IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS, Plaintiff, v. **UNITED STATES DEPARTMENT OF THE INTERIOR**, *et al.*, Defendants.	Case No. 1:26-cv-02814-TNM Judge Trevor N. McFadden

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

This Court has twice required the Department to respect legal limits governing the Band's gaming eligibility: first, by evaluating the Band's historical showing under the framework established in *Scotts Valley I*; and second, by affording due process before depriving the Band of the property interest created by the January 2025 Decision. The Department's opposition explains neither why its July 30, 2026, decision ("2026 Decision" or the "Decision") satisfies the first obligation nor why the Band's lawful exercise of the reinstated gaming eligibility determination eliminates the second. Authority to reconsider is not authority to disregard the remand, reverse accepted findings without adequate explanation, or dismiss resulting injuries as self-inflicted.

The difference from last year's preliminary injunction motion is concrete. The Band established a Tribal Gaming Commission, licensed its facility, and began gaming operations. Interior's decision forced those operations to stop. The Band now seeks interim protection to continue an existing exercise of tribal governmental authority while the Court determines whether the Department lawfully withdrew the authorization supporting it.[1]

ARGUMENT

I. The Department's Decision inflicts present sovereign and economic injury that is not self-inflicted.

The Band's circumstances today are categorically different than those in existence during the Court's denial of its previous motion for injunctive relief: the Department's Decision stopped

[1] Defendants' repeated invocation of agency expertise does not alter the Court's responsibility to decide the governing legal questions independently. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13 (2024), the Court must exercise its independent judgment in determining the meaning of IGRA and Part 292 and may not defer to the Department's legal interpretation merely because statutory or regulatory language is ambiguous. The meaning of "significant historical connection," "occupancy," and "vicinity," the role of IGRA's remedial purpose, and the legal effect of this Court's remand are questions of law. The Department receives no special deference on the legal framework governing that evaluation.

gaming at a licensed facility and interrupted the Band's exercise of governmental authority. Davis Decl. ¶¶ 34, 36-38, 50, 62-63, 69-70 (ECF No. 10-2); see also Declaration of Alexander C. Koch. Defendants' characterization of those injuries as "entirely self-inflicted," Opp'n at 12, conflates the risk of investment with the deprivation of an existing authorization.

A. The Decision caused concrete sovereign injury that was absent from last year's preliminary injunction record.

The Court previously concluded: "The Scotts Valley Band expressly alleges only a theoretical harm to its sovereignty—and it cannot allege more, because no casino or gaming exists to harm." *Scotts Valley Band of Pomo Indians v. Burgum*, No. 25-cv-00958 (TNM), 2025 WL 1639901, *8 (D.D.C. June 10, 2025) ("June Opinion"). At the hearing, the Court drew the same distinction: "if you had a gaming operation up and under control and all of a sudden they yank your license, I'd say: Yeah. You've got it." Tr. of Prelim. Inj. Hr'g at 14:20-22, *Scotts Valley Band of Pomo Indians v. Burgum*, No. 25-cv-00958 (TNM) (D.D.C. May 23, 2025), Exhibit K to the Supplemental Declaration of Patrick R. Bergin ("Suppl. Bergin Decl."). That is now the case. The Band established and staffed its Gaming Commission, licensed the Preview Casino, commenced Class II gaming, resumed Compact negotiations with the State, and regulated actual operations before the challenged Decision forced those operations to cease.

1. The Decision displaces the Band's active sovereign authority over gaming.

The Band established a Tribal Gaming Commission, appointed Commissioners, hired staff, implemented regulatory procedures. Davis Decl. ¶ 34; Declaration of Dana Novoa ¶¶ 2-3, 7-15 ("Novoa Decl."). On July 13, 2026, the Commission licensed the Preview Casino for Class II gaming after inspection and compliance review. Davis Decl. Ex. B, at 2 (ECF No. 10-4); Novoa Decl. ¶¶ 4-6. Having satisfied the applicable federal and Tribal prerequisites, the Band began limited operations on July 24 while completing employee training, testing, and operational-

readiness activities. *Id.* ¶ 37. The notice and licensing obstacles that made injury premature last year had therefore been overcome. *Compare* June Opinion at *6-7, *with* Davis Decl. ¶¶ 36-38.

"Upon receiving the 2026 Decision, the Band ceased gaming operations, turned off its devices, and closed the Preview Casino." Davis Decl. ¶ 50. The Band gave contemporaneous notice to the National Indian Gaming Commission of that immediate suspension. Davis Decl. Ex. D, at 2 (ECF No. 10-6). This was an actual interruption of existing operations, not a prediction about a casino that might someday open. *See Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019) (preliminary injunction requires "actual and not theoretical" injury).

