

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

**FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

The Scotts Valley Band of Pomo Indians (“Scotts Valley” or the “Band”) challenges a July 2026 opinion by the United States Department of the Interior (the “Department”) that reconsidered and ultimately reversed a January 2025 opinion that a parcel of land in Vallejo, California was eligible for gaming under the Indian Gaming Regulatory Act (“IGRA”). Such opinions are generally called “Indian Lands Opinion.” On reconsideration, the Department considered additional evidence and legal analysis submitted by Scotts Valley and third parties. The Department concluded that the parcel did not qualify under IGRA’s “restored lands” exception to the statute’s general gaming prohibition on lands taken into trust by the United States for a tribe’s benefit after 1988. The Department found that Scotts Valley did not establish a significant historical connection to the parcel.

Scotts Valley asks this Court to immediately enjoin the Department from implementing or giving legal effect to the 2026 Opinion and to reinstate the 2025 Opinion. Pl.’s Mem. of Law in Supp. of Mot. for Prelim. Inj., Dkt. No. 10-1 (“Pl.’s Mot.”). The Court should deny Scotts Valley’s motion for a preliminary injunction because Scotts Valley has not carried its heavy burden to justify the extraordinary remedy of preliminary injunctive relief. First and foremost, Scotts Valley has failed to demonstrate an irreparable harm that would justify preliminary relief. To the extent that Scotts Valley is injured, that injury resulted from Scotts Valley continuing its development plans while knowing that the Department was reconsidering the decision. Indeed, the Department warned the Band in March 2025 not to rely on the 2025 Opinion during the agency’s reconsideration process. This Court, in ruling in Scotts Valley’s favor in its prior challenge to the Department’s temporary rescission of the 2025 Opinion, also warned that the Department could revoke the 2026 Opinion at the end of its ongoing reconsideration and “Scotts Valley would be ill-served by placing undue reliance on today’s decision.” *Scotts Valley Band of Pomo Indians v. Burgum* (“*Scotts Valley I*”), 808 F. Supp. 3d 1, 28 (D.D.C. 2025). Scotts Valley’s choice to ignore these warnings makes their harm self-inflicted and insufficient to satisfy the irreparable harm standard.

In addition, in denying Scotts Valley’s preliminary injunction in the prior case, this Court concluded the Band had failed to demonstrate irreparable harm. *Scotts Valley Band of Pomo Indians v. Burgum*, (“*Scotts Valley II PF*”), No. 1:25-cv-00958, 2025 WL 1639901, at *3-8 (D.D.C. June 10, 2025). The Band’s present motion similarly fails to provide evidence of irreparable harm that would occur before the Court could issue a decision on the merits of this Administrative Procedure Act (“APA”) case. The Court should again deny Scotts Valley’s motion on that basis.

The other preliminary injunction factors also weigh against injunctive relief. Scotts Valley is not likely to succeed on the merits. The Department appropriately exercised its authority to review its own decision in a timely manner. It considered extensive historical evidence, including new arguments and evidence presented on reconsideration, and issued a well-reasoned and detailed decision on a complicated issue in which the Department has expertise. This Court’s review is under the APA’s deferential arbitrary and capricious standard and the Department has discretion to make factual findings on reconsideration. As such, Scotts Valley is not likely to succeed on the merits of the case.

Finally, the balance of harms and the public interest factors weigh against preliminary relief. Scotts Valley has not demonstrated any irreparable harm. In contrast, there is a strong public interest in the Department issuing correct determinations especially in matters involving a highly regulated and controversial activity such as gaming. And multiple third parties, including the four tribes that filed suit challenging the Department’s 2025 opinion and related decision to accept land into trust, have an interest in seeing that the 2026 Opinion remains effective while the Court decides the merits of the case. Scotts Valley also has not adequately supported its requested relief. None of the preliminary injunction factors weigh in Scotts Valley’s favor, and its motion therefore should be denied.

II. BACKGROUND

A. Legal Background

The Indian Gaming Regulatory Act (“IGRA”) was enacted in 1988 “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments[.]” 25 U.S.C. § 2702(1).¹

¹ Some portions of Section 2710 not relevant here have been held unconstitutional. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996).

Generally, IGRA bars gaming on lands taken into trust after October 17, 1988, with limited exceptions. *Id.* § 2719(a). Relevant here, the prohibition does not apply to lands taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition.” *Id.* § 2719(b)(1)(B)(iii).

In 2008, the Secretary promulgated regulations to define and place reasonable limits on this so-called “restored lands” exception. *See generally* 25 C.F.R. §§ 292.7–292.12. To show that lands qualify as “restored,” a tribe must establish: (1) a modern connection to the lands; (2) a significant historical connection to the lands; and (3) a temporal connection between the date of acquisition and the tribe’s restoration. 25 C.F.R. § 292.12. To demonstrate a “significant historical connection” under Part 292, a tribe can either (1) show that “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty”; or (2) “demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” 25 C.F.R. § 292.2.

IGRA authorizes three classes of Indian gaming. “Class I gaming consists of social games played for nominal prizes and traditional forms of Indian gaming occurring in connection with tribal ceremonies or celebrations. Class II gaming consists of bingo, games similar to bingo, and certain card games. Class III gaming consists of all forms of gaming that are not class I gaming or class II gaming [and] includes most conventional casino games—blackjack, roulette, slot machines, and the like.” *Cherokee Nation v. U.S. Dep’t of the Interior*, 643 F. Supp. 3d 90, 97–98 (D.D.C. 2022) (citations and internal quotations omitted).

B. Factual Background

Scotts Valley was restored to Federal recognition in 1991. In 2016, Scotts Valley asked the Department to take a parcel of land in Vallejo, California (the “Vallejo Site”) into trust for gaming purposes as restored lands. *See Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the*

Interior (“*Scotts Valley I*”), 633 F. Supp. 3d 132, 171 (D.D.C. 2022).² In February 2019, the Department denied that request after issuing an Indian Lands Opinion (“ILO”) that found that Scotts Valley failed to demonstrate the necessary “significant historical connection” to the Parcel to qualify under IGRA’s restored lands exception. *Id.* at 139–40. Scotts Valley challenged that decision in this Court.

In September 2022, this Court (Judge Amy Berman Jackson) found in favor of the Department on almost all Scotts Valley’s claims. *Id.* at 171. The Court found that the ILO did not violate IGRA or the Indian Reorganization Act, was not the “result of a flawed decision-making process,” and that the Part 292 regulations were not in excess of the agency’s statutory authority. *Id.* The Court, however, granted Scotts Valley’s motion for summary judgment on “the question of whether the ILO was arbitrary and capricious when considered in accordance with the Indian canon of statutory construction.” *Id.* The Court held that the Department had failed to apply the Indian canon to the evidence that Scotts Valley submitted in support of its trust application and had not resolved all alleged ambiguities in Scotts Valley’s favor. *Id.* at 167–68. The Court therefore concluded that the Department’s decision was arbitrary and capricious under the APA. *Id.* at 171. The Court remanded “the ILO to the agency for further proceedings consistent with this opinion.” *Id.*

On October 28, 2022, the Department filed a motion for reconsideration under Federal Rule of Civil Procedure 59(e). *Scotts Valley I*, Case No. 19-cv-1544 (D.D.C.), Dkt. No. 65. That

² The Secretary of the Interior (“Secretary”) may accept land into trust under the Indian Reorganization Act for “the purpose of providing land for Indians.” *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009) (citing 25 U.S.C. § 465, since recodified at § 5108). The Department has issued regulations that set forth the policies and procedures governing the Secretary’s decision-making on tribal applications to have land transferred into trust. 25 C.F.R. Part 151.

motion was directed solely at Section III.B. of the Opinion and its apparent holding that the Department was required to apply the Indian canon of construction in its evaluation of evidence during its adjudication of the Band's request. *Id.* The motion noted that this issue was not briefed and asserted that it was a novel holding that represents clear error. *Id.* The Court held a status conference on May 8, 2023, and at that conference denied the motion for reconsideration, reading her reasons into the record. *See* Ex. 1 (Transcript of May 8, 2023, Status Conference).

