

**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.

Civil Action No. 1:26-cv-02814
Judge Trevor N. McFadden

**BRIEF OF LYTTON RANCHERIA OF CALIFORNIA AS *AMICUS CURIAE* IN
SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Lytton Rancheria of California is a federally-recognized band of Southern Pomo Indians located in Sonoma County, California. In 1959, Congress terminated the government-to-government relationship between Lytton and the United States, resulting in the loss of Lytton's homelands and impoverishment of its members. In 1991, Lytton reversed its wrongful termination through federal litigation. Since that time, Lytton has worked to regain its economic independence and restore a portion of its homelands. Today, Lytton operates a successful Class II gaming facility on its trust land in San Pablo, California and conducts other business activities in and around its homeland in Sonoma County. These business activities are critical to Lytton's ability to achieve self-determination and provide for its members.

Lytton has a strong interest in this case, which raises important questions about the authority of the Department of the Interior to ensure that it has considered all relevant evidence in determining whether it may apply the restored-lands exception to the general statutory prohibition against gaming on newly-acquired lands. As a federally-recognized Indian tribe, Lytton is subject to and relies on decisions of the Department and has submitted evidence during the agency decisionmaking process. In addition, the proper interpretation of the restored-lands exception directly impacts the economic viability of Lytton's San Pablo gaming facility and Lytton's other business activities, as well as the well-being of its members who reside within Lytton's homeland.

If granted, the Scotts Valley Band of Pomo Indians' request to preliminarily enjoin the Department from implementing its decision that a parcel of land in Vallejo, California (the "Vallejo site") is gaming-ineligible would allow Scotts Valley to take steps toward building a

¹ No counsel for any party authored this brief in whole or in part, and no entity or person other than *amicus curiae*, its members, and counsel made any monetary contribution intended to fund the preparation or submission of this brief.

casino that would compete with Lytton’s gaming facility. That would threaten severe economic harm to Lytton, its members, and its community. The Department correctly determined that Scotts Valley lacks the requisite historical connection to the Vallejo site for gaming to occur there. Moreover, the Department appropriately weighed all the evidence—including submissions from Lytton and other tribes that it had previously ignored—in reaching that decision.

INTRODUCTION

This case arises from the Department of the Interior’s reconsideration of the prior administration’s eleventh-hour approval of the Scotts Valley Band of Pomo Indians’ plans to construct and operate a casino on the Vallejo site, a newly-acquired parcel of land with no historical connection to Scotts Valley. In its prior decision authorizing gaming, the government had ignored evidence from Lytton and other tribes that it had previously promised to consider. As a result, multiple tribes were forced to bring lawsuits challenging the Department’s decision. Lytton’s complaint alleged that the Department failed to consult with Lytton and other affected parties—as required by the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA)—and disregarded its obligations to take a hard look at the gaming-eligibility decision’s environmental impacts. Complaint, *Lytton Rancheria of Cal. v. DOI*, No. 1:25-cv-01088 (D.D.C. Apr. 10, 2025), ECF No. 1.

While those lawsuits were pending, the Department reconsidered its decision. Scotts Valley sought a preliminary injunction against reconsideration, which the Court denied because the tribe failed to demonstrate irreparable harm. *See Scotts Valley Band of Pomo Indians v. Burgum*, 2025 WL 1639901 (D.D.C. June 10, 2025). The Court subsequently held that the ongoing reconsideration was not final agency action subject to judicial review, but it vacated the Department’s temporary rescission of the gaming-eligibility decision because Scotts Valley had been given too little notice. *See Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1

(D.D.C. 2025). The Department subsequently completed its reconsideration process and issued a decision that correctly found that the Vallejo site is not gaming-eligible because Scotts Valley lacks a significant historical connection to that land.

This lawsuit followed. In it, Scotts Valley attempts to put a new spin on the tribe’s failed arguments that the Department violated the APA in reconsidering the Vallejo site’s gaming eligibility. According to Scotts Valley, the Department failed to properly consider the tribe’s purportedly reasonable reliance on the initial gaming-eligibility decision during the nine months this Court had vacated its temporary rescission while it was being actively reconsidered. The tribe also rehashes its past arguments for a preliminary injunction, invoking the same “monetary and sovereignty harms” that the Court found lacking last time. *Scotts Valley*, 2025 WL 1639901, at *1. Remarkably, it bases those arguments on the operation of a “Preview Casino” Scotts Valley just opened one week before the date the Department had announced its reconsideration decision would issue. Scotts Valley’s motion for a preliminary injunction should be denied.