Defendants answer that the land remains in trust. Opp'n at 15-16. But continued trust ownership alone does not preserve the relevant sovereign power the Band exercised on that land. By declaring the land ineligible for gaming, the Department prevented the Band from continuing the very activity the Band's governmental institutions licensed and regulated. The injury concerns a specific exercise of Tribal jurisdiction, even though the Band retains trust ownership and other governmental powers.

The Court's earlier distinction of *Mashpee Wampanoag Tribe v. Bernhardt* rested on the absence of a comparable tangible injury in the record then before it. June Opinion at *8. The Band now supplies that evidence. *Mashpee* recognized that "even a partial infringement on a tribe's sovereignty over its land constitutes an irreparable harm." No. 18-2242 (PLF), 2020 WL 3034854, at *4 (D.D.C. June 5, 2020) (emphasis added). The Band's claim rests on the actual interruption of a particular governmental function, supported by sworn testimony and the Commission's own license. The fact that the land remains in trust status is immaterial.

Actual operations were under the Band's governmental regulation with the attendant fostering of regulatory experience, institutional knowledge, and governmental capacity; closure

halted that exercise of sovereign authority almost immediately. Davis Decl. ¶ 62-63. A later judgment can restore eligibility prospectively but cannot restore the intervening exercise of governmental authority. Defendants' emphasis on limited operations and unproven revenue does not answer that sovereign injury. Opp'n at 13; Davis Decl. ¶ 47.

2. The Decision interrupts gaming compact negotiations between sovereigns.

The July 2026 decision stopped an existing government-to-government process. Beginning in December 2025, the Band and California met nearly every month, exchanged drafts, and "tentatively agreed to nearly all material terms" before California announced that the compact negotiations would cease because of the Department's determination. Davis Decl. ¶¶ 69-70. The Department's objection that negotiations had not proceeded uninterrupted for eighteen months does not answer that evidence: the Band relies on the substantial negotiations conducted after eligibility was restored and their termination following the challenged decision. Opp'n at 16.

The Band acknowledges that agreement on the number of authorized Class III gaming devices—the primary outstanding issue—required further negotiations. That does not negate the parties' substantial progress. Nor was the interruption self-inflicted: negotiations ceased because the Department withdrew eligibility, not because the parties had failed to conclude a compact. Davis Decl. ¶ 70; Opp'n at 12-13. The Governor's asserted "Hobson's choice" between accepting the Band's proposal and risking litigation likewise conflates an obligation to negotiate with an obligation to agree. Br. for Gov. Gavin Newsom as Amicus Curiae 3-4 (ECF No. 20-1) ("Newsom Amicus Br."). Preliminary relief would restore the framework for good-faith negotiations without prescribing any compact term or adjudicating any future bad-faith claim. *See* 25 U.S.C. §§ 2710(d)(3)(A), 2710(d)(7)(A)(i).

The Governor's assurance that California would resume negotiations after a favorable judgment does not establish that the same personnel, positions, and tentative agreements would remain available following the January gubernatorial transition. Newsom Amicus Br. 5. Belated resumption would not necessarily preserve the progress already achieved. Restoring that framework would preserve the parties' prior relationship while leaving ultimate eligibility and compact terms unresolved. *See Singh v. Berger*, 56 F.4th 88, 95-97 (D.C. Cir. 2022).

The Band recognizes the Court's earlier conclusion that "any factual chilling of negotiations would be reparable." June Opinion at *7. But possible resumption does not remedy the intervening interruption of Tribal gaming regulation or the continuing burdens of preserving the closed facility and its governmental infrastructure. Davis Decl. ¶¶ 50, 54-55, 61-63. The cessation of negotiations reinforces those present governmental injuries; it is not the Band's sole basis for irreparable harm.

B. Notice that eligibility could be reconsidered did not make the Band responsible for the Department's elimination of the Band's existing rights.

Defendants' categorical premise is that "[a]ny reliance on the 2025 Gaming Eligibility Determination after March 27, 2025, was unreasonable and any alleged harm was of Scotts Valley's own making." Opp'n at 12. That premise disregards the October judgment vacating the temporary rescission and conflates the Band's financial reliance interests with its continuing legal rights. The Court held that the January 2025 determination "functioned much like a license or permit" and explained: "Once the agency took the parcel into trust and deemed it eligible for gaming, no further legal barrier stood in the way of class II gaming." *Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1, 28-29 (D.D.C. 2025) ("*Scotts Valley II*")

The Band acknowledges that warning to avoid "undue reliance" on the Court's decision. *Id.* at 34. But the Court's next sentence was equally important: "But Interior, too, must take

seriously the Band's reliance interests, and it must provide the required due process." *Id.* Although the Court's "undue reliance" warning tempered any expectation of permanent gaming eligibility, it did not convert the reinstated determination into a prohibition on gaming or make the exercise of an existing right an automatic bar to equitable relief.