The Bench Ruling denying the reconsideration motion did not significantly modify the original Opinion. The Ruling, however, did make certain clarifications, including that the original Opinion did not “rule that the Department of Interior had to apply the canon,” but that the Indian canon “was a tool and a principle of *statutory* construction that the Court was supposed to utilize” in assessing the agency's decision. *Id.* at 16–17 (emphasis added).

On remand, the Department did not reopen the administrative record to allow new evidence to be submitted. *Scotts Valley II*, 808 F. Supp. 3d at 10. On January 10, 2025—just before a change in Administrations—the Department issued a favorable decision on Scotts Valley's application to take the Vallejo Parcel into trust (the “Trust Determination”), which included its opinion that the Vallejo Parcel qualified as “restored lands” under IGRA (the “Gaming Eligibility Determination”). *See* Jan. 10, 2025, Decision, Ex. 2. The Department published notice of the Trust Determination on January 15, 2025. *See* Land Acquisitions; Scotts Valley Band of Pomo Indians, Vallejo Site, Solano County, California, 90 Fed. Reg. 3906, 3906 (Jan. 15, 2025). The 2025 Decision is the subject of three lawsuits in this Court. *See Yocha Dehe Wintun Nation v. U.S. Dep't of the Interior*, Case No. 1:25-cv-867 (D.D.C.); *United Auburn Indian Cmty. of the Auburn Rancheria v. U.S. Dep't of the Interior*, Case No. 1:25-cv-873

(D.D.C.); *Lytton Rancheria of California v. U.S. Dep’t of the Interior*, Case No. 1:25-cv-1088 (D.D.C.).

On March 27, 2025—after the change in Administrations—the Department issued a letter to Scotts Valley that temporarily rescinded the Gaming Eligibility Determination for reconsideration. *See* Letter from Scott J. Davis, Sen. Advisors to Secretary of the Interior, to Hon. Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians (Mar. 27, 2025) (“March 27 Letter”), Dkt. No. 10-8. The letter states that “[t]he Secretary is concerned that the Department did not consider additional evidence submitted after the 2022 Remand.” *Id.* The Department invited Scotts Valley “and other interested parties to submit evidence and/or legal analysis regarding whether the Vallejo Parcel qualifies as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. Part 292” by May 30, 2025. *Id.* The submission deadline was later extended to June 13, 2025. 2026 Opinion at 3. The letter states that the Trust Determination remains in place and the land remains in trust, but no party should rely on the Gaming Eligibility Determination until the Department’s reconsideration is completed. March 27 Letter.

The Band filed suit, challenging the Department’s decision to reconsider the prior authorization, as well as the rescission itself. *See Scotts Valley II*, 808 F. Supp. 3d at 1. The Court denied Scotts Valley’s motion for a preliminary injunction, finding the Band failed to show irreparable harm. *Scotts Valley II PI*, 2025 WL 1639901, at *8. On summary judgment, the Court then ruled for the Department on all but one issue. The Court rejected the Band’s challenge to the Department’s decision to reconsider the Gaming Eligibility Determination, finding that it did not constitute final agency action. 808 F. Supp. 3d at 13–14. The Court also held that the Department’s rescission of the Gaming Eligibility Determination was neither arbitrary nor capricious under the APA. *Id.* at 17–23.

The Court, however, concluded that, in temporarily rescinding the Gaming Eligibility Determination, the Department had violated the Band's due process rights. The Court held that the Band had a protected property interest in the Department's Gaming Eligibility Determination that the parcel was eligible for gaming and because of the lack of explanation in the Department's rescission notice and the absence of any "formal hearing or opportunity to respond to" the other tribes' arguments and evidence, the agency had not provided sufficient process. *Id.* at 25–28. The Court thus vacated the Department's rescission of the Gaming Eligibility Determination, though noting that "the Court's remedy does not bar [the Department] from continuing its reconsideration," or "from revoking the Band's gaming eligibility at the end of that process." *Id.* at 28. The Court thus warned the Band not to "plac[e] undue reliance" on the Court's ruling. *Id.*

After the Court's order, the Department proceeded with reconsideration, taking steps to ensure that the reconsideration would comport with due process. *See* Letter from William Henry Kirland III, Assistant Secretary–Indian Affairs, to Hon. Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians (Dec. 3, 2025) ("December 3 Letter"), Dkt. No. 10-9. The Department received submissions from a number of parties, including other federally recognized tribes, state and local governments, individual tribal members, and a former congressman (the "June 2025 Submissions"). The Department notified the Band that "[t]he June submissions raise questions about the [Band's] significant historical connection and temporal connection to the Vallejo Site." *Id.* at 2. The Department subsequently provided the June 2025 Submissions to Scotts Valley so that the Band would have notice of the evidence and legal analysis being added to the record underlying the agency's reconsideration. 2026 Order at 3. The Band was invited to provide any further evidence or legal analysis it wished the Department to consider on the questions of Scotts

Valley’s significant historical connection and temporal connection to the Vallejo Site by January 30, 2026. After discussions with Scotts Valley regarding the reconsideration timeline, and its request for additional time to respond, the Department gave the Band until May 1, 2026, to review and respond to the June 2025 Submissions. The Department then met with Scotts Valley on April 17, 2026, at which time Scotts Valley presented its response to the June 2025 Submissions. The Department did not accept any further submissions after receipt of Scotts Valley’s submission.

Concurrent with the Department’s reconsideration, and consistent with the Court’s orders in the three cases challenging the 2025 Decision, the Department submitted status reports advising the agency’s plans and “concrete timeline” for its reconsideration considering *Scotts Valley II*. See, e.g., No. 1:25-cv-00867-TNM (D.D.C.), Nov. 20, 2025, & Dec. 5, 2025, Minute Orders; No. 1:25-cv-00873-TNM (D.D.C.), Nov. 20, 2025, & Dec. 5, 2025, Minute Orders; No. 1:25-cv-01088-TNM (D.D.C.), Nov. 20, 2025, & Dec. 5, 2025, Minute Orders. In those submissions, the Department outlined the developments mentioned above and, in February 2026, and again in May 2026, advised that the agency anticipated issuing a reconsidered opinion by July 31, 2026. See, e.g., Case No. 1:25-cv-00867-TNM (D.D.C.), Dkt. Nos. 23, 33, 36; Case No. 1:25-cv-00873-TNM (D.D.C.), Dkt. Nos. 25, 39, 42; Case No. 1:25-01088-TNM (D.D.C.), Dkt. Nos. 18, 28, 30]. Scotts Valley was aware of this anticipated timeline.³

On July 30, 2026, the Department issued the 2026 Opinion. Dkt. No. 2-1. It found that the Band had demonstrated “modern connections” to the Parcel and had demonstrated “a temporal connection between the date of the acquisition of the Parcel and the date of the tribe’s restoration.” *Id.* at 4, 6–7. The Department, however, found that the Band had not demonstrated a

³ The Band moved to intervene in the three pending cases.

“significant historical connection” to the Vallejo Site. *Id.* at 9–39. “Consequently, the Vallejo Parcel does not qualify as restored lands within the meaning of applicable law, and the Band may not conduct gaming on the Parcel pursuant to IGRA’s restored lands exception.” *Id.* at 39.

Scotts Valley filed its Complaint for Declaratory and Injunctive Relief on August 7, 2026. Dkt. No. 2. The Band pled four claims under the APA, alleging arbitrary and capricious decision-making for different reasons. Count I alleges a failure to comply with Judge Berman Jackson’s Remand Order, IGRA, and the Part 292 regulations. *See* Compl. ¶¶ 125–42. Count II alleges a violation of the APA based on the Department’s reversal of its prior decision without consideration of Scotts Valley’s reliance on the prior decision. *Id.* ¶¶ 143–49. Count III alleges the Department offered an arbitrary and capricious rationale for reconsideration of the Gaming Eligibility Determination. *Id.* ¶¶ 150–68. Count IV alleges that the Department violated Scotts Valley’s procedural due process rights. *Id.* ¶¶ 169–83. On August 14, 2026, Scotts Valley moved for preliminary injunction. Dkt. No. 10.