ARGUMENT

Scotts Valley satisfies none of the elements for interim relief. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008). Lytton and three other affected tribes—the Kletsel Dehe Wintun Nation of the Cortina Rancheria, the United Auburn Indian Community of the Auburn Rancheria, and the Yocha Dehe Wintun Nation—are submitting *amicus* briefs to explain the flaws in Scotts Valley’s arguments and, based on their perspective as sovereign nations with longstanding ties to the region, the serious harms threatened by Scotts Valley’s casino-development efforts. To avoid duplication, the *amici* have divided the issues among themselves. This brief explains why Scotts Valley cannot establish that the Department failed adequately to address Scotts Valley’s alleged reliance interests based on the gaming-eligibility decision, which it claims even though that decision was under

reconsideration by the Department. The brief also explains that Scotts Valley’s asserted sovereign and economic interests do not support a finding of irreparable harm.

I. The Department Reasonably Considered Any Reliance by Scotts Valley on the Gaming-Eligibility Decision.

According to Scotts Valley, the Department should have done more to address the tribe’s purported reliance on the gaming-eligibility decision. ECF No. 10-1, at 39 (“Mem.”). But the Court and the Department specifically warned Scotts Valley against unduly relying on the Department’s previous decision during the reconsideration process. The tribe thus assumed the risk in moving forward, and that strategic choice provides no basis for preventing the Department from fixing its prior, erroneous decision.

Reliance costs must be “reasonably incurred” to factor into agency decisionmaking. *Solenex LLC v. Bernhardt*, 962 F.3d 520, 529 (D.C. Cir. 2020). When “an issue had long been in dispute,” reliance interests incurred in the face of that uncertainty are not reasonable. *Id.*; *see also Bell Atl. Tel. Cos. v. FCC*, 79 F.3d 1195, 1207 (D.C. Cir. 1996) (orders on pricing did “not upset petitioners’ reasonable reliance interests” because “the issue has been disputed since it first arose”). Nor is reliance reasonable when the agency’s decision “might soon be reversed,” *Mozilla Corp. v. FCC*, 940 F.3d 1, 64 (D.C. Cir. 2019), as when it is “actively being challenged . . . in court,” *Voyageur Outward Bound Sch. v. United States*, 444 F. Supp. 3d 182, 196 (D.D.C. 2020), *vacated on other grounds*, 2022 WL 829754 (D.C. Cir. Mar. 17, 2022). An agency’s warning that reliance would be “at the risk of the” actor also defeats any “reasonable expectation” of continuity. *Sinclair Broad. Grp., Inc. v. FCC*, 284 F.3d 148, 166 (D.C. Cir. 2002).

These principles doomed Scotts Valley’s last attempt in this Court to set aside the Department’s temporary rescission decision based on the contention that the Department should have done more to account for the tribe’s alleged reliance on the gaming-eligibility decision. Then,

the Court recognized that any reliance was “tempered by substantial concerns for legal or political jeopardy” because Scotts Valley knew “that legal challenges would likely soon follow.” *Scotts Valley*, 808 F. Supp. 3d at 23. In any event, the Court added, Scotts Valley’s asserted reliance on “a parcel-specific determination that was eleven weeks old” fundamentally differed from the reliance interests at issue in other cases that “involved society- and industry-wide reliance on longstanding policies.” *Id.* at 22-23. The Department’s statement “directing [Scotts Valley] not to ‘rely on the Gaming Eligibility Determination’ while reconsideration was ongoing” thus satisfied the agency’s burden to account for whatever reliance interests Scotts Valley may have had. *Id.* (observing that “the agency’s ‘duty’ to explain itself ‘exists in tandem with the nature of the reliance interests at issue’”).

All that and more is true now regarding Scotts Valley’s purported additional reliance on the gaming-eligibility decision for the nine months between this Court’s decision vacating the Department’s temporary rescission of its initial decision and the Department’s reconsideration decision. To start, Scotts Valley’s reliance was still “tempered by” litigation risk, *id.* at 23, because Kletsel Dehe, Lytton, United Auburn, and Yocha Dehe had all challenged the gaming-eligibility decision in court. Scotts Valley was well aware of those lawsuits and indeed has sought to have them dismissed.²

Certainly, the reconsideration process did not provide the sort of “society- and industry-wide reliance on longstanding policies” that might trigger a heightened duty for the Department to