Chairman Davis's declaration draws exactly that distinction. The Band proceeded "with full knowledge that reconsideration remained pending," but understood that the January decision "remained legally effective unless and until lawfully changed." Davis Decl. ¶ 20. Whether the Department lawfully changed that determination is the merits question presented here. The Band's awareness that an adverse decision was possible does not establish that the resulting deprivation was self-inflicted. Otherwise, exercising established rights pending their administrative reconsideration would itself disable the Band from obtaining interim protection against an unlawful withdrawal of those rights.

Defendant's reliance on *Barton v. District of Columbia*, 131 F. Supp. 2d 236, 247 (D.D.C. 2001), is misplaced. There, the plaintiff refused a good-faith offer of a new lease and refused to relocate his business to an alternative location, declining opportunities to cure the asserted injury. Thus, as *District of Columbia v. USDA* explained, "self-inflicted generally means curable by the moving party without an injunction." 444 F. Supp. 3d 1, 35 (D.D.C. 2020) (distinguishing *Barton*); *see also Safari Club Intern. v. Salazar*, 852 F. Supp. 2d 102, 123 (D.D.C. 2012). The Band has no comparable alternatives: Vallejo is its only trust land, and it cannot restore gaming eligibility itself. Nor could a new application for a substitute parcel satisfy either temporal connection pathway under 25 C.F.R. 292.12(c), because it would not be the Band's first post-restoration request for trust lands and the twenty-five-year application period has expired. The Band's suspension of

operations complied with Interior's decision; it did not independently create the restriction or relinquish gaming of its own volition.

The record also contradicts the suggestion that the Band manufactured a last-minute operation solely to obtain an injunction. *See* Opp'n at 13, 16. The facility's July opening concluded a plan the Band had disclosed seven months earlier. At the December 22, 2025, meeting, counsel "expressly informed Department officials that the Band intended to open and operate a Class II gaming facility at the Vallejo Site." Bergin Decl. ¶ 11. The Tribal Chairman's January 27 letter described "completion of a temporary Class II facility slated to open shortly" and stated: "The Tribe has hired and trained employees to work in the facility, retained operational vendors, and initiated complementary initiatives, including workforce, housing, and public health planning." Letter from Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians, to William Henry Kirkland III, Assistant Sec'y—Indian Affs., at 2 (Jan. 27, 2026), Suppl. Bergin Decl. Ex. I. The Band again discussed development with Department officials in April. Bergin Decl. ¶¶ 15-20.

The Band did not rely on a promise of a favorable outcome or immunity from reconsideration. Rather, the Band implemented an operative determination for governmental and operational reasons disclosed months before July. Bergin Decl. ¶¶ 11, 15–21; Davis Decl. ¶¶ 39–40, 47.

C. Continuing closure of the Band's gaming facility threatens the Band's established operating and governmental infrastructure.

The economic evidence reinforces the sovereign injury without depending on speculative profits. Economic loss can constitute irreparable harm "where the loss threatens the very existence of the movant's business." *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam). Here, the challenged decision has already stopped the Band's gaming operation. Even maintaining the closed facility requires "approximately $235,247 in expenses and obligations" each month.

Davis Decl. ¶ 54. Those obligations include employees, security, Commission costs, equipment and fuel, and the allocated City payment. *Id.* ¶ 55. The declaration explains the allocation of the City payment and the development partner's advances, distinguishing the expenses and obligations associated with preserving the facility from direct payments out of existing Tribal funds. *Id.* ¶¶ 54-55. But those financing arrangements do not eliminate the continuing cost of maintaining an enterprise prohibited from operating.

Chairman Davis identifies the resulting choice: "Continuing to preserve the closed facility consumes Tribal resources each month," while dismantling it or reducing employees, contractual relationships, or the Commission would impair the Band's ability to resume operations if it prevails. *Id.* ¶ 61. The Commission was itself developing institutional knowledge through actual operations, a process now interrupted. *Id.* ¶¶ 62-63. The evidence thus identifies present carrying obligations and an ongoing loss of governmental and operational development, together with the risk that prolonged closure will force the Band to dismantle the capacity needed to resume. In other words, the very existence of the gaming facility is at risk.

Defendants' objection to the September 2025 purchase of modular buildings does not answer those continuing injuries. Opp'n at 14. The declaration explains that the buildings were acquired for administrative use and converted for gaming after the October vacatur. Davis Decl. ¶¶ 25-26. More fundamentally, the Band need not establish that every historical expenditure independently constitutes irreparable harm. A preliminary injunction would address the continuing prohibition on operations and its consequences, not reimburse sunk costs. Disputes over when individual purchases occurred therefore do not dispose of the present sovereign injury or the cost of preserving an existing facility during forced closure.

D. The Department's deprivation of the Band's gaming rights without due process constitutes irreparable harm.

Absent a preliminary injunction, the Band will also continue to experience the deprivation of its right to gaming eligibility through a procedure that violated the Band's due process rights. The Department's opposition brief does not address this aspect of the Band's irreparable harm and thereby concedes that, if the Court finds the Band is likely to succeed on its due process claim, the Band necessarily satisfies the irreparable harm requirement as well. *See Taylor v. Trump*, 823 F. Supp. 3d 17, 40 (D.D.C. 2026).