III. STANDARD OF REVIEW

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008) (citation omitted). Instead, preliminary injunctive relief “may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* at 22 (citation omitted); *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011). A plaintiff seeking a preliminary injunction must demonstrate four elements: (1) a likelihood of irreparable harm absent injunctive relief; (2) a likelihood of success on the merits; (3) a balance of hardships that tips in their favor; and (4) that the public interest weighs in favor of granting the injunction. *Winter*, 555 U.S. at 20 (citations omitted). The party seeking the preliminary injunction bears the burden of establishing that these four factors weigh in its favor, which includes a “burden of producing credible evidence sufficient to demonstrate her entitlement to

injunctive relief.” *Workman v. Bissessar*, 275 F. Supp. 3d 263, 267 (D.D.C. 2017) (citations omitted).

IV. ARGUMENT

Scotts Valley has not carried its burden of demonstrating that any of the preliminary injunction factors weigh in its favor, much less all four. Scotts Valley has failed to demonstrate that irreparable harm will occur before this Court issues a decision on the merits. Any action Scotts Valley has taken since the Department’s March 27 Letter was at its own risk, given the Department’s warning and the Court’s later instruction in *Scotts Valley II* that the Department had authority to reconsider the Gaming Eligibility Determination and could “revok[e] the Band’s gaming eligibility at the end of that process.” 808 F. Supp. 3d at 28. Thus, the Court explicitly warned the Band “would be ill-served by placing undue reliance” on *Scotts Valley II* vacating the Department’s temporary rescission during the agency’s reconsideration process. *Id.* Scotts Valley also does not demonstrate the Court is likely to rule in its favor on the merits, nor that the balance of harms and public interest factor justify preliminary relief. Scotts Valley’s motion should be denied.

A. Scotts Valley has fallen far short of its burden to demonstrate irreparable harm.

The Court should deny Scotts Valley’s motion because, despite the Department’s and the Court’s explicit warnings, Scotts Valley deliberately “undertook substantial expenditures and financial commitments” to develop the Preview Casino “in reliance on” the Gaming Eligibility Determination during the Department’s reconsideration. Davis Decl. ¶¶ 20, 40, Dkt. No. 10-2. Scotts Valley gambled and now asks the Department to pay for it. The Band’s deliberate actions and undue reliance do not establish irreparable injury.

“Failure to show a likelihood of irreparable harm is sufficient to defeat a motion for a preliminary injunction ‘even if the other three factors entering the calculus merit such relief.’”

Novartis Pharmaceuticals Corp. v. Becerra, No. 24-cv-02234, 2024 WL 3823270, at *4 (D.D.C. Aug. 13, 2024) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). “The D.C. Circuit ‘has set a high standard for irreparable injury.’” *Novartis*, 2024 WL 3823270, at *4 (quoting *Mdewakanton Sioux Indians of Minn. v. Zinke*, 255 F. Supp. 3d 48, 52 (D.D.C. 2017) (internal citation omitted)). The party seeking a preliminary injunction must make two showings to demonstrate irreparable harm. The “harm” must be (1) “certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm[;]” and (2) beyond remediation. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1 (D.C. Cir. 2016) (cleaned up). A showing of “some possibility of irreparable injury” is insufficient. *Hanson v. Dist. of Columbia*, 120 F.4th 223, 245 (D.C. Cir. 2024) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

A movant does not satisfy irreparable harm when the alleged harm is self-inflicted. *Barton v. Dist. of Columbia*, 131 F. Supp. 2d 236, 247 (D.D.C. 2001). Scotts Valley’s alleged harm is entirely self-inflicted. Scotts Valley alleges harm from the closure of its temporary class II gaming facility known as the “Preview Casino.” Pl.’s Mot. 46–50. But Scotts Valley did not pursue the Preview Casino until after the Department’s March 27 Letter. That Letter warned that “[d]uring the pending of this reconsideration neither the Tribe nor any other entity or person should rely on the Gaming Eligibility Determination.” March 27 Letter at 1. Despite the clear warning, the Band chose to build its Preview Casino anyway. Any reliance on the 2025 Gaming Eligibility Determination after March 27, 2025, was unreasonable and any alleged harm was of Scotts Valley’s own making.

Beyond the warning in the March 27 letter, this Court warned Scotts Valley that it would “be ill-served by placing undue reliance” on the Court’s decision because the Department could

revoke the Band’s gaming eligibility at the end of the reconsideration process. *Scotts Valley II*, 808 F. Supp. 3d at 28. With one exception, the expenditures listed on Appendix A to Mr. Davis’s declaration were incurred after this Court’s warning. The Department also reminded Scotts Valley again in a December 2025 letter that reconsideration was ongoing: “In the meantime, as the Court cautioned, the Tribe ‘would be ill-served by placing undue reliance’ on the vacatur of the temporary rescission of the Gaming Eligibility Determination.” Dkt. No. 10-9 at 2 (quoting *Scotts Valley II*, 808 F. Supp. 3d at 28).

Scotts Valley’s choice to incur “substantial expenditures and financial commitments,” Davis Decl. ¶¶ 23, 25, during the Department’s reconsideration process negates the alleged harms it claims. In fact, Scotts Valley incurred costs the same day the Court issued its warning in *Scotts Valley II*. Davis Decl. ¶ 26; Dkt. No. 10-3 at 2 (item 4). The Band continued to undertake substantial financial commitments and perform construction work “in reliance on” the Gaming Eligibility Determination and “with full knowledge that reconsideration remained pending” until the day the Department issued the reconsidered decision. Davis Decl. ¶ 20; *id.* ¶¶ 41, 60.

In fact, the Band was aware that the Department intended to issue its reconsidered decision by July 31, 2026, given that it was presented in filings with this Court since February 3, 2026. *See, e.g., Yocha Dehe*, Case No. 1:25-cv-867-TNM, Dkt. Nos. 33, 36. Amazingly, the Band chose to “open” its Preview Casino on July 24, 2026, one week before the decision was set to be issued. Davis Decl. ¶ 37. The Preview Casino was not generating revenue because it was not open to the public before the Band suspended operations. *Id.* Any injury from the “premature closure” is overstated at best and entirely the result of a risk the Band decided to take by making investments while the Department was reconsidering its Gaming Eligibility Determination. *See Barton*, 131 F. Supp. 2d at 247 (D.D.C. 2001) (self-inflicted harm is not irreparable harm).

Further, this Court already determined that any costs incurred or contracts entered before the Department's January 2025 Opinion did not suffice to show irreparable harm. *Scotts Valley II PI*, 2025 WL 1639901, at *3–4. Yet Mr. Davis admits that Scotts Valley incurred costs both *before* and immediately after the Court's *Scotts Valley II* decision. *See* Davis Decl. ¶¶ 25–26. Any costs incurred before *Scotts Valley II* would have been incurred when the Gaming Eligibility Determination was temporarily rescinded. Despite the temporary rescission, the Band purportedly incurred \$752,329 in September 2025, a month before *Scotts Valley II*. Davis Decl. ¶ 25; Dkt. No. 10-3 at 2. Those prior costs thus cannot provide a basis for alleged economic harm now. *See Scotts Valley II PI*, 2025 WL 1639901, at *4 (“[I]f the contracts did not rely on the January decision, then they also are not harmed by the Department suspending part of it.”); *AARP v. U.S. Equal Emp. Opportunity Comm’n*, 226 F. Supp. 3d 7, 22 (D.D.C. 2016) (preliminary injunction “would serve little purpose” because any harm “has already occurred”).

As with the previous case, Scotts Valley also fails to provide sufficient detail to demonstrate irreparable harm. The cost summary attached as Exhibit A to the Davis Declaration lists five “other purchases as of 7.31” which total over \$4.6 million. Dkt. No. 10-2 at 4-5 (items 123-30). Scotts Valley provides no details and it is unclear when these alleged purchases were made or what they are. These unspecified costs cannot provide a basis for irreparable injury that would justify the extraordinary remedy of preliminary injunctive relief. *See Scotts Valley II PI*, 2025 WL 1639901, at *3–4 (“But the tribe has not provided enough detail for the Court to determine how much, if any, monetary harm is implicated.”). It is also not clear that all of the costs are irreparable or would be incurred before this Court can issue a decision on the merits. The Davis Declaration asserts that the Band will be “forced” to expend “substantial resources to preserve” the Preview Casino or begin “dismantling the governmental and operational

infrastructure the Band built in reliance” on the 2025 Opinion. Davis Decl. ¶ 67. But the Band does not provide facts that would allow the Court to do any more than speculate on the subject. This is insufficient to demonstrate that the Band will suffer any irreparable harm while this case is litigated.