² See Mot. to Intervene, *Lytton Rancheria of Cal. v. DOI*, No. 1:25-cv-01088 (D.D.C. Dec. 5, 2025), ECF No. 17; Mot. to Intervene, *United Auburn Indian Cmty. v. DOI*, No. 1:25-cv-00873 (D.D.C. Dec. 5, 2025), ECF No. 24; Mot. to Intervene, *Yocha Dehe Wintun Nation v. DOI*, No. 1:25-cv-00867 (D.D.C. Dec. 4, 2025), ECF No. 22.

address reliance interests.³ *Scotts Valley*, 808 F. Supp. 3d at 22-23; *see also Mozilla*, 940 F.3d at 64 (describing “two years” as “a limited period to engender reliance”). The period was short and during the entire period *Scotts Valley* was aware that reconsideration was underway and the decision could well be reversed.

Against this backdrop, the Department’s repeated warnings that reconsideration was underway and might bar gaming on the Vallejo site reflect that the agency reasonably took into account whatever reliance interests *Scotts Valley* might have had in the decision that the Department was reconsidering. *See MediNatura, Inc. v. FDA*, 998 F.3d 931, 942 (D.C. Cir. 2021) (looking to agency’s treatment of reliance “during the development of the [challenged action]”). First, the Department said that “neither the Tribe nor any other entity or person should rely on the Gaming Eligibility Determination” in a March 2025 letter. ECF No. 10-8, at 1.

Second, it again admonished the tribe against placing undue reliance on that decision during “our continued reconsideration” in a letter dated December 2025. ECF No. 10-9, at 1.

Third, in vacating the temporary rescission of the gaming-eligibility decision, this Court itself observed that the tribe “would be ill-served by placing undue reliance on” the vacatur decision because the dispute was “far from over,” and reconsideration might yield a different outcome. *Scotts Valley*, 808 F. Supp. 3d at 28.

Finally, the government’s reconsideration decision, in turn, recognized that the Court had “cautioned that the Band ‘would be ill-served by placing undue reliance’ on the vacatur,” as the ruling did “not bar Interior from continuing its reconsideration, nor d[id] it stop the Department

³ For this reason, *Scotts Valley*’s reference (Mem. 39, 43) to *DHS v. Regents of the University of California*, 591 U.S. 1 (2020), and *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016), which involved longstanding policies of this sort, is unavailing. *See Scotts Valley*, 808 F. Supp. 3d at 21 (distinguishing them on this basis).

from revoking the Band’s gaming eligibility at the end of that process.” ECF No. 2-1, at 3. On these facts, there is no doubt that the Department “was ‘cognizant’ of the Band’s” potential reliance when it determined that it would nonetheless correct its previous erroneous determination that Scotts Valley had the requisite historical connection to the Vallejo site, which is all the APA demands. *Scotts Valley*, 808 F. Supp. 3d at 23.

Scotts Valley argues that the Department was in addition required to weigh the “concrete steps” that Scotts Valley supposedly took in reliance on the gaming-eligibility decision following this Court’s summary-judgment decision. Mem. 41. The claimed steps include establishing a governmental and regulatory framework for gaming, entering into an agreement with the City of Vallejo concerning municipal services for the gaming facility, hiring and training employees, and constructing a “Preview Casino” that Scotts Valley began operating one week before the date by which the Department had announced it would issue its reconsideration decision. *See id.*; *see also* Joint Status Report 3, *Lytton Rancheria of Cal. v. DOI*, No. 1:25-cv-01088 (D.D.C. Feb. 3, 2026), ECF No. 28 (announcing plans to issue “a reconsidered decision by July 31, 2026”).

But reliance must be “reasonable,” and Scotts Valley does not even attempt to explain how any of these steps were reasonable in light of the Department’s announced intent to reconsider the gaming-eligibility decision, beyond observing that the agency’s January 2025 decision “remained the operative agency decision governing the Vallejo Site.” Mem. 42.