II. The Band is likely to succeed on the merits of its claims.

The Band is likely to succeed on the merits because the Decision fails to address the deficiencies identified in this Court's prior rulings and to adequately explain the reversal of the 2025 Decision. The Band's claims turn on whether the Department followed the Court's rulings and reasonably explained its decision—defects the Court can resolve without deciding every disputed historical fact.

A. The Decision disregards this Court's remand order and therefore is contrary to law.

In *Scotts Valley Band of Pomo Indians v. U.S. Department of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) ("*Scotts Valley I*"), the Court upheld Interior's authority to require a significant historical connection but, in light of the Indian canon, rejected application of that requirement without adequate consideration of the Band's displacement and IGRA's remedial purpose. The remand did not compel eligibility or freeze factual findings. It required Interior to evaluate the evidence under the legal framework the Court prescribed.

The Department invokes the May 2023 bench ruling to separate statutory interpretation from evaluation of the evidence under regulatory standards. Opp'n 21–22. But the Court explained that the canon reaches the implementing regulations, which are susceptible to multiple

interpretations and applications. *See* Tr. of Bench Ruling at 15:17-16:1 (May 8, 2023) (ECF No. 21-1); *see generally id.* at 18-34. The Court also explained that the canon informs the significance of historical circumstances the agency ignored or minimized, and that IGRA's remedial purpose also influences the evaluation of facts in applying the regulations. *Id.* at 28:7–22, 29:16–20, 30:19–31:3. Its discussion of *Mashpee* likewise rejected Defendants' categorical separation of factual inquiry from that framework. *Id.* at 26:18–28:17.

The Court clarified that it had not directed Interior itself to apply the canon; the canon governed judicial review. Opp'n at 21; Tr. of Bench Ruling at 16–17. That distinction does not excuse a decision inconsistent with the statute and regulation as judicially construed. The Band does not seek to invoke the canon to resolve every disputed historical fact. It asks the Court to enforce the remand's requirement that Interior account for the Band's historical displacement and IGRA's remedial purpose when weighing the evidence for satisfying the significant-historical-connection standard. *See Sullivan v. Hudson*, 490 U.S. 877, 886 (1989); *Am. Waterways Operators v. Regan*, 590 F. Supp. 3d 126, 137 (D.D.C. 2022).

The concrete defects are addressed below. Interior acknowledged documented ancestral occupancy but rejected its combined significance by emphasizing documentary gaps the 2025 Decision had already acknowledged. New evidence could justify different findings; it did not eliminate Interior's obligation to weigh that evidence, including any gaps, under the governing framework. Although the Department insists its Decision did not "deviate from the analytical framework" of the 2025 Decision, Opp'n at 29, the framework was given practical content by the inferences it required and the significance assigned to historical circumstances. The Department cannot validly preserve the required framework in name while reversing its application to every material component of the showing and treating the same acknowledged evidentiary limitations as

newly dispositive. The Court can assess the legality of the Decision without resolving every historical dispute.

B. The Department's did not adequately explain its reversal or treatment of the historical evidence.

The Department characterizes its reversal as revised factfinding under an unchanged framework. Opp'n 22–31. Even on that characterization, Interior had to confront the premises of its prior decision and explain the departures. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009). It need not show that its new position is better, but must connect its evidence to its conclusion. *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350-51 (D.C. Cir. 2014). The following defects concern the explanation, not simply disagreement with the result.

3. Rejecting the baptismal identification does not explain the rejection of the Band's independently documented historical connection.

Defendants devote substantial attention to whether the six-year-old Agustín listed in the 1837 Mission San Francisco Solano baptismal register was Chief Augustine. Opp'n at 23-24, 27. That presentation overstates the consequence of the Department's revised identification. The 2025 decision did not treat the identification as conclusively established. It acknowledged the uncertainty and described Augustine's "possible baptism," considering that evidence alongside his documented Napa residence and the broader circumstances of displacement and labor in the North Bay. 2025 Decision 12, 17-18. Thus, the evidentiary limitation was acknowledged in the decision itself; it was not a previously hidden defect whose discovery necessarily invalidated the entire analysis. *See* Band's Mem. of Law in Support of Affirmance of the January 10, 2025 Gaming Eligibility Decision at 49-52 (May 1, 2026), Supp. Bergin Decl. Ex. J.

More importantly, the 2026 Decision preserves the independently documented occupancy that the baptismal dispute cannot erase. The Department maintains its finding that Augustine and other Band ancestors worked on North Bay ranchos, including evidence connecting Augustine to

Rancho Tulucay and other Band ancestors to that rancho or Napa City Township. 2026 Decision at 32-33 & nn. 273-274. It expressly confirms that Augustine's Napa residency constituted occupancy and leaves intact its determination that this occupancy is attributable to the Band as a whole. *Id.* at 33. The Department therefore does not merely recognize a generic Indian presence somewhere in Northern California. It accepts occupancy by identified Band ancestors in an area it previously determined was within the Vallejo Site's vicinity.