In any event, for “purely financial or economic” harms, “the barrier to proving irreparable injury is higher still, for it is ‘well settled that economic loss does not, in and of itself, constitute irreparable harm.’” *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555–56 (D.C. Cir. 2015) (quoting *Wis. Gas. Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). Scotts Valley’s purely economic injuries are insufficient to establish irreparable harm. Scotts Valley alleges that the 2026 Opinion “causes irreparable economic harm[,]” as “[t]he Band’s total investment in the Preview Casino exceeds \$10 million.” Pl.’s Mot. 48 (citing Davis Decl. ¶ 56). But pure “economic loss does not, in and of itself, constitute irreparable harm.” *Wis. Gas. Co.*, 758 F.2d at 674. “Mere injuries, however substantial, in terms of money, time and energy . . . are not enough” to meet the threshold for irreparable harm. *Sampson v. Murry*, 415 U.S. 61, 90 (1974).

Scotts Valley has also not established irreparable harm to its “governmental power over class II gaming.” Pl.’s Mot. 46. Scotts Valley relies on *Mashpee Wampanoag Tribe v. Bernhardt*, No. 18-CV-2242, 2020 WL 3034854, at *3 (D.D.C. June 5, 2020), Pl.’s Mot. 48, but that case does not support its irreparable sovereign harms theory. As the Court recognized, *Scotts Valley II PI*, 2025 WL 1639901, at *8, that case involved the irreparable harm from taking land out of trust. *Mashpee Wampanoag Tribe*, 2020 WL 3034854, at *3. The 2026 Opinion, however, did not change the Department’s Trust Determination, and the Vallejo Site remains in trust.

Finally, Scotts Valley’s allegation of irreparable injury resulting from its negotiations with the State of California for a Class III gaming compact also fails. Pl.’s Mot. 49–50. Again, Scotts Valley resumed negotiations with California fully aware that there was a chance the Gaming Eligibility Determination could change. The Band further claims that it expended “substantial financial resources” during the negotiations that “cannot be recovered.” Pl.’s Mot. 50 (Davis Decl. ¶ 71). But it provides no details or information for these purportedly unrecoverable expenditures. Nor are any listed in the cost summary attached as Exhibit A to the Davis Declaration. Unsupported assertions of harms are not sufficient to justify injunctive relief. *Jones v. Dist. of Columbia*, 177 F. Supp. 3d 542, 547 (D.D.C. 2016). And if the Tribal-State compact negotiations were suspended in March 2025 and did not resume until December 2025, then it is simply not the case that the 2026 Opinion could have “destroy[ed] more than eighteen months of substantial governmental effort and investment.” Pl.’s Mot. 49–50 (citing Davis Decl. ¶¶ 68–71). The Court should not credit Scotts Valley’s bald assertions of irreparable harm without any support. *Trudeau v. FTC*, 384 F. Supp. 2d 281, 297 (D.D.C. 2005).

In an attempt to adjust the circumstances from those in *Scotts Valley II*, Scotts Valley gambled by rushing to begin class II gaming (including investing in and constructing a facility that allegedly opened one week before the Department’s announced decision date) despite the uncertainty and the Department’s and the Court’s warnings. *Id.* at 47. The Band cannot now bootstrap its gamble into a cognizable showing of irreparable harm. Scotts Valley has failed to demonstrate irreparable harm warranting preliminary injunctive relief. The motion for preliminary injunctive relief should be denied on that basis alone.

B. Scotts Valley will not succeed on the merits of its case.

Even if Scotts Valley has shown an immediate and irreparable harm, it has not shown a likelihood of success on the merits of its case. Scotts Valley bears the burden of demonstrating

“that [it] is *likely* to succeed on the merits.” *Scotts Valley II PI*, 2025 WL 1639901, at *3 (citing *Winter*, 555 U.S. at 20) (emphasis added). The merits of the case will be reviewed under the APA. Under the APA’s “deferential arbitrary-and-capricious standard,” the Court “asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 179–80 (2025) (citing *Motor Vehicle Mfrs. Ass’n of U.S., Inc., v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983)). Agency action is arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *State Farm*, 463 U.S. at 43).

Scotts Valley has not carried its burden of showing a likelihood of success on the merits. The Department undertook review that complied with the *Scotts Valley I* remand order. This Court found previously that the Department has inherent authority to reconsider its decisions and correct legal errors, including by receiving and considering third-party submissions. *Scotts Valley II*, 808 F. Supp. 3d at 18–19. The 2026 Opinion reflects the Department’s reasoned decision after consideration of additional evidence. The Department’s 2026 Opinion is factually and procedurally sound and fully complies with the law.

This Court previously noted that “[t]he Vallejo parcel’s gaming eligibility is an avowedly complex question.” *Scotts Valley II*, 808 F. Supp. 3d at 18. The question of whether Scotts Valley has a significant historical connection to the Vallejo Site is complicated and involves the weighing of evidence in the Department’s area of expertise. The 2026 Opinion is thirty-nine

pages of analysis of extensive historical documentation. It explains the agency’s reasoned decision that after consideration of all the evidence, Scotts Valley had not presented sufficient evidence demonstrating that it has a significant historical connection to the Vallejo Site. The Department is entitled to discretion on its weighing of the evidence.

Scotts Valley has not pointed to any factor that the Department failed to consider or shown that the Department’s decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Contrary to the Band’s contention, the Department did not “devalue” facts favorable to the Band. Rather, the 2026 Opinion reflects thorough consideration of the competing narratives and reaches well-reasoned conclusions on reconsideration. While Scotts Valley disagrees with the Department’s conclusions, its complaints do not establish that the 2026 Opinion was arbitrary under the APA.

Given that Scotts Valley carries the burden of showing that it is *likely* to succeed on the merits, and considering the deference this Court should afford the Department on its weighing of evidence, Scotts Valley cannot meet the standard to justify a preliminary injunction.

1. The 2026 Decision complies with the Court’s Remand Order.

Scotts Valley asserts that the Court required the Department to follow a particular legal framework when it remanded the case to the agency in 2022. The Department’s 2026 Decision complies with the Court’s remand order.

In its decision on cross-motions for summary judgment on the 2019 Indian Lands Opinion, the *Scotts Valley I* Court found that the Department’s decision did not violate the APA “from a pure administrative law perspective” because the Department considered the relevant materials, gave a rational explanation for its decision, and its findings were not “conclusory, unexplained, or unsupported.” 633 F. Supp. 3d at 165. The Court, however, determined that “the equally important evaluation of the decision through the lens of the Indian canon of construction

requires that the decision be vacated and remanded to the agency.” *Id.* The Court acknowledged “that it is not its role to scour through the ILO and substitute its judgment for that of the agency.” *Id.* The Court held, however, that the agency must consider the policy behind IGRA and the Indian canon of construction. *Id.* The Court therefore remanded the ILO “to the agency for further proceedings consistent with this opinion.” *Id.* at 171.

Nothing in *Scotts Valley I* prevented the Department from reconsidering the facts at issue or compels the Department to adhere to previous factual findings that it deems unreasonable or unreliable after taking additional information into consideration. As the Band noted in one of its submissions, the Department may overturn a prior decision if the facts on which the Department relied do not “have basis in the record.” *Scotts Valley Mem.* (May 1, 2026) at 23. The Band acknowledged that, in doing so, the Department need only “provide a reasoned explanation for disregarding prior factual findings and policy judgments, . . . confront the basis of the prior decision, and . . . account for serious reliance interests created by the earlier action.” *Id.* (citations omitted).