That alone defeats Scotts Valley’s reliance argument but, if more were needed, the argument also fails because the tribe never gave the Department the information that it now contends should have been addressed. For example, the tribe never claims to have told the Department that it “retained a consulting firm to provide market research,” “met nearly every month” with California to negotiate a tribal-state gaming compact, “entered into agreements with

the City of Vallejo” to provide municipal services for the Vallejo site, “hired and trained employees,” or “commenced class II gaming operations at the Vallejo site on July 24, 2026.” Mem. 41-42. Nor does it explain how the Department should have known about the tribe’s engagements with third parties like California, Vallejo, and unspecified consultants. *See id.*

Rather, Scotts Valley simply asserts (Mem. 14) that the Department was aware of its reliance interests because the tribe’s counsel told the Department at a December 2025 meeting “that the Band intended to open and operate a Class II gaming facility at the Vallejo Site.” ECF No. 10-7, ¶¶ 11-12; *see also* ECF No. 10-2, ¶ 21 (similar). Those comments shed no light on *when* Scotts Valley planned to start gaming at the Vallejo site, let alone what the tribe had done to set those plans in motion. The lack of detail is not surprising, as many of the expenditures that Scotts Valley characterizes as reliance costs were not incurred until 2026. *See* ECF No. 10-3, at 1-4. Other costs predated the Court’s October 2025 ruling and thus could not have been made in reliance on the then-rescinded gaming-eligibility decision. *See id.* at line 3 (listing \$752,329 expense for “Admin Office” dated September 17, 2025). There is no indication in Scotts Valley’s motion that it provided any specifics to the Department on its asserted reliance interests, including by identifying a single dollar spent, agreement entered or other action taken in reliance on the gaming-eligibility decision.

The Department cannot be faulted for offering too little analysis of reliance interests that Scotts Valley did not describe. In *Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 720 (D.C. Cir. 2016), for example, the plaintiff submitted “172 pages of comments” challenging a proposal to narrow its permit. “Conspicuously absent” was any argument that the agency had to consider “the costs [plaintiff] had incurred in reliance on the permit,” let alone “a detailing of these costs.” *Id.* Passing references to “millions of dollars” spent, the court added, were no substitute for a fully-

fledged description of “what costs the [agency] should consider.” *Id.* at 720-21. Here, too, the Department was under no obligation to consider reliance costs that Scotts Valley never told it about. *See also Solenex*, 962 F.3d at 529 (observing that “unidentified . . . reliance interests are not a valid basis on which to undo agency action”). In any event, the Department fully accounted for those costs by warning Scotts Valley time and again not to rely on the gaming-eligibility determination during the reconsideration process.

II. Scotts Valley Does Not Face Irreparable Harm.

Even if Scotts Valley could somehow establish a likelihood of success on the merits, a preliminary injunction still should be denied because the tribe is not “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20; *see also Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019) (absence of irreparable harm is “grounds for refusing to issue a preliminary injunction,” regardless of the other factors). The Court denied the tribe’s last request for a preliminary injunction because the “monetary and sovereignty harms” it invoked rested on speculation and conjecture. *Scotts Valley*, 2025 WL 1639901, at *3-9. The same conclusion is warranted here.

A. Scotts Valley’s Alleged Harm Was Self-Inflicted.

Scotts Valley asserts that, as a result of the Department’s reconsideration decision, it will suffer irreparable harms to its sovereign authority and its economic interests.⁴ All the alleged harms relate to Scotts Valley’s obligation to suspend operation of its so-called Preview Casino, “a temporary Class II gaming facility” that Scotts Valley opened “on a limited basis” just one week before the reconsideration decision issued. Mem. 13; *see id.* at 45-50. But the tribe built this

⁴ Scotts Valley also asserts that it is irreparably harmed because the Department’s decision unconstitutionally deprived it of its property interest in gaming eligibility. Mem. 45-46. To minimize duplication with Defendants and other *amici*, Lytton does not address this point here.

gaming facility knowing full well that reconsideration was ongoing. And the tribe pressed ahead despite multiple warnings from the Department—echoed by this Court—not to place undue reliance on the gaming-eligibility decision. *See supra* Part I.

Any harm thus resulted from “a marketing choice plaintiff[] ha[d] made for [it]sel[f]”; the Department was “not driving [Scotts Valley] to it.” *Time Warner Ent. Co. v. FCC*, 810 F. Supp. 1302, 1307-08 (D.D.C. 1992). This kind of “self-inflicted” injury “does not ‘satisfy the irreparable harm criterion.’” *Corp. for Public Broad. v. FEMA*, 792 F. Supp. 3d 67, 79 (D.D.C. 2025). For that reason alone, the Court should deny preliminary relief. *See also Khalid v. Garland*, 2022 WL 17976614, at *1 (D.D.C. Oct. 7, 2022) (government not required to facilitate plaintiff’s return to United States because he had decided to leave after “being told that the government would not” help him get back).