In the 2025 Decision, that geographic determination provided evidence of significant historical connection to the Vallejo Site independent of the baptismal identification. Napa was approximately eleven miles from the Vallejo Site; the region was historically rural and agricultural; and the relevant ranching operations extended across "large swaths of land" located between the identified places of residence and the Vallejo Site. 2025 Decision at 21-22. The Department also relied on agency precedents recognizing the relevance of historical occupancy at comparable distances. *Id.* at 21 & fns.205-206. Rejecting a baptism in Sonoma, seventeen miles from the Vallejo Site, does not eliminate the accepted facts concerning Napa otherwise establishing the Band's significant historical connection to the Site.

4. The absence of direct parcel-specific evidence does not explain the Department's reversal of its prior inference.

The Band does not contend that presence anywhere in the North Bay automatically establishes a significant historical connection to the Vallejo Site. The regulation requires a connection to the land and permits that connection to be demonstrated through historical documentation of villages, burial grounds, occupancy, or subsistence use in its vicinity. 25 C.F.R. §§ 292.2, 292.12(b). *Confederated Tribes of Grand Ronde Community of Or. v. Jewell*, 830 F.3d 552, 566-68 (D.C. Cir. 2016), recognizes an inquiry into whether surrounding use and occupancy support a natural inference of use of the parcel. But that inquiry permits an inference; it does not

require direct documentation identifying the exact parcel. Nor does it make the particular evidence accepted for one tribe a mandatory template for every other tribe.

Defendants emphasize the Bear River determination, which involved villages and other sites clustered around the proposed parcel. Opp'n at 27; 2026 Decision at 34-35. That example demonstrates one sufficient evidentiary showing. It does not establish that a displaced population whose documented presence arose through labor and temporary residence must produce the same record. Indeed, the 2025 Decision also considered the Cowlitz and Mooretown determinations, including evidence fourteen miles and fifteen to twenty miles from the respective parcels. 2025 Decision at 21-22 & nn. 205-206. Those examples do not establish eligibility by mileage alone, but they underscore the contextual nature of the inquiry.

The Department's repeated objection to "inference upon inference" likewise does not identify a legal deficiency. 2026 Decision at 37; Opp'n at 24, 27. Agencies conducting ordinary factfinding must draw the inferences the evidence fairly demands. *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 378 (1998). Circumstantial evidence is capable of providing evidentiary support; its inferential character does not disqualify it. *Lucas v. Duncan*, 574 F.3d 772, 777 (D.C. Cir. 2009). The Department can evaluate the strength of the Band's proposed inferences and should conduct an assessment of their evidentiary foundations. However, it cannot simply object to inferential reasoning entirely.

The evidentiary foundations supporting the Band's proposed inferences were concrete: the Band's documented ancestral occupancy in Napa; the recruitment and forced movement of Clear Lake Indians into the North Bay labor economy; the Band's ancestors' connection to regional ranching operations; Indian labor on Rancho Suscol; and the Vallejo Site's location within that rancho. 2025 Decision at 17-23; 2026 Decision at 32-38. The 2025 Decision expressly

acknowledged the absence of documentation linking Band ancestors specifically to Suscol and explained why the surrounding circumstances nonetheless supported the inference. 2025 Decision at 23. The 2026 Decision's renewed emphasis on that same absence does not identify a newly discovered evidentiary deficiency and therefore does not by itself explain the Department's different outcome. The Department must explain why the previously acknowledged gap now defeats the combined showing.

5. The Department's ceded-territory analysis confuses authority to convey land with evidence of historical occupancy.

Defendants' treatment of Area 296 similarly attacks a proposition the 2025 Decision did not adopt. The Department did not conclude in 2025 that the Vallejo Site was the Band's last treaty reservation or that location within ceded territory automatically established eligibility. It treated the location within Area 296 as corroborative evidence supporting a favorable inference of occupancy. 2025 Decision at 22-23. The 2026 Decision acknowledges that both the 2019 and 2025 determinations accorded that circumstance evidentiary significance. 2026 Decision at 33 & n.277.

The Department now rejects that significance because the record does not establish that the Band's predecessors possessed authority to cede land around Vallejo. *Id.* at 33; Opp'n at 25-26. But whether the tribal signatories could legally convey that territory is distinct from whether the federal treaty geography provides evidence of historical relationships to it. A map's limitations as an account of ownership do not necessarily eliminate its value as corroboration of movement, labor, or occupancy. The Department's reasoning does not bridge that distinction.