The Department took the required steps here. First, it provided reasoned explanations for departing from prior factual findings, including findings relating to Band ancestor Augustine’s baptism and the boundaries of the ceded territory. The Department also accounted for the Band’s reliance interests. In line with the Court’s 2025 Order, it “provide[d] the required due process.” *Scotts Valley II*, 808 F. Supp. 3d at 28. It gave the Band the opportunity to review and respond to the third-party submissions and accepted no additional submissions after the Band’s. In short, the Department fully complied with the remand order.

Scotts Valley suggests that because the *Scotts Valley I* court’s remand order did not hold that the Department lacked necessary evidence to resolve the restored lands question or require

the Department to solicit additional evidence, it was error for the Department to accept additional submissions. Pl.’s Mot. 18. The remand order, however, did not prevent the Department from doing so. It simply remanded the ILO to the agency for further proceedings. And under the APA, under these circumstances where the Court found the agency did not consider the appropriate factors, the proper remedy is remand to allow the agency to determine how to proceed on reconsideration. *See PPG Indus., Inc. v. United States*, 52 F.3d 363, 365 (D.C. Cir. 1995) (“Under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court’s inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards.” (citations omitted)).

Further, the Court has already confirmed the validity of the Department’s reconsideration, including the solicitation and consideration of third-party submissions. *See Scotts Valley II*, 808 F. Supp. 3d at 14–15 (“Merely allowing Scotts Valley and others to weigh in on the parcel’s gaming eligibility does not ‘determine[] anyone’s ‘rights or obligations.’”); 18–19 (noting agency’s inherent ability to reconsider decisions and stated concern that additional evidence was not considered). Several other tribes brought litigation against the Department challenging the Gaming Eligibility Determination, asserting that the Department erred by *not* accepting additional submissions after the remand. *Id.* at 18. Moreover, given the Department’s acceptance of the third-party submissions, the Department was required to consider those submissions to the extent they are relevant. It follows that the Department has authority to revise previous findings based on the arguments made in those submissions and on the Band’s response to those submissions.

The Department also appropriately applied the Indian canon of construction. As an initial matter, the *Scotts Valley I* court stated on reconsideration that it “didn’t rule that the Department of the Interior had to apply the [canon].” Tr. 16. Instead, the Court clarified, the Indian canon “was a tool and principle of statutory construction that *the Court* was supposed to utilize when assessing whether the agency’s decision about the restored lands exception, which is a statutory provision, was reasonable and in accordance with law.” *Id.* at 16–17 (emphasis added).

Throughout its motion and complaint, the Band suggests that the Indian canon of construction applies to the weighing of evidence (that is, to the evaluation of contrary facts). For example, the Band argues that the Indian canon of construction compels the Department to view the 1851 Treaty that the Band’s predecessors signed in the light most favorable to the Band to find that the territory ceded in the treaty encompasses the Parcel. Pl.’s Mot. 23. But the Band fails to highlight any language in the Treaty that might be subject to interpretation under the Indian canon. And, as the Gaming Eligibility Determination notes, the 1851 Treaty “ceded no particular land.” 2025 Decision at 23 n.222. Furthermore, as the 2026 Opinion explains, there is little to no reason to think that Band’s ancestors would have understood the cession to include the area around Vallejo. 2026 Opinion at 33.

The Department explained in both the 2025 and the 2026 decisions that “although the Indian canon requires that ambiguous *laws* be interpreted in favor of the Indians, the canon ‘has no applicability to the weighing of evidence, for example, regarding occupancy or use of a given plot of land.’” 2026 Opinion at 31 (quoting 2025 Decision at 10). As even *Scotts Valley* asserted, the remand order did not remove the Department’s ability to exercise its discretion in weighing the evidence. *Scotts Valley Band of Pomo Indians’ Opp’n to Mot. for Reconsideration Under Rule 59(e)*, Dkt. No. 66, Case No. 1:19-cv-1544-ABJ (“Again, whatever the Secretary’s

discretionary authority in such factual disputes, nothing in the Court’s Order impinges upon the Secretary’s . . . authority to resolve these disputes.”); *see also* 2026 Opinion at 31. And in weighing the evidence, the 2026 Opinion explains that “the Indian canon does not compel a different result.” 2026 Opinion at 32. For example, the Department stated that it would “not resolve this factual ambiguity in the Band’s favor over its own reasoned judgment, as well as over the objection of other federally recognized tribes that identify as Southern Pomo, including [the Federated Indians of the Graton Rancheria] and [the Lytton Rancheria], both of which were restored to federal recognition.” *Id.* Because the Remand Order did not compel the Department to resolve factual disputes in favor of Scotts Valley, the Department did not err here.

Finally, whether the Vallejo Site is located within ceded territory is a question of fact entrusted to the judgment of the agency, and the Indian canon does not apply to fact-finding. *See Mashpee Wampanoag Tribe v. Bernhardt*, 466 F. Supp. 3d 199, 217 (D.D.C. 2020) (stating that the Indian canon of construction applies to questions of statutory interpretation, but “with the statutory interpretation resolved, the canon’s role is complete”). Similarly, there is no requirement that the Department draw factual inferences in the Band’s favor over its own reasoned judgment. *See* 2026 Opinion at 32. The Band is not likely to succeed on its argument that the Department failed to comply with the remand order.

2. The 2026 Decision’s treatment of historical evidence is likely to be upheld.

Scotts Valley also argues that the historical record did not materially change on remand, but that the Department simply assigned less weight to previously accepted evidence, in violation of the Remand Order. Pl.’s Mot. 20. According to the Band, the Department “discounts favorable evidence and refuses to draw the reasonable inference that this Court held must be afforded to the Band.” *Id.* The 2026 Opinion explains that the Department revisited several factual questions in light of new arguments and evidence presented by third parties. 2026 Opinion at 31. Scotts

Valley is not likely to succeed in demonstrating that the Department's conclusions were arbitrary and capricious.

The Department fully explained the evidence in the record that resulted in the changed factual findings. For example, in the 2019 and 2025 Opinions, the Department discussed a list of Indian children baptized in 1837 at Mission San Francisco Solano, located in the city of Sonoma that included a six-year-old child named Agustín who the Department previously stated could have been the Band's ancestor Augustine. 2026 Opinion at 31–32. In the 2026 Opinion, the Department reversed that finding based on evidence presented by the Yocha Dehe Wintun Nation and the Federated Indians of the Graton Rancheria. *Id.* at 32. The Department noted that those tribes persuasively argue that “the names of the parents of the Agustin listed in the relevant baptismal register, as well as the name of his village, are different from those associated with the Band's ancestor Augustine.” *Id.* at 31 (internal quotation omitted). For instance, the names of many of the female children listed in the baptismal register contained a suffix common only by Southern Pomo communities. *Id.* Thus, while the Department came to a different conclusion than the previous opinions, it was based on new arguments and factual evidence presented in the June 2025 Submissions and was fully explained in the decision document. The same is true for the other changed factual determinations in the 2026 Opinion. *See* 2026 Opinion at 33 (discussing arguments and evidence leading to decision that the parcel is not located in territory ceded by the Band's ancestors).

Scotts Valley takes issue with this finding, arguing that the Department ignored evidence that there were errors in the record, but does not point to any evidence the Department purportedly ignored. The Band's own expert noted that “the baptismal record gave different names for the parents,” meaning either that this was not “Augustine, or that there were errors in

the record.” *Id.* at 31. The Department did not act arbitrarily in concluding that the evidence, rather than constituting an error, did not support a finding that the Agustin in the baptismal record is not the Band’s Augustine. Nor was the Department required to “resolve this factual ambiguity in the Band’s favor over its own reasoned judgment, as well as over the objection of other federally recognized tribes that identify as Southern Pomo, including FIGR and Lytton, both of which were restored to federal recognition.” *Id.* at 32.

