submissions unless they were resubmitted, this augured a new and different reason for reconsidering the matter. The Department again failed to provide adequate notice of the specific reasons for this new rationale or a meaningful opportunity to respond to such rationale.

The Decision deprives the Band of the ability to pursue the most economically valuable use of its trust land—gaming—which constitutes a vested and legally protected property interest. *Scotts Valley II*, 808 F. Supp. 3d at 25. After the Department attempted to temporarily rescind the Band's gaming eligibility, this Court held the Band "obtained a valid property interest through the January 10 decision." *Id.* The 2025 Decision gave the Band "a 'legitimate claim of entitlement' to gaming eligibility." *Id.* Any extinguishment of that entitlement must be consistent with due process. *Id.* The reversal of the Vallejo Site's gaming eligibility immediately deprives the Band of its gaming rights and thus constitutes the deprivation of a concrete and valuable property interest.

The Department's extinguishment of the Band's property interest in the right to engage in gaming at the Vallejo Site arose out of a process that began with its extraordinarily vague and unexplained choice to reconsider the 2025 Decision. The reason for making that choice was further

muddled as the process continued. Deprived of a clear explanation of the Department’s rationale, the Band also had no meaningful opportunity to make a case disputing that rationale. The Band is therefore likely to demonstrate that the Decision violated its constitutional rights to procedural due process.

**G. The Department arbitrarily disregarded the Band’s substantial reliance on its final restored-lands determination.**

The Department’s reversal also failed to account for the substantial reliance interests produced by its 2025 Decision. The Band reasonably relied on the 2025 Decision while it was operative after *Scotts Valley II*, and materially changed its position by committing significant resources to exercise its long-awaited right to generate tribal government revenues with a gaming operation—actions the Department knew were occurring but failed to meaningfully consider when it reversed course.

When an agency reverses course, it must account for serious reliance interests engendered by its prior action. An agency changing position “must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Dep’t of Homeland Security v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (quoting *Fox*, 556 U.S. at 515). Where serious reliance interests exist, the agency must assess them and weigh them against the competing considerations underlying its new position. *Id.* at 33. “It would be arbitrary and capricious to ignore such matters.” *Id.* at 30. Further, “[t]his strand of arbitrary-and-capricious doctrine ‘does not set a high bar.’” *Scotts Valley II*, 808 F. Supp. 3d at 22 (quoting *MediNatura, Inc. v. FDA*, 496 F. Supp. 3d 416, 458 (D.D.C. 2020), *aff’d*, 998 F.3d 931 (D.C. Cir. 2021)).

The Band reasonably relied on the 2025 Decision that the Vallejo Site qualified for gaming under IGRA’s restored lands exception, and nowhere does the Department identify the Band’s reliance interests, assess their significance, or explain why they are outweighed by the

Department's reasons for reversing the 2025 Decision—despite this Court's admonition that the Department “must take seriously the Band's reliance interests” in making its reconsidered decision. *Scotts Valley II* at 28.

This Court previously considered the Band's reliance on the 2025 gaming eligibility determination in reviewing the March 2025 rescission in *Scotts Valley II*. The Court recognized that “the Band surely had incurred some reliance on the January determination” and characterized the issue as a “close question.” *Scotts Valley II* at 21-22. The Court nevertheless concluded that the reliance interests then presented were insufficient because the January determination had been in effect for only eleven weeks, the Band's description of its reliance remained “at a high level,” and the record did not make clear which expenditures were actually attributable to the January determination. *Id.* at 22. That is not the reliance now before the Court.

When this Court vacated the March 2025 rescission, reinstating gaming eligibility, the Court cautioned that the Band “would be ill-served by placing undue reliance” on maintaining its gaming eligibility because the Department could reverse itself at the conclusion of the reconsideration process. *Id.* at 28. But the Court's caution did not render the reinstated 2025 Decision legally meaningless, nor did it give the Department license to disregard reliance that developed while that decision remained operative. To the contrary, in the same passage, the Court expressly admonished that “Interior, too, must take seriously the Band's reliance interests.” *Id.* The two admonitions were deliberately paired. The Band was on notice that reconsideration could result in reversal; the Department was equally on notice that, if it chose that course, it would have to take seriously the reliance interests existing at the time of its final decision.