B. Scotts Valley’s Alleged Harms Are Not Sufficiently “Actual” Or “Tangible” To Constitute Irreparable Harm.

Even setting aside the fact that Scotts Valley could have avoided any harm by waiting for the reconsideration decision, the tribe comes nowhere close to establishing the irreparable injuries required to secure preliminary relief. As before, it “claims both monetary and sovereignty harms, but neither meets the requisite standard.” *Scotts Valley*, 2025 WL 1639901, at *1.

1. Sovereign Harms

As Scotts Valley sees things, the reconsideration decision infringed on its sovereign authority to conduct Class II gaming on the Vallejo site because it is required to suspend operations at the “Preview Casino.” Mem. 45-48. This argument fails. Given the limited nature of this facility—which may never have fully opened to the public in its one week of “operation”—Scotts Valley cannot show that “any sovereignty change” associated with the suspension will produce

“the type of ‘actual,’ ‘tangible’ harm that the D.C. Circuit requires.” *Scotts Valley*, 2025 WL 1639901, at *6.

As this Court has recognized, a “shift in applicable legal regimes” does not alone “cause the kind of factual harm” required to constitute irreparable harm. *Scotts Valley*, 2025 WL 1639901, at *7. Irreparable harm has been found when land has been removed from trust, thereby “eradicat[ing] sovereignty” previously exercised by a tribe, or when tribes have “endured criminal prosecutions, invasion of their land, and, in one instance, physical property confiscation.” *Id.* at 8 (citing cases). But a mere “theoretical harm to [a tribe’s] sovereignty” is insufficient. *Id.*

This distinction reflects a more general need to conduct “a particularized inquiry into the nature of the state, federal, and tribal interests at stake” in evaluating the effect of challenged conduct on tribal sovereignty. *San Manuel Indian Bingo & Casino v. NLRB*, 475 F.3d 1306, 1313 (D.C. Cir. 2007). As a rule, tribal sovereignty is “at its strongest when explicitly established by a treaty, or when a tribal government acts within the borders of its reservation, in a matter of concern only to members of the tribe,” such as “determining tribe membership.” *Id.* at 1312 (citation omitted). By contrast, “sovereignty is at its weakest” when a tribe “enters into off-reservation business transaction[s] with non-Indians.” *Id.* at 1312-13. The critical question is whether the challenged conduct “will constrain the tribe with respect to its governmental functions.” *Id.* at 1313; *see also S. Ute Indian Tribe v. DOI*, 2015 WL 3862534, at *2 (D. Colo. June 22, 2015) (not all acts that impair “sovereignty in some conceptual respect will necessarily amount to an irreparable injury”).

Tribal gaming is no exception. Although it has “commercial” aspects, it “is also in some sense governmental,” as when, for example, a tribe’s gaming operations are “the primary source of revenue for the tribal government.” *San Manuel*, 475 F.3d at 1310-11; *see also id.* at 1314-15

(noting that executing a gaming compact with the State of California was a governmental act but one that was “ancillary to th[e] commercial activity” of establishing and operating a casino). The extent to which agency action implicating gaming infringes on tribal sovereignty turns on whether “a drop in [gaming] revenues will adversely affect [the tribe’s] ability” to “carry out [governmental] functions,” such as providing “programs and services” for the tribe’s members. *Cow Creek Band of Umpqua Tribe of Indians v. DOI*, 2025 WL 548316, at *4 (D.D.C. Feb. 19, 2025). A “certain and great” impact on specific “tribal programs and services” can constitute irreparable harm, whereas a bare “drop in gaming revenues” in the abstract cannot. *Id.*

Even a cursory evaluation reveals that pausing operations at the so-called Preview Casino will have no appreciable impact on Scotts Valley’s “governmental functions.” *San Manuel*, 475 F.3d at 1313. As noted above, by early 2026, the Department had announced plans to issue a reconsidered decision by July 31, 2026. Just one week before that deadline, Scotts Valley purportedly “opened the Preview Casino on a limited basis.” ECF No. 10-2, ¶ 37. In fact, the casino was closed or open to invitees only for the vast majority of its week of limited operations. Tavassoli Decl. ¶¶ 3-6, 8. Scotts Valley provides no indication that the few “patrons” that it pictures (ECF No. 10-5, at 3-5) were members of the public, rather than the tribe’s own members visiting the gaming facility by invitation for a “Private Event.” Tavassoli Decl. ¶¶ 5-6 & Ex. 2 (photograph). As Scotts Valley itself acknowledges, the tribe was still “completing employee training, systems testing, and operational-readiness activities.” ECF No. 10-2, ¶ 37.