The distinction matters because the requisite historical connection based on occupancy need not involve ownership or exclusive control. *Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 75 F. Supp. 3d 387, 410 (D.D.C. 2014), *aff'd*, 830 F.3d 552 (D.C. Cir. 2016). The restored-lands exception serves a remedial purpose broader than returning previously owned land

to its original condition. *City of Roseville v. Norton*, 348 F.3d 1020, 1026-27 (D.C. Cir. 2003). Thus, the Department does not need to find a legally effective cession of this specific parcel by the Band or even resolve every cartographic uncertainty in the Band's favor. Where there is evidence supporting occupancy, however, the Department must provide a reasoned explanation for discarding the map's corroborative value in an occupancy inquiry; merely pointing out that the signatories' authority to convey the territory was not established is insufficient.

The Opposition repeatedly invokes "new evidence" without identifying which material propositions were genuinely new. With respect to Area 296, third party opponents had previously disputed the relationship between the map and the treaty's nonspecific cession, and the Department rejected their arguments. *See* 2025 Decision at 23 & n. 222. When those same arguments reappeared in the opponents' June submissions, the Department accepted them. 2026 Decision at 25-26, 33. Repackaged criticism of a final decision is not itself new historical evidence. The Department must identify what the supplemented record newly established and explain why it undermined the factual or legal premises of the 2025 Decision.

The evidentiary value of the Royce Map stems in part from the federal treaty negotiators' "understanding of what they had done," as reflected in the map's cession boundaries. 2026 Decision at 30. That is, the federal government's negotiators had reason to believe they had extracted from the Band's ancestors the relinquishment of any claim to lands in Area 296. It may reasonably be inferred that this belief arose from the actual presence of the signatory tribes in that area, and the perceived absence or relative scarcity of others. *Id.* That inference exists whether or not the signatory tribes might have had legal authority to dispose of the lands.

The provisioning evidence presents a related logical defect. The 2025 Decision treated the designation of Vallejo as a distribution point, and the subsequent collection of provisions there, as

additional corroboration. 2025 Decision at 23 & nn.220-222. It expressly recognized that collecting provisions might be too transitory to establish occupancy by itself. *Id.* The 2026 Decision prefers an explanation that Vallejo was convenient for federal officials. 2026 Decision at 35. But federal convenience and tribal collection of provisions are compatible facts. Although the federal convenience theory could explain the officials' selection of the location, that would not negate the evidentiary significance of tribal collection of provisions at that location. Nor does doubt about Royce's map erase the potential corroborative value of documented collection activities. The Department improperly treats an alternative explanation for the government's motive as if it disproved the historical connection the activity helps demonstrate.

Additionally, the Department fails in its effort to rewrite the 2012 ILO. Opp'n at 26. That decision teaches two points about tribal reliance on Royce Area 296: first, the Band must show the entire cession was attributable to all tribal treaty signers, and second, the parcel in question must lay within the boundaries of Royce Area 296. See 2012 ILO at 14. The Department has held since 2019 that the "tribal signatories 'jointly and severally' ceded" their land rights, satisfying the first element. 2026 Decision at 9; 2025 Decision at 8. The 2026 Decision arbitrarily negates the significance of satisfying the second element.

6. Evidence of another Indian tribe's prior presence does not negate the Band's historical occupancy.

Defendants also emphasize that references to Indians near Vallejo may describe non-Clear Lake Indians and that references to Clear Lake Indians do not invariably identify Band ancestors. Opp'n at 28. The Band does not equate every regional Indian population with its own predecessors. Its argument combines the broader evidence with the specific ancestral connections the Department expressly accepts. 2026 Decision at 32-33. That combination cannot be rejected merely because other tribes also occupied the region.

For example, the 2026 Decision relies on continued Patwin presence and evidence that a Pomo party needed Patwin escorts to travel through Patwin territory. *Id.* at 36. That evidence may undermine a theory that Clear Lake Indians wholly displaced local populations. It does not establish that Band ancestors were absent from a mixed labor force. Likewise, a predominantly Patwin workforce is not necessarily an exclusively Patwin workforce. *See id.* at 37. The Department expressly declined to limit qualifying historical connections to areas of exclusive tribal use and occupancy when adopting Part 292. Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,366 (May 20, 2008). Evidence of another tribe's presence therefore does not, without further explanation, negate the Band's labor-related occupancy.

The Department's reliance on Suscol's later ownership history is similarly incomplete. The January 2025 inference concerned labor after Vallejo acquired Suscol in 1843. 2025 Decision at 23. The 2026 Decision emphasizes the rejection of Vallejo's claim in 1862 and private ownership by 1870. 2026 Decision at 37-38. Those later circumstances do not negate labor or occupancy during the earlier period. Nor is private or governmental title incompatible with Indian labor on the land. *See Grand Ronde*, 75 F. Supp. 3d at 410. The Department could consider Suscol's history in assessing whether it differed from neighboring ranchos, but it had to explain how the identified differences defeated the particular inference supporting the January 2025 decision. A change in legal ownership does not supply that explanation by itself.