Thus, *Scotts Valley II* contemplated both propositions at once: the Band could not assume reconsideration would necessarily end in its favor, but if the Department ultimately reversed the

operative gaming eligibility determination, the agency remained obligated to take seriously the reliance interests that existed when it did so. The Department did not do that.

Following *Scotts Valley II*, the Band did not treat the Court’s decision as a guarantee that its gaming eligibility could never change. It instead continued to act under the agency determination that was actually in force. The 2025 Decision remained the Department’s operative determination that the Vallejo Site satisfied IGRA’s restored-lands exception and was eligible for gaming. And while that determination remained effective, the Band took concrete steps to implement the gaming eligibility it conferred.

Those actions went far beyond the preliminary development expenditures considered in *Scotts Valley II*. The Band established the governmental and regulatory infrastructure necessary for gaming; pursued development of the Vallejo Site; entered into agreements with the City of Vallejo concerning municipal services associated with the gaming facility; hired and trained employees; constructed the Class II Preview Casino; and ultimately commenced Class II gaming operations at the Vallejo Site on July 24, 2026. Davis Decl. ¶¶ 23-38.

The Band likewise resumed and substantially advanced negotiations with the State of California for a Tribal-State Gaming Compact governing Class III gaming at the Vallejo Site. Beginning in December 2025, the Band and the State met nearly every month. The Band retained a consulting firm to provide market research, financial-feasibility analysis, and economic-impact analysis necessary for those negotiations. The parties exchanged multiple compact drafts and, by July 2026, had reached tentative agreement on nearly all material terms. Davis Decl. ¶¶ 68-71.

These are precisely the sort of concrete reliance interests that were missing from the record in *Scotts Valley II*. The D.C. Circuit requires claimed reliance harms to be “specifically identified, reasonably incurred, and causally tied to” the challenged agency action. *Solenex LLC v. Bernhardt*,

962 F.3d 520, 529 (D.C. Cir. 2020). The Band's post-*Scotts Valley II* reliance satisfies each requirement. It is specifically identified: the Band established the governmental and regulatory infrastructure for gaming, hired and trained employees, constructed and opened the Preview Casino, undertook governmental and municipal commitments, and substantially advanced compact negotiations with California. It was reasonably incurred while the January 2025 gaming eligibility determination remained the operative agency decision governing the Vallejo Site. And it is directly traceable to that determination: these actions were undertaken specifically to implement the gaming eligibility the Department had recognized.

Nor can the Department characterize that reliance as something of which it was unaware. During an in-person meeting with Department officials in Washington, D.C., on December 22, 2025, the Band expressly informed the Department that it intended to open a Class II gaming facility at the Vallejo Site. Bergin Decl. ¶ 10-13. The Department therefore knew that the Band was proceeding toward actual gaming operations while reconsideration remained pending.

The fact that the Preview Casino had been operating for only approximately one week when the Department issued the 2026 Decision does not diminish the Band's reliance interest. The opening was not the beginning of the Band's reliance; it was the culmination of more than seven months of concrete actions taken to implement the Department's operative final gaming eligibility determination. And the Department knew that process was underway and allowed that implementation process to continue for more than seven months before reversing the determination on which it depended. By July 30, the Band's reliance had progressed from planning, to implementation, to an accomplished fact: the Band had established and was operating a tribal governmental gaming facility pursuant to the federal eligibility determination then in effect.

The Department will likely emphasize this Court’s warning against “undue reliance” on *Scotts Valley II*. But that warning does not resolve the APA issue now before the Court. Indeed, it does not say the Band should not rely upon the force of *Scotts Valley I* and the resulting 2025 Decision on remand. It bears on the weight the Department could reasonably assign to the Band’s reliance; it does not extinguish the reliance or relieve the Department of its obligation to consider it.