Little gaming occurred: the casino offered just 17 Class II gaming devices maintained by a staff of nine employees. ECF No. 10-2, ¶ 33; Tavassoli Decl. ¶ 9. That is far too few machines to provide an economically sustainable operation, particularly where the video bingo devices in question require players to be matched against other players to play. Tavassoli Decl. ¶¶ 10-11.

Meanwhile, the facilities consisted of “two modular buildings” erected for tribal administration and then “convert[ed]” into a casino after the Court’s October 2025 ruling. ECF No. 10-2, ¶¶ 25-27. Even Scotts Valley admits the structure was “temporary.” Mem. 13. Put simply, the Preview Casino was a mere stepping stone toward the “eight-story casino” with “238,266 square feet of gaming floor area” and “264 hotel rooms” that Scotts Valley plans for the Vallejo site. Pincus Decl. Ex. 1 at AR_002293.

Although Scotts Valley appears to have rushed this facility into operation to be able to assert in this litigation that a casino now “exists to harm,” Mem. 48, it provides no basis to conclude that the closure during litigation of this temporary facility represents irreparable harm in any way. For example, the tribe claims that the Preview Casino started to generate “governmental revenue” during the week before the reconsideration decision. Mem. 14. But it does not say how much; indeed, Scotts Valley questions whether “the amount of gaming revenue” even matters. ECF No. 10-2, ¶ 47.

But, as discussed above, the amount of revenue matters in determining whether a tribe has established the sovereign harm necessary to prove irreparable injury. And the limited nature of the operation makes it unlikely that it generated any meaningful revenue. Certainly, the tribe does not even try to establish how much revenue might be lost during this litigation. Rather, Scotts Valley’s description of the closure’s consequences for tribal government is wholly conclusory. For example, Scotts Valley claims that it will lose “governmental economic-development revenue.” *Id.* ¶ 42. But it fails to identify any specific economic-development projects that the Preview Casino’s revenue would have funded, let alone quantify that loss. In this respect, Scotts Valley’s alleged sovereign harms are even less concrete than those found insufficient in *Cow Creek*, 2025 WL 548316, at *4, where a tribe faced an asserted 28.5% reduction in gaming revenue, a 12.3%

reduction “in Tribal government funds,” and listed by category “the services and benefits” that would likely have to be eliminated to cover the shortfall.

If anything, Scotts Valley’s description of its purported sovereign harms reveals that they are actually economic. Revenue shortfalls preventing the tribe from satisfying “obligations associated with [casino] development” or “support[ing] [the casino’s] continuing operations,” ECF No. 10-2, ¶ 56, speak to the casino project’s balance sheet, not Scotts Valley’s sovereign interests. Meanwhile, the reconsideration decision presents no barrier to other uses of the Vallejo site. After all, Scotts Valley insists that it “did not acquire the Vallejo Site solely as a location for gaming,” as the land also would serve “the Band’s long-term governmental, residential, [and] social” interests. *Id.* ¶ 9. Those functions can continue, especially if the tribe restores the Preview Casino to its original role as an “administration facility.” *Id.* ¶¶ 25-26.⁵

Resisting this conclusion, Scotts Valley cites the same authority that the Court has already distinguished. *See Mashpee Wampanoag Tribe v. Bernhardt*, 2020 WL 3034854 (D.D.C. June 5, 2020) (cited at Mem. 48). There, the court concluded that the removal of land from trust constituted an irreparable injury because the tribe would “lose its sovereignty over the land in its entirety.” *Id.* at *3. As this Court explained, “[t]his context is readily distinguishable from the current situation, where the Department explicitly kept the land in trust for the benefit of the Band pending reconsideration of gaming eligibility.” *Scotts Valley*, 2025 WL 1639901, at *8. Temporarily

⁵ As noted *supra* at 2, Lytton has challenged in a separate litigation whether the Department appropriately took the Vallejo site in trust for Scotts Valley in the first place. Scotts Valley’s suit, however, involves only the gaming-eligibility decision, and its ability to use the parcel for non-gaming purposes was not affected by the Department’s reconsideration decision.

suspending nascent gaming operations is a far cry from the wholesale “eradicat[ion] [of] sovereignty” flowing from a “trust removal.” *Id.*⁶

2. *Economic Harms*

The alleged economic harms do not support a preliminary injunction either. Because “economic loss does not, in and of itself, constitute irreparable harm,” Scotts Valley must demonstrate imminent losses of such magnitude as to “threaten[] the very existence of [its] business.” *Scotts Valley*, 2025 WL 1639901, at *3. Nothing in the tribe’s motion comes close.

a. Past costs do not support a preliminary injunction.