Taken together, these defects show why the Department's description of its review as consideration of the record "as a whole" does not answer the Band's claim. Opp'n 27. The 2025 Decision acknowledged that "no documentation links the Band's ancestors specifically to Rancho Suscol," yet explained why the inference "need not be obvious or unquestionable." 2025 Decision at 22–23. The Department could reassess that inference, but had to explain how the additional

evidence undermined its foundations under the remand's framework. Its renewed reliance on the same documentary gap does not supply that explanation.

C. The Department did not adequately justify the basis and scope of reconsideration.

The Department answers the Band's challenge to the rationale for reopening by invoking its inherent authority to reconsider. Opp'n at 31. Authority to reconsider, however, does not equate to reasoned exercise of that authority. An agency must explain why it acted; conclusory statements do not suffice. *Amerijet*, 753 F.3d at 1350–51.

The Department's March letter expressed concern that it had not considered post-remand evidence. In December, it stated that excluding those submissions "could be deemed legal error." ECF No. 10-9. The final Decision repeated that concern. 2026 Decision at 2–3. But the Department did not identify what law required reopening the record or explain why the prior discretionary choice amounted to an abuse of discretion. Pl.'s Mot. 32–34. Its authority to correct possible error does not explain the supposed error at issue here, to justify the Department's reconsideration.

Nor did *Scotts Valley II* conclusively approve the completed reconsideration. The Court recognized inherent reconsideration authority while dismissing the Band's challenge to the ongoing process because it was nonfinal. 808 F. Supp. 3d at 13–19. That ruling does not foreclose review of the process and explanation culminating in the July 2026 Decision.

The stated rationale and resulting record also require reconciliation. The Department cited its failure to consider submissions received after the 2022 remand and before January 2025, but later excluded those submissions unless resubmitted and considered new post-decision materials. Pl.'s Mot. at 34–37. The January 21, 2026 letter explained that resubmission was intended to gather previously unconsidered evidence. ECF No. 10-10. That explains the Department's collection mechanism, but not why or how its review was a reasoned response to the alleged defect in the

closed-record decision. Defendants' general defense of authority does not answer that narrower objection. Opp'n at 20, 31–32.

D. The Department failed to afford meaningful process concerning its threshold rationale.

The Band possessed a constitutionally protected property interest in its "legitimate claim of entitlement to gaming eligibility once granted" in January 2025. *Scotts Valley II*, 808 F. Supp. 3d at 25 (quotation marks omitted). The Fifth Amendment required the Department to adhere to due process requirements before depriving the Band of that property interest. *Id.* "[A]dequate notice lies at the heart of due process." *Gray Panthers v. Schweiker*, 652 F.2d 146, 168 (D.C. Cir. 1980). Notice is adequate only when it informs the recipient of "the specific reasons" for the deprivation and does not "require[] its target to guess among several possible bases for adverse government action." *Scotts Valley II* at 26 (quoting *Gray Panthers* at 168 and *Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 599 (D.C. Cir. 1993)).

Here, there were two phases to the Department's extinguishment of the Band's gaming eligibility: in phase one, the Department decided to reopen and reconsider the 2025 Decision, and in phase two, it issued the unfavorable 2026 Decision. (This was in addition to the decision to temporarily rescind gaming eligibility, which *Scotts Valley II* vacated as a due process violation.) As the Band has explained, throughout the process from the initial letter in March 2025 to the final decision in July 2026, the Department gave the Band no meaningful explanation of the reason for its phase one decision. Without being told anything specific about why making the 2025 Decision on the existing factual record could be deemed legally erroneous, the Band could only guess about what law was thought to be violated.[2] A notice that merely states a procedure "could be deemed

[2] Nor did the Department identify any specific submission, topic, historical fact, or analytical fault that caused the Department to revisit its prior decision. All the Department offered in terms of a

legal error" — without specifying what law, rule, or standard may have been violated — does not inform the Band of the grounds for the agency's proposed action and therefore falls short of the constitutional standard. In this respect, just like the Department's notice of rescission, the Department's notice of its decision to reconsider "flouted due process." *Scotts Valley II* at 27.

The Department now asserts that its statements in the December and January letters provided adequate notice of the reason for its reconsideration. Opp'n at 32. These statements, however, were not substantively different from the inadequate notice in March 2025, which violated due process, and the Department fails to explain why the result should be any different now. The Department then pivots to the fact that it provided the Band copies of the 2025 submissions and gave the Band time to respond, but this argument addresses the Department's ultimate decision on the merits, not the threshold question of why the Department concluded it must compel the Band to relitigate questions that were already answered. "The lack of adequate notice is in no way offset by a compensating procedure elsewhere in the process," *Gray Panthers* at 169, because the receipt of information and opportunity to respond at the merits stage is separate and distinct from the threshold issue: on what ground is reconsideration warranted. On that issue, the Band received only a cursory statement of the Department's reason for acting, devoid of specific content to which the Band could give a meaningful response. And the 2026 Decision did not confront the argument the Band presented, or otherwise identify a legal reason reconsideration was necessary, suggesting the Department had made its final decision on the threshold question at some previous time, and had no intention of hearing argument in opposition.