The nature of an agency’s explanatory obligation depends on the nature of the reliance at issue. *See Kiewit Power Constructors Co. v. Sec’y of Lab.*, 959 F.3d 381, 399 (D.C. Cir. 2020); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). In *Kiewitt Power*, the D.C. Circuit explained that the “key to understanding *Encino Motorcars*” is the Supreme Court’s recognition that a cursory explanation was inadequate because of decades of industry reliance on an agency’s prior policy. *Id.* The Band does not contend that seven months of post-*Scotts Valley II* reliance is equivalent in duration to the decades of industry reliance present in *Encino Motorcars*. But duration is not the only measure of reliance. In those seven months, the Band progressed from preparing to implement the restored eligibility determination to actually operating a tribal governmental gaming facility. That concrete and consequential change in position was an interest the Department was required at least to confront, and which this Court ordered that the Department “must take seriously.” *Scotts Valley II*, 808 F. Supp. 3d. at 28.

And the reliance interests the Department was required to consider on July 30, 2026 were materially different from those this Court considered in *Scotts Valley II*. The prior case concerned eleven weeks of reliance and a record that did not sufficiently distinguish expenditures attributable to the January determination. By July 2026, the 2025 Decision had existed for more than eighteen months; the Band had spent months implementing the restored eligibility determination; the

Department had actual notice of the Band's plans to commence Class II gaming; employees had been hired and trained; the Preview Casino had been constructed; and gaming operations had actually commenced. Moreover, this decision was more consequential; rather than a temporary rescission, the 2026 Decision is intended to be the final determination, making it more important for the Decision to acknowledge and address the consequences.

Yet the 2026 Decision does not meaningfully address those post-*Scotts Valley II* reliance interests. It does not grapple with the Band's establishment and operation (or even the planned or anticipated operation) of the Preview Casino, its employees, its governmental and municipal commitments, or its advanced compact negotiations with California. Nor does it explain why those interests were outweighed by the Department's reasons for reversing course. The Department gives no consideration to the negative effects that a reversal would have on the Band's ability to achieve economic self-determination, or its ability to make use of the IGRA exception tailor-made for restored tribes like Scotts Valley. The Decision entirely fails to address what reversal could mean for the simultaneous trust decision that was centrally premised on using the trust land for gaming purposes. This is therefore not a case in which an agency acknowledged the relevant reliance interests and supplied even a concise contemporaneous explanation for overriding them. *MediNatura, Inc. v. FDA*, 998 F.3d 931, 942-43 (D.C. Cir. 2021).

The omission is striking because the Department expressly considered the economic and reliance interests asserted by the Indian tribes opposing the Band's restored-lands determination. The Decision recounts Federated Indians of Graton Rancheria's ("FIGR") assertion that the Band's proposed gaming operation would adversely affect FIGR's gaming operation and, "by extension," its ability to provide services to its members. 2026 Decision at 22. It likewise credits Lytton Rancheria's concern that, because its gaming operation "almost exclusively draws its customers

from the San Francisco Bay Area,” Lytton would “see steep cuts with the approval of Scotts Valley’s project.” *Id.* And it specifically acknowledges United Auburn Indian Community’s (“UAIC”) assertion that the Band’s proposed gaming operation “threatens UAIC’s good-faith investments in legally compliant, on-reservation gaming.” *Id.* The asymmetry is especially stark: the Department expressly considered UAIC’s “good-faith investments” in reliance on its existing gaming operations while ignoring the Band’s investments and governmental actions undertaken in reliance on the very determination the Department was reversing.

The 2026 Decision does more than interrupt a gaming project. It upends the Band’s reasonable reliance on the government’s final determination that, decades after the government terminated Scotts Valley and the Band fought to regain recognition, it had finally satisfied the Federal regulatory requirements for gaming-eligible restored lands. For a tribe like Scotts Valley, restoration of land is essential to give practical effect to the restoration of Federal recognition and its attendant dignity as a sovereign. *See Scotts Valley I* at 167; *City of Roseville*, 348 F.3d at 1030. The Department reversed that determination without considering the extraordinary reliance interests its own final decision had engendered.