Scotts Valley spills considerable ink describing the \$10 million that it supposedly spent on the Preview Casino, albeit without providing any substantiation of any such expenditures beyond a spreadsheet attached to a declaration. Mem. 48-49; Davis Decl. Ex. A. In any event, any such past expenses do not warrant interim relief.

The “purpose of a preliminary injunction is to preserve the parties’ respective positions” while litigation proceeds, so courts evaluate the expected “loss during the pendency of th[e] case.” *ConverDyn v. Moniz*, 68 F. Supp. 3d 34, 47 (D.D.C. 2014); *cf. Ohio v. EPA*, 969 F.3d 306, 309 (6th Cir. 2020) (asking whether harm will occur “while this case remains pending”). “[P]revious harm” does not fit that bill, *Morgan Drexen, Inc. v. CFPB*, 979 F. Supp. 2d 104, 112 (D.D.C. 2013), unless it “is likely to occur again,” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*per curiam*). Accordingly, “‘sunk costs’ that could not be avoided by an injunction . . . do

⁶ Scotts Valley appropriately makes no argument that it suffers irreparable harm associated with Class III gaming. Scotts Valley still has no tribal-state compact with California authorizing Class III gaming. ECF No. 10-2, ¶ 70. Nor is a compact forthcoming, as California decided to “cease” negotiations. *Id.* For Class III gaming, then, “the tribe had not even gained sovereignty to enforce its laws on the Vallejo site before the suspension.” *Scotts Valley*, 2025 WL 1639901, at *6.

not support injunctive relief.” *Tohono O’odham Nation v. Ducey*, 130 F. Supp. 3d 1301, 1319 (D. Ariz. 2015).

Scotts Valley’s asserted economic losses are, as the tribe freely admits, “unrecoverable sunk costs” spent on things like “gaming devices,” “structural improvement,” “landscaping,” and “hiring and training.” Mem. 48-49. A preliminary injunction will not put those expenses back in Scotts Valley’s pocket. Indeed, even if the Court granted Scotts Valley full relief on the merits today, the tribe would remain liable for the commitments it entered before the reconsideration decision issued. Those costs are simply irrelevant to the question whether Scotts Valley faces prospective harm that interim relief could prevent and, therefore, they do not qualify as irreparable harm for purposes of the preliminary-injunction inquiry. *See Ctr. for Bio. Diversity v. Regan*, 2024 WL 1740078, at *6 (D.D.C. Apr. 23, 2024) (denying interim relief that “would do nothing to make [movant] whole for its past expenditures”).

b. Scotts Valley fails to support any claims of future harm.

Scotts Valley’s passing references to future harm fare no better, as they contain none of the “details” required to obtain an injunction. *Scotts Valley*, 2025 WL 1639901, at *3-4. The tribe asserts that shuttering the Preview Casino deprived it of “gaming revenues.” Mem. 49. But it offers no inkling of what those revenues might have been. Meanwhile, the tribe’s assertion that suspending operations will delay development of a Class III gaming facility and “result in the loss of community goodwill, operational momentum, and valuable regulatory and operational experience,” *id.*, is wholly conclusory. So is Scotts Valley’s assertion that it will someday incur “further expenses” to restart the Preview Casino. *Id.* The tribe does not offer a single dollar figure to quantify those expenses, let alone demonstrate that they “threaten[] the very existence of [the tribe’s] business.” *Scotts Valley*, 2025 WL 1639901, at *4-5. Nor could it: the tribe admits that it

will “reestablish the facility” if it prevails in this lawsuit, Mem. 49, putting to rest any notion that the absence of interim relief might sink the project.

Courts deny preliminary injunctions despite far stronger showings of economic harm. In *National Mining Association v. Jackson*, 768 F. Supp. 2d 34, 51-52 (D.D.C. 2011), for example, a company asserted that it had “cost[s] that cannot be recovered if . . . permits are not issued,” would “be out of business within [eighteen] months,” had suffered “nearly \$6.7 million” in lost revenue, had “laid off five of its twenty-eight employees,” and would need to “lay off more employees and ‘sell[] equipment to lower [its] cost[s] and loan debt in the very near future.’” None of that, the court concluded, supported “a finding of irreparable harm.” *Id.* at 52; *see also Cow Creek*, 2025 WL 548316, at *2-3 (projection that casino “will lose approximately 28.5% of its total annual gaming revenues and 52.1% of its current non-gaming revenues” did not establish irreparable harm, even if those losses might “threaten the viability” of the project).