Scotts Valley also argues that the 2026 Opinion fails to recognize that historical circumstances make it impossible to show conclusively that the Band had a significant historical connection to the Vallejo Site. Pl.’s Mot. 22. The 2026 Opinion explains, however, that the issue is not that evidence is simply unavailable. It noted that “the Band is correct that ‘[h]istorical inquiries of this kind frequently involve incomplete records, changing place names, mobile labor populations, and fragmented documentation.’” 2026 Opinion at 37 (citing Scotts Valley submission). The problem for the Band is that there is evidence of the Band’s presence during the relevant time period on land other than the Vallejo parcel, but not in the vicinity of the parcel or on the parcel itself. *Id.* “Here, what is striking is the discrepancy between the evidence of a Band presence elsewhere during the time period in question, in places where the Band might ‘attain a different result,’ and the lack of evidence indicating a Band presence on Rancho Suscol, much less the Parcel.” 2026 Opinion at 37. “Faced with ‘gaps in written documentation,’ the Band asks that the Department grant inference upon inference to establish the requisite connection.” *Id.* at 37. The Department reasonably concluded that the evidence did not demonstrate a “significant historical connection” to the parcel.

To demonstrate a “significant historical connection” under Part 292, a tribe can either (1) show that “the land is located within the boundaries of the tribe’s last reservation under a ratified

or unratified treaty”; or (2) “demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” 25 C.F.R. § 292.2. The Department reasonably concluded that Scotts Valley did not demonstrate such a connection.

a. Ceded Territory

Under 25 C.F.R. § 292.2, a tribe can establish a significant historical connection to a parcel if “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty.” The 2026 Opinion found “that the Parcel is not located in territory ceded by the Band’s ancestors, replacing an assumption to the contrary in both the 2019 ILO and 2025 ILO.” 2026 Opinion at 33. The Department reviewed evidence, including a map compiled by cartographer Charles Royce that purported to depict Indian land cessions in the United States, including the land that would have been ceded under the 1851 Treaty (“Area 296”). *Id.* at 9, 33. The Department determined that even if Area 296 represented what the federal agents who negotiated the 1851 Treaty thought was ceded territory, nothing in the extensive record before the agency suggested that the Band had authority to cede land around Vallejo at the time of the treaty. 2026 Opinion at 33. The Department thus concluded that Royce’s map was “unreliable—if not outright inaccurate.” *Id.* at 35. “Favorable treatment of Royce’s map in this analysis would not only be ahistorical but also unfair to any successors-in-interest of the original inhabitants of those territories, who did not participate in the negotiation of the 1851 Treaty.” *Id.* at 33.

Scotts Valley argues that the Department’s finding in this regard violates the Indian canon that states that treaties should be interpreted as the tribal signatories would naturally have understood them. Pl.’s Mot. at 23. However, as noted above, the Band fails to highlight any language in the treaty that might be subject to interpretation under the Indian canon. The ILO is not interpreting the Treaty, but facts at the time of the Treaty. The 1851 Treaty “ceded no

particular land.” 2025 Decision at 23 n.222. Furthermore, as the 2026 Opinion explains, there is little to no reason to think that Band’s ancestors would have understood the cession to include the area around Vallejo. 2026 Opinion at 33. Even Scotts Valley’s expert argues that Royce’s map depicts what federal agencies understood, not what the tribes understood. The Indian canons do not require the Department to accept unreliable evidence.

Finally, Scotts Valley argues in its motion that “[t]he Department had repeatedly treated Area 296 as meaningful evidence identifying the territory ceded by the Band’s ancestors” and that the Department in a 2012 Indian Lands Opinion (“2012 ILO”) rejected a parcel “in part because it ‘lay outside of that ceded territory.’” *Id.* (quoting 2012 ILO at 14). According to Scotts Valley, the 2012 ILO led Scotts Valley to understand that “the location of future trust acquisitions within Royce Area 296 would be an important consideration in satisfying the restored-lands requirements of 25 C.F.R. Part 292.” Davis Decl. ¶ 7. However, Scotts Valley’s reliance on the 2012 ILO is unfounded. Contrary to what the Band argues, the 2012 ILO does not ascribe any value to a parcel’s location within Area 296. *See* 2012 ILO, found at <https://www.bia.gov/sites/default/files/dup/assets/public/pdf/idc-018517.pdf> (last visited Sept. 4, 2026). Rather, it suggests that claiming a significant historical connection based on a parcel’s location within Area 296 would be speculative because “[t]he land that the Band’s Ca-la-na-po ancestors’ . . . ceded could exist anywhere in Royce Area 296.” *Id.* at 14. More generally, the ILO states that “[t]he 1851 Treaty does not demonstrably add to the Band’s claims of significant use and occupancy of the vicinity.” *Id.* Nothing in those passages from the 2012 ILO should have led Scotts Valley to understand that a parcel’s location within Royce Area 296 “would be an important consideration,” Davis Decl. ¶ 7, just as nothing in Part 292 elevates that type of evidence over other evidence or otherwise gives rise to that understanding.

b. Baptisms

As discussed above, the 2026 Opinion thoroughly explains the reasons for the Department's determination that "the evidence does not support the Band's claim to a significant historical connection to the Parcel" based on Augustine's possible baptism at the Mission San Francisco Solano. Scotts Valley also argues that the Department relied too heavily on the baptismal identification and in so doing, allows the "uncertainty surrounding one historical detail to overshadow the remainder of the record" instead of taking a holistic approach. Pl.'s Mot. 27. But the Department does not rely on this conclusion alone. Instead, the Department found that, as a whole, Scotts Valley did not provide evidence that would support an inference that the Band historically used or occupied the parcel itself. *See* 2026 Opinion at 34–39.

The Department contrasted Scotts Valley's evidence with the evidence supporting another Indian Lands Opinion. In that Opinion, the tribe demonstrated that the parcel in question was located among many sites known to have been used by the tribe's ancestors, including a pond that is the setting of an old tribal story and aboriginal villages within a three-mile radius of the parcel. The Department in that ILO found that even though the tribe did not show direct evidence of occupancy or use on the parcel itself, the evidence led to a natural inference of historic use or occupancy on the parcel. 2026 Opinion at 34–35. In contrast, Scotts Valley's "evidence is too attenuated to lead to a natural inference of the Band's historic use or occupancy of the Parcel." *Id.* at 35. "Faced with 'gaps in written documentation,' the Band asks that the Department grant inference upon inference to establish the requisite connection." *Id.* at 37. The Decision is supported by evidence and explained and thus complies with the APA.

c. Inferences from Rancho Suscol.

Scotts Valley also challenges the Department's conclusion that historical circumstances surrounding the Band's labor on ranchos in the North Bay area and Indian labor on the rancho

encompassing the Vallejo site do not support an inference that the Band historically used or occupied the Parcel. Pl.'s Mot. at 28. Scotts Valley is not likely to succeed on this argument.

The Department found that “the evidence is too attenuated to lead to a natural inference of the Band’s historic use or occupancy of the Parcel.” 2026 Opinion at 35. Although Indians likely worked on the rancho surrounding the Parcel, the Department found little to no documentation in the record that showed the Band’s ancestors were among those Indians, much less that they established a significant historical connection there. Even the Band’s expert was only able to say that, at best, “Clear Lake people may have been among” the Indians that worked at the rancho. 2026 Opinion at 36. The Department found that “(1) references to Indians in the area around Vallejo during the historical period were just as likely, if not more likely, to be references to non-Clear Lake Indians; and (2) that references to Clear Lake Indians are not the same as references to the Band’s ancestors.” *Id.*

More broadly, Scotts Valley argues that the Department rejected inferences in the Band’s favor in violation of the *Scotts Valley I* opinion. Pl.’s Mot. 30. Not true. The 2026 Opinion explains the reasoning behind the Department’s findings and Scotts Valley’s suggestion otherwise is meritless. The evidence does not show occupancy or use in the vicinity of the Vallejo Site and the Remand Order does not require the Department to disregard relevant evidence in order to find in favor of Scotts Valley.