That failure is particularly significant because of this Court’s instruction that the Department “must take seriously the Band’s reliance interests” if reconsideration continued. *Scotts Valley II* at 28. The Department was free to complete reconsideration. It was free, upon a lawful and reasoned basis, to reach a different conclusion. But it was not free to ignore the concrete reliance interests that had developed by the time it did so. The Department’s failure even to consider those interests reinforces the Band’s likelihood of success.

## **II. The Band faces immediate and irreparable harm absent Court intervention.**

The irreparable harm factor requires an injury that is “both certain and great; it must be actual and not theoretical and of such imminence that there is a clear and present need for equitable

relief.” *Scotts Valley Band of Pomo Indians v. Burgum*, No. 25-cv-00958 (TNM), 2025 WL 1639901, \*3 (D.D.C. June 10, 2025) (“*Scotts Valley PI Order*”) (quoting *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019)). The factor is satisfied where the plaintiff is “likely to suffer irreparable harm before a decision on the merits can be rendered.” *Id.* (quoting *Winter*, 555 U.S. at 22).

The challenged Decision has immediate and substantial adverse consequences for the Band. Because the Department now deems the Vallejo Site ineligible for tribal gaming under IGRA, the law now requires the Band to suspend operation of its class II gaming facility. By extinguishing the Band’s gaming rights, the Decision directly injures the Band’s sovereign authority, its economic interests, and its property.

As explained above, the Decision deprived Scotts Valley of its property interest in gaming eligibility without providing the Band with adequate notice and an opportunity to be heard, in violation of the Band’s Fifth Amendment due process rights. The Band’s showing that it is likely to succeed on a claim for this constitutional violation means, under the law of this Circuit, that it has also shown it is likely to suffer irreparable harm without preliminary injunctive relief. *Taylor v. Trump*, 823 F. Supp. 3d 17, 40 (D.D.C. 2026); *see also Kareem v. Trump*, 960 F.3d 656, 667-68 (D.C. Cir. 2020); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). As long as the unconstitutionally-based Decision continues to deny the Band gaming rights, it constitutes irreparable injury.

In addition to the due process violation that led to the Band being stripped of its property right in gaming eligibility, the Decision also immediately terminates the Band’s governmental power over class II gaming. Until the 2026 Decision, the Band possessed the sovereign authority to regulate class II gaming on the Vallejo Site. “Once the agency took the parcel into trust and

deemed it eligible for gaming, no further legal barrier stood in the way of class II gaming.” *Scotts Valley II*, 88 F. Supp. 3d at 25. IGRA authorizes an Indian tribe to “engage in, or license and regulate, class II gaming on Indian lands within such tribe’s jurisdiction,” where specified conditions are met. 25 U.S.C. § 2710(b)(1). First, the gaming must be located within a State that permits such gaming. 25 U.S.C. § 2710(b)(1)(A). It is undisputed that class II gaming is permitted in California. Second, the tribe must have a gaming ordinance or resolution which is approved by the Chairman of the NIGC. 25 U.S.C. § 2710(b)(1)(B). The Band also satisfies this condition; the NIGC Chairman approved the Band’s gaming ordinance in March 2025. Davis Decl. ¶ 34. IGRA also requires a tribally-issued facility license for each location that conducts Class II gaming, and federal regulations impose a “procedural notice requirement” associated with the tribal license. *Scotts Valley II* at 25 n.6; 25 U.S.C. § 2710(b)(1). The regulations require at least 120 days’ notice to the NIGC Chairman that a facility license is under consideration. 25 C.F.R. § 559.2(a). After a license is issued, a copy must be submitted to the NIGC Chairman. 25 C.F.R. § 559.3. The Band also satisfied all the facility license requirements. Davis Decl. ¶ 36. In the *Scotts Valley PI Order*, the Court found the sudden rescission of gaming rights did not cause “imminent” harm to the Band’s sovereign authority over Class II gaming because of the “time delay” associated with the required facility license. *Scotts Valley PI Order* at \*7. Since the Band has now cleared all the legal and procedural prerequisites, no such delay now precedes the present existence of the tribe’s gaming rights. The legal and practical consequences of the Decision are immediate.