Also “inadequate” is “unquantified hardship” arising from “lost customers, distribution channels, and long-term agreements.” *Mylan Pharms., Inc. v. Sebelius*, 856 F. Supp. 2d 196, 215-16 (D.D.C. 2012). Scotts Valley’s generalized assertions of loss of revenue and goodwill from the suspension of operations at a gaming operation that had yet to open fully to the public therefore “are too conclusory to show irreparable harm.” *Scotts Valley*, 2025 WL 1639901, at *3 (rejecting tribe’s attempt to establish irreparable harm through “declarations” showing “total disbursement” and “overall authorized future contractual payments”).

c. Scotts Valley’s figures are misleading.

To make matters worse, Scotts Valley’s figures overstate the tribe’s actual costs. According to the tribe’s brief, the “Band’s total investment in the Preview Casino exceeds \$10 million.” Mem. 48. In fact, the project “was financed through advances made by the Band’s development partner.” ECF No. 10-2, ¶ 41. Scotts Valley fails to identify what bills (if any) the tribe paid on its own. *See*

id. ¶ 54. And although the tribe suggests that the advances will someday need to “be repaid,” it admits that future repayments are “tied to revenues generated by the gaming enterprise itself,” rather than “existing government funds.” *Id.* ¶¶ 41-42.

The natural inference is that Scotts Valley’s development partner, and not the tribe, will ultimately be responsible for any shortfall. At a minimum, the evidence—again consisting of declarations rather than “copies of [the] contracts”—omits “key details” about the project’s funding source required to support a finding of irreparable harm. *Scotts Valley*, 2025 WL 1639901, at *3-4.

To the extent Scotts Valley’s contracts are public, they paint a different picture than the tribe’s declarations. Take the tribe’s agreement with Vallejo. *See* Mem. 14. The tribe claims that it “imposed a financial obligation of \$1,506,000 on the Band relating to municipal services associated with gaming operations at the Vallejo Site.” ECF No. 10-2, ¶ 32. In fact, the agreement “may be terminated and payments may be refunded” if “public operations do not commence.” Pincus Decl. Ex. 2, Exhibit E ¶ 5(a). In addition, Scotts Valley’s “obligation to provide financial mitigation payments associated with police or fire personnel staffing” is “automatically suspended during any period in which public operations of the Temporary Development are suspended or prohibited due to . . . a determination by the United States Department of the Interior or other federal authority that the [Vallejo site] is not eligible for gaming.” *Id.* § 2.2(b). These terms safeguard the tribe’s economic interests while litigation proceeds, undercutting any argument for interim relief.

Other alleged costs have nothing to do with the reconsideration decision. Scotts Valley claims, for example, that it will need to spend \$235,247 each month “to preserve the” Preview Casino during this lawsuit. ECF No. 10-2, ¶ 54. By “preserve,” the tribe appears to mean operating

the casino as if it were open to the public. *See id.* ¶ 55 (citing costs of “\$59,081 for employees; \$40,500 for security; \$50,167 attributable to obligations under the Band’s agreement with the City of Vallejo; \$68,000 for trailer and generator rental and fuel; and \$17,500 for the Tribal Gaming Commission”). Yet those same costs (or more) would be incurred if operations at the Preview Casino continued. That means none of them flow from the reconsideration decision, so they “are irrelevant to the tribe’s monetary harm.” *Scotts Valley*, 2025 WL 1639901, at *4. Plus, there is reason to doubt that Scotts Valley will actually incur the cited costs, as the tribe elsewhere claims that the casino’s employees and gaming commissioners will “be laid off or furloughed without pay” during litigation. Mem. 49.

Finally, Scotts Valley’s calculations are rife with errors. The tribe’s chairman claims that it spent \$30,000 more to set up the Preview Casino than the supporting documentation indicates. *Compare* ECF No. 10-2, ¶ 30, *with* ECF No. 10-3, line 120. The tribe lists over \$750,000 in “Admin Office” expenses that were incurred while the Vallejo site was not eligible for gaming and, therefore, cannot be attributed to the challenged agency decision. ECF No. 10-3, line 3. And the tribe claims as expenses a series of payments *to itself* totaling more than \$100,000. *See id.* lines 91, 106-07 (recipient is the “Scotts Valley Band [o]f Pomo Indians”). Such deeply flawed figures are no basis for interim relief.

CONCLUSION

For these reasons, the Court should deny Scotts Valley’s motion for a preliminary injunction.

Respectfully submitted,

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