3. The Department did not reverse its prior decision without explanation.

Scotts Valley argues that the 2026 Opinion “silently abandons the legal framework required by *Scotts Valley I* and implemented in the 2025 Decision.” Pl.’s Mot. 31. But the 2026 Opinion follows the same legal framework as the 2025 Opinion. The Department did not change the analytical framework in the 2026 Opinion. On reconsideration, the Department (1) considered additional evidence; (2) revised fact-findings based on review of the additional

evidence; and (3) revised conclusions based on the revised fact-finding. In doing so, the 2026 Opinion repeatedly called into question the reasonableness of the fact-finding and conclusions in the 2025 Opinion. However, at no point does the 2026 Opinion deviate from the analytical framework in the 2025 Opinion. Like the 2025 Gaming Eligibility Determination, the 2026 Opinion reflects ample consideration of the historical circumstances (even more so than the 2025 Opinion because it was based on a supplemented record and incorporated additional discussion and analysis of the competing narratives).

The Court in *Scotts Valley I* required the Department to give 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. Scotts Valley agrees that the Department complied with the remand order in the 2025 Decision. Pl.’s Mot. 19. The Department in the 2025 Opinion gave additional consideration to the historical circumstances and, upon doing so, concluded that (1) Band ancestor Augustine’s “possible baptism at Mission San Francisco Solano in 1837” was attributable to the Band as a whole; and (2) Augustine’s “dwelling in Napa in 1870” was attributable to the Band as a whole. 2026 Opinion at 17–18.

The Department in the 2025 Decision also gave additional consideration to IGRA’s policy goals. Based on “broad understandings of the terms ‘occupancy’ and ‘vicinity’” that furthered those goals, the Department concluded that the Band’s presence at Mission San Francisco Solano in the late 1830s and in Napa in the early 1870s constituted occupancy in the vicinity of the Vallejo Parcel (Parcel). 2026 Opinion at 18. Notwithstanding those broad understandings, the Department in the 2025 Opinion still required that evidence of occupancy “in the vicinity” of the Parcel also “lead to a natural inference of historic use or occupancy” on the Parcel itself. 2025 Decision at 22. The Band expressly supported this analytical framework. Pl.’s Mot. 12 (“On

remand, the Department reconsidered the existing comprehensive administrative record under the framework prescribed by *Scotts Valley I*”).

Additionally, like the 2025 Gaming Eligibility Determination, the 2026 Opinion reflects consideration of IGRA’s policy goals. As discussed above, in furtherance of those goals, the Department in the 2025 Opinion adopted broad understandings of the terms “occupancy” and “vicinity.” The Department did not modify those understandings in the 2026 Opinion. The only analytical difference between the two ILOs is that, in the 2026 Opinion, the Department clarified that the evaluation of the “natural inference” requirement is not an extra-regulatory step but a step that informs whether the occupancy at issue was “in the vicinity” of the Parcel. 2026 Opinion at 35 n.284. That clarification was not substantive, and not even the Band seems to argue otherwise. In providing that clarification, the Department sought only to explain precisely the standard set forth in Departmental precedent (including the 2025 Opinion) and applicable case law. *See* 2026 Opinion at 34.

A review of the 2026 Opinion confirms that the analytical framework in the 2026 Opinion is the same as that in the 2025 Opinion. For example, in the 2026 Opinion, the Department expressly “confirm[ed] that Augustine’s residency in Napa in the 1870s constituted occupancy, *as defined in the 2025 ILO*” and “that that occupancy is attributable to the Band as a whole, *for the reasons stated in the 2025 ILO*.” 2026 Opinion at 33 (emphasis added). In other words, the Department confirmed the validity of certain facts and conclusions presented in the 2025 Decision, based on the reasoning set forth in the 2025 Opinion. The Department did so with citations to specific pages of the 2025 Opinion that contain the relevant analysis.

Nevertheless, pursuant to its discretion on reconsideration, the Department also reevaluated certain factual findings in the 2025 Opinion that ultimately impacted the

Department's conclusion on whether the Band's occupancy was "in the vicinity" of the Vallejo Site. Nothing in *Scotts Valley I* prevented the Department from reconsidering the facts at issue, and nothing compels the Department to adhere to previous factual findings that it deems unreasonable or unreliable after taking additional information into consideration. As the Band noted in one of its submissions, the Department may overturn a prior decision if the facts on which the Department relied do not "have basis in the record." *Scotts Valley Mem.* (May 1, 2026) at 23. The Band acknowledged that, in doing so, the Department need only "provide a reasoned explanation for disregarding prior factual findings and policy judgments, . . . confront the basis of the prior decision, and . . . account for serious reliance interests created by the earlier action." *Id.* (citations omitted).

4. The Department had authority to reopen the 2025 Decision and accept post-remand submissions.

Scotts Valley argues that the Department was not required to consider post-remand submissions and "never explained why its prior discretionary decision not to reopen the administrative record became unlawful, or even arguably unlawful." Pl.'s Mot. 33–34. *Scotts Valley* made this argument in *Scotts Valley II* and the Court rejected it. 808 F. Supp. 3d at 17–19 (finding the Department has inherent authority to reconsider the Gaming Eligibility Determination). The Court noted the agency's explanation that it was concerned about not having considered additional evidence submitted after the 2022 Remand, as well as "the neighboring tribes' lawsuits against Interior, which claim that the agency's 'refusal to consider relevant evidence timely placed before [it] by Yocha Dehe, Kletsel Dehe, and other tribes and concerned parties violated the APA in multiple respects." *Id.* at 18. The Court found that the rescission to consider extra-record evidence "was 'allegedly correcting legal error'—a circumstance in which courts have been more 'willing to allow an inherent power to reconsider.'" *Id.* at 18–19.

5. Scotts Valley is not likely to succeed on its due process claim.

Scotts Valley’s argument that the 2026 Decision violated the Band’s due process rights also misses the mark. Pl.’s Mot. 37. “The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in ‘liberty’ or ‘property.’” *Scotts Valley II*, 808 F. Supp. 3d at 23 (citing *Gen. Elec. Co. v. Jackson*, 610 F.3d 110, 117 (D.C. Cir. 2010)). If a protected or liberty interest exists, then due process requires “notice and [an] opportunity for [a] hearing appropriate for the nature of the case” before the deprivation of the protected interest. *Id.* at 25 (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985)).

The Court determined “Scotts Valley held a property interest in gaming eligibility so long as the agency’s discretion to rescind it was ‘constrained sufficiently to give [the Band] an expectation in [its] continued effect.’” *Scotts Valley II*, 808 F. Supp. 3d at 25 (internal citation omitted). Following *Scotts Valley II*, the Department took steps to ensure that its reconsideration process comported with due process. In doing so, the Department provided notice that it would be continuing its reconsideration process because it was concerned about not considering submissions in making the 2025 Opinion. December 2025 Letter at 1–2. The Department invited interested parties to submit (or resubmit) evidence from March 27, 2025, through June 13, 2025, and, based on those submissions, the agency explained that the “submissions raise questions about the Tribe’s significant historical connection and temporal connection to the Vallejo Site.” *Id.* at 2. Further, the Department also clarified the scope of its reconsideration in response to Scotts Valley inquiry. January 2026 Letter, Dkt. No. 10-10. Thus, the Department provided adequate notice for the reason for its continued reconsideration.

Scotts Valley was also given a meaningful opportunity to be heard and present a response. The Department provided the Band with the June submissions, met with the Band to discuss the reconsideration process, and invited Scotts Valley to provide its own response to the

submissions. 2026 Opinion at 3–4. The Department also responded to Scotts Valley’s inquiry to allow the Band to narrow the focus of its response. January 2026 Letter at 1. The Band subsequently provided a response to the submissions and even presented that response to the Department in person in April 2026. *Id.* at 4. The Department gave the Band several meaningful opportunities to be heard before issuing the 2026 Opinion.

Scotts Valley’s argument that the 2026 Opinion deprived the Band of its right to engage in gaming fares no better. Pl.’s Mot. 38. The Due Process Clause does not prohibit the deprivation of a property interest but provides only that the government cannot deprive a person of property without due process. As explained above, the Department provided Scotts Valley with the process it was due. As such, Scotts Valley is not likely to prevail on this claim.

6. The Department was not required to consider the Band’s unreasonable reliance.

Scotts Valley’s reliance interests were not reasonably incurred. The Department warned Scotts Valley not to rely on the Gaming Eligibility Determination during the pendency of the reconsideration. March 27 Letter. The Court then warned Scotts Valley against undue reliance because of the Department’s ongoing reconsideration process. *Scotts Valley II*, 808 F. Supp. 3d at 27. Rather than heed those warnings, Scotts Valley repeatedly admits it relied on the Gaming Eligibility Determination and “materially changed its position by committing significant resources” during the Department’s ongoing reconsideration. Pl.’s Mot. 39. The Department need not consider unreasonable reliance.