Not only did the Band possess the fully realized right under IGRA to engage in and regulate Class II gaming on the Vallejo Site, but the Decision’s extinguishment of that right is “actual and not theoretical.” *Scotts Valley PI Order* at \*3 (quoting *Olu-Cole*, 930 F.3d at 529). The Band was actively operating a class II gaming facility on the Vallejo Site when the Department issued the

Decision. Davis Decl. ¶¶ 36-37. The Decision rendered such gaming illegal, forcing the Band to turn off the gaming devices and close the facility. Davis Decl. ¶ 50. Previously, this Court found the Band could allege “only a theoretical harm to its sovereignty ... because no casino or gaming exists to harm.” *Scotts Valley PI Order* at \*9. Those facts have fundamentally changed.

This actual and tangible “loss of sovereign authority, self-government, and jurisdiction over the land, is unquestionably an irreparable harm.” *Mashpee Wampanoag Tribe v. Bernhardt*, No. 18-2242 (PLF), 2020 WL 3034854, \*3 (D.D.C. Jun. 5, 2020). Although not the “total loss” of sovereign rights that could occur if the Band’s territory were removed from trust status, as in *Mashpee Wampanoag*, the termination of the Site’s gaming eligibility nevertheless effected the total loss of a significant sovereign power that, until the Decision, the Band possessed and exercised. As *Mashpee Wampanoag* observed, “even a partial infringement on a tribe’s sovereignty over its land constitutes an irreparable harm.” *Id.* at \*4.

The Decision also causes irreparable economic harm. A financial injury is irreparable “where the loss threatens the very existence of the movant’s business.” *Scotts Valley PI Order* at \*3 (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). That precisely describes this case. The Decision declares that tribal gaming under IGRA is not lawful at the Vallejo Site. To avoid violating federal law, the Band’s class II gaming facility must cease operation. The Band cannot move the business elsewhere because the Band does not possess any other Indian land eligible for gaming, or indeed any other trust land at all. The Band’s gaming business cannot lawfully exist while the challenged Decision is in effect. The total eradication of the Band’s casino business constitutes irreparable injury to the Band.

The significant magnitude of this injury justifies maintaining the status quo while judicial review is underway. The Band’s total investment in the Preview Casino exceeds \$10 million.

Davis Decl. ¶ 56 & Ex. A. This figure represents unrecoverable sunk costs for the use of class II gaming devices, the placement, structural improvement, and outfitting of buildings for the Preview Casino, construction and improvement of the facility's landscaping, driveway and parking area, and the hiring and training of casino employees and the members and staff of the Tribal Gaming Commission. *Id.* ¶¶ 25-34. All of these costs were incurred while the January 2025 restored lands decision was in effect. *Id.* ¶ 35. The facility's premature closure prevents the Band from recouping these investments. *Id.* ¶¶ 54-61. Continued closure will also deprive the Band of gaming revenues needed to support Tribal governmental operations, delay the development of the planned Class III gaming facility, and result in the loss of community goodwill, operational momentum, and valuable regulatory and operational experience that cannot readily be recreated. *Id.* ¶¶ 62-67. In addition, the closure will cause the facility's employees, Tribal Gaming Commissioners and Gaming Commission staff to be laid off or furloughed without pay. *Id.* ¶¶ 57, 60-61. And the Band will incur the additional expenses associated with dismantling the facility and then, in the event it prevails in this lawsuit, the further expenses required to reestablish the facility, reacquire the necessary equipment, and hire and train new staff, managers, and regulators. *Id.* ¶ 58-60.

Every day the facility remains closed is a day that the Scotts Valley Band remains a restored tribe with trust land but without the ability to realize the very economic self-sufficiency that Congress intended the restored lands exception to promote.

The 2026 Decision also immediately halted the Band's ongoing Tribal-State compact negotiations, destroying more than eighteen months of substantial governmental effort and investment. Just seven days after the Department issued the 2025 Decision, the Band formally requested that the State of California commence negotiations for a Class III gaming compact under IGRA. Davis Decl. ¶ 68. The Governor accepted that request on March 4, 2025, and the parties

promptly began negotiating. Although negotiations were temporarily suspended following the Department’s March 27, 2025, rescission letter, they resumed immediately after this Court’s October 30, 2025, decision in *Scotts Valley II*. Beginning in December 2025, representatives of the Band and the State met approximately every month to negotiate the compact. During that process, the Band retained specialized gaming consultants to prepare market analyses, financial feasibility studies, and economic impact assessments necessary to support the negotiations. The parties exchanged multiple drafts of a proposed compact and reached tentative agreement on the overwhelming majority of its provisions. *Id.* ¶ 69. At the parties’ previously scheduled negotiation session on August 5, 2026—just days after the Department issued the challenged Decision—the State advised that, in light of the Department’s determination that the Vallejo Site was no longer eligible for gaming under IGRA, the compact negotiations would cease. *Id.* ¶ 70. As a result, the Band has lost not only the substantial financial resources expended on consultants, experts, legal counsel, and Tribal governmental personnel, but also the benefit of months of productive negotiations that had brought the parties close to agreement. Those lost governmental efforts, expenditures, and opportunities cannot be recovered. *Id.* ¶ 71.

### **III. The balance of equities and public interest favor injunctive relief.**

The balance of equities and public interest factors merge when the Government is the party opposing preliminary relief. *Scotts Valley II* at \*3.

The balance of equities in this case weighs overwhelmingly in favor of granting a preliminary injunction. The Band faces immediate and concrete harms to its due process rights, gaming rights, sovereign authority, economic development efforts, and government-to-government relationships.

In contrast, Defendants would suffer no legally cognizable harm from a temporary return to the status quo – a status quo the Department itself created by issuing the 2025 Decision.

Defendants retain full authority to litigate the merits of their position during the course of this action. No regulatory deadlines will be missed, and no urgent federal interests are at stake. The Vallejo Site's title status will not be affected. The only consequence of granting the preliminary injunction is that the Department will be required to adhere to its previous decision while its new decision is under judicial review.

Moreover, no legitimate public or third-party interest will be harmed by temporarily preserving the status quo. The 2025 Decision made a rational and well-supported determination that the Vallejo Site constitutes the Band's restored land under IGRA, and found it appropriate to accept the land into trust for the Band, indicating that gaming eligibility on the Vallejo Site is not manifestly contrary to the public interest. The opponents of the Band's project will not face substantial harm from preserving the status quo pending a final disposition. The economic effects of the Band's modestly-sized Class II gaming facility upon other tribal gaming in the region will be negligible. In any event, any such effects do not outweigh the harm to the Band if its gaming rights remain unlawfully extinguished during the protracted course of litigation. Accordingly, there is no equitable interest—on the part of the government or of other Indian tribes—that weighs against the narrow and temporary relief sought here.

#### **IV. No bond should be required.**

The Court should not impose a security requirement in this litigation. *See, e.g., Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, 775 F. Supp. 3d 100, 130 (D.D.C. 2025) (declining to impose bond and stating that the trial court has discretion to require no bond at all, and noting that it would “defy logic” to require bond in a case where the defendants—a federal agency and its director—would face no monetary injury from preliminary injunctive relief). The Court has broad discretion to dispense with the bond requirement, particularly where, as here,

Defendants face no risk of monetary harm. Therefore, the Court should waive any bond requirement under Rule 65(c).

### CONCLUSION

For the foregoing reasons, the Band respectfully requests that the Court grant a preliminary injunction during the pendency of this action: (1) enjoining Defendants from implementing and otherwise giving legal effect to the 2026 Decision; and (2) reinstating and preserving the legal force and effect of the 2025 Decision.

Dated: August 14, 2026

Respectfully submitted,

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