When an agency changes its position, an agency should be aware that longstanding policies may have engendered serious reliance that must be taken into account. *Scotts Valley II*, 808 F. Supp. 3d at 21 (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016)). The Supreme Court precedent requiring consideration of reliance interest, however, does not set

a high bar. *MediNatura, Inc. v. Food & Drug Admin.*, 496 F. Supp. 3d 416, 458 (D.D.C. 2020). Nor is that bar uniformly set across all contexts. *Scotts Valley II*, 808 F. Supp. 3d at 22. The D.C. Circuit requires claimed reliance interest to be “specifically identified, reasonably incurred, and causally tied to” the challenged action. *Solenex LLC v. Bernhardt*, 962 F.3d 520, 529 (D.C. Cir. 2020). “[T]he agency’s duty to explain itself exists in tandem with the nature of the reliance interests at issue.” *Id.* (quoting *Am. Petroleum Inst. v. U.S. Dep’t of Interior*, 81 F.4th 1048, 1060 (10th Cir. 2023)).

The Department notified Scotts Valley in March 2025 that it was rescinding and reconsidering the Gaming Eligibility Determination and that the Band should therefore refrain from relying on the Determination. In doing so, the Department considered that the Band might rely on the Gaming Eligibility Determination during the reconsideration and warned against doing so. In December 2025, the Department also reiterated its commitment to reconsideration and reminded the Band that it “would be ill-served by placing undue reliance on the vacatur of the temporary rescission of the Gaming Eligibility Determination.” December 2026 Letter at 1. The Department thus considered that the Band might rely on the Court’s ruling in *Scotts Valley II* and again cautioned against it. *Id.* (citing *Scotts Valley II*); 2026 Opinion at 3. The Band’s actions were taken with full knowledge of the risk.

Not all claims of reliance are equal. *See Scotts Valley II*, 808 F. Supp. 3d at 22. Scotts Valley’s claimed reliance interests are undue and not reasonably incurred. The Band repeatedly claims to “reasonably rely” on the 2025 Opinion after the *Scotts Valley II* decision. *See, e.g.*, Pl.’s Mot. 39 (“The Band reasonably relied on the 2025 Decision while it was operative after *Scotts Valley II* . . .”), 42 (arguing reliance “was reasonably incurred while the January 2025 gaming eligibility determination remained the operative agency decision”). According to Scotts Valley,

its “reasonable” reliance interests include establishing governmental and regulatory infrastructure necessary for gaming, hiring and training employees, and constructing a class II gaming facility. *Id.* at 41; *see also id.* at 42 (“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[.]”). But the Band cannot claim reasonable reliance when it knew “that reconsideration could result in reversal[.]” *id.* at 40. *See Bell Atl. Tel. Cos. v. FCC*, 79 F.3d 1195, 1207 (D.C. Cir. 1996) (reliance interest incurred when an issue had long been in dispute were not reasonable).

What’s more, as noted above, Scotts Valley was fully aware of the anticipated timeline for the Department’s reconsideration process. Yet it still took substantial steps to develop and build a class II gaming facility at the same time, including opening the facility the same week of the anticipated reconsidered decision date. This undercuts the Band’s reliance position.

Scotts Valley’s attempt to weaponize the Department’s reconsideration process also does not support its position. Pl.’s Mot. 42–43. The Department aimed to complete its reconsideration process as quickly as possible, providing Scotts Valley with the June submissions on December 9, 2025, and inviting the Band to respond by January 30, 2026. December 2025 Letter, Dkt. No. 10-9. Scotts Valley, however, advocated for at least six to eight months to provide a meaningful response. *See* January 2026 Letter, Dkt. 10-10. Following several meetings with the Band, the Department agreed to extend the submission deadline to May 2026. *Id.* The Band cannot request more time to respond and then argue that the Department erred because of actions the Band took during that requested extended period.

For these reasons, Scotts Valley is not likely to prevail on the merits.

C. The Balance of Harms Counsels Against Preliminary Relief.

The final two factors for preliminary injunctive relief are the balance of harms and the public interest. When the government is a party, the two factors merge. *See Nkem*, 556 U.S. at 435. Here, those factors also weigh against preliminary relief. As explained above, Scotts Valley has not made the necessary showing on irreparable harm and the merits to warrant preliminary relief. Balanced against that nullity is the Department’s “interest in reaching the right gaming decision because a Vallejo casino would have substantial social and economic effects, especially on the neighboring tribe.” *Scotts Valley II*, 808 F. Supp. 3d at 26.

Scotts Valley also disregards the impact on third parties of enjoining the 2026 Opinion. As this Court is aware, several other tribes have filed suit contesting the “restored lands” determination, and even more tribes and other entities provided evidence to the Department during the reconsideration. Those parties have a substantial interest in not having the 2025 Opinion reinstated. The public interest favors not issuing an injunction.

In short, Scotts Valley fails to demonstrate that it is entitled to preliminary injunctive relief.

D. Scotts Valley’s Requested Relief is Unsupported.

Even if Scotts Valley had met its burden for preliminary injunctive relief, the Band’s motion falls short for another reason: it seeks preliminary relief that assumes the wrong status quo. The Band requests that the Court not just enjoin the 2026 Opinion, but also that the 2025 Opinion be reinstated and preserved. Pl.’s Mot. 9.

Preliminary injunctive relief is intended to *maintain* the status quo until the court can resolve the merits. *Hanson v. Dist. of Columbia*, 120 F.4th 223, 247 (D.C. Cir. 2024) (“Preliminary injunctions, though are generally a stopgap measure meant only to preserve the relative positions of the parties until trial.” (internal quotations and citation omitted)). “The status

quo is the last uncontested status which preceded the pending controversy.” *Dist. 50, United Mine Works of Am. v. Int’l Union, United Mine Workers*, 412 F.2d 165, 168 (D.C. Cir. 1969).

Scotts Valley’s status quo assumes the Vallejo Site is eligible for gaming. Pl.’s Mot. 9. But that is not the full picture. Without the 2026 Opinion, the status quo is the Court vacated the Department’s rescission of the 2025 Opinion, the Department exercised its inherent authority to reconsider that decision, and the Band was cautioned against undue reliance on that decision. Thus, Scotts Valley’s request to “preserve the status quo that existed immediately before the challenged Decision,” *id.*, does not endorse the Band’s ability to operate a class II facility pending the resolution of the merits. Nor should it endorse Scotts Valley’s continued undue reliance against which the Department and the Court explicitly cautioned.

Scotts Valley’s request here is the same relief it seeks in its Complaint. *See* Compl. Prayer for Relief ¶¶ D, E, Dkt. No. 1. Thus, the Band is attempting to obtain through only a showing of likely success (at this stage) the same thing it desires after actual success (on summary judgment). The Court should reject the attempted shortcut. Even still, Scotts Valley’s request to have the 2025 Decision preliminary reinstated is *beyond* the relief Scotts Valley would be entitled to if it ultimately succeeds on the merits of this APA case because the appropriate remedy would be to remand the case to the agency for further proceedings, not to reinstate a prior decision. *See PPG Indus., Inc. v. United States*, 52 F.3d 363, 365 (D.C. Cir. 1995) (“Under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court’s inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards.” (citations omitted)).

V. CONCLUSION

Scotts Valley has not met its burden of proving that a preliminary injunction should issue. Any injury Scotts Valley incurred was at its own risk in the face of repeated warnings by the

Department and this Court. And Scotts Valley has not demonstrated that irreparable harm would occur before a decision on the merits. In addition, however, Scotts Valley is not likely to prevail on the merits of its arguments and the balance of harms and the public interest weight against issuing an injunction here. For all these reasons, Federal Defendants respectfully request that this Court deny Scotts Valley's motion for a preliminary injunction.

Respectfully submitted this 4th day of September, 2026.

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