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merits-related basis was the nonspecific assertion that the 2025 "submissions raise questions about the Tribe's significant historical connection and temporal connection to the Vallejo Site." Opp'n at 32. The Department did not reveal to the Band which "questions" the Department intended to reexamine, or say whether these questions – and not the alleged procedural legal error – were the actual reason for proceeding with reconsideration.

The Department's failure to explain its stated rationale was compounded by its refusal to afford the Band a meaningful opportunity to contest whether reconsideration should proceed. After this Court vacated the March 27 rescission, the Band requested a government-to-government meeting to explain its position that further reconsideration was unwarranted. Letter from Shawn Davis to William Kirkland, *et al* at 1 (Nov. 20, 2025), Suppl. Bergin Decl. Ex. F. That request put the Department on notice that the Band sought to address the threshold justification for reopening its final gaming eligibility determination.

The Department did not meet with the Band before issuing its December 3 letter. The Band thus had no notice of the Department's final intent to proceed with reconsideration following vacatur until that letter announced that "[t]he Department is committed to reconsidering the Gaming Eligibility Determination." Letter from William Kirkland to Shawn Davis at 1 (Dec. 3, 2025), ECF No. 10-9. The letter invited discussion of "the timeline and substance of the reconsideration," but did not identify what legal error or abuse of discretion allegedly resulted from resolving the remand on a closed record. *Id.* The Department presented reconsideration as a settled course before providing the requested opportunity to discuss whether it was justified.

The December 22 meeting at Interior did not cure that omission. When the Band sought to discuss whether reconsideration should proceed, Department officials stated that the issue was outside the agenda and that they were unprepared to discuss it. They also would not commit to addressing it at the next meeting. Suppl. Bergin Decl. ¶ 7. The Department therefore declined the requested threshold discussion even after announcing its intent to proceed.

The Band continued to press its objections in writing. Its January 2 letter explained why reconsideration was unwarranted, objected to the Department's decision to proceed before engaging the Band, and preserved its constitutional objections. Letter from Shawn Davis to

William Kirkland at 2–6 (Jan. 2, 2026), Suppl. Bergin Decl. Ex. G. It also stated the Band's understanding that the next meeting would address whether reconsideration was warranted and, if so, why. *Id.* at 10. Assistant Secretary Kirkland emailed an initial response on January 15, acknowledging the Band's multiple requests to discuss the Band's objections to reconsideration, but stating that Interior had initiated reconsideration with its March 27 letter and that "[t]hat reconsideration will continue." Email from William Kirkland to Shawn Davis (Jan. 15, 2026), Suppl. Bergin Decl. Ex. H. The Department's January 21 response did not address the Band's objections either. Instead, it clarified the evidentiary record, set a deadline for responding to the June 2025 submissions, and announced that a reconsidered determination would follow. Letter from William Kirkland to Shawn Davis at 1 (Jan. 21, 2026), ECF No. 10-10.

Despite the Band's written objections and requests for discussion, the Department neither explained the supposed legal error sufficiently to permit a focused response nor addressed the Band's challenge to that premise. The Band's participation in the merits process did not constitute acquiescence in that threshold determination or, by itself, establish meaningful process concerning it.

It should go without saying that due process is essential throughout each phase of a proceeding that could destroy a property or liberty interest, not only to protect the owners of these interests, but also to maintain confidence that the government acts fairly. By keeping the Band in the dark about exactly why its gaming eligibility must be subjected again to dispute, the Department exposes itself to the perception that the end result was predetermined - if the Department conjured an opaque excuse to reopen the final 2025 Decision, proceeded in a manner that cast doubt even on that vague premise, and remained insensate to contrary arguments, it would not be a leap to suppose the Department took these unusual actions with an end goal in mind.

Whatever the motivations, however, the 2026 Decision extinguished the Band's gaming rights without ever giving the Band adequate, meaningful notice of the alleged legal error that was claimed to justify the proceeding. This violated the Band's due process rights.

E. The Department failed to assess the Band's reliance interests.

Defendants argue that the warnings made all subsequent reliance unreasonable. Opp'n at 33–35. But *Scotts Valley II* paired its warning against undue reliance with the instruction that "Interior, too, must take seriously the Band's reliance interests." 808 F. Supp. 3d at 28. Under *Regents*, limitations on an earlier action may diminish reliance without automatically eliminating it; the agency must make that assessment. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

The Band identified its reliance interests as regulatory infrastructure, hiring, training, construction, and actual operations. Davis Decl. ¶¶ 23–38. The Department was advised of the opening plan in December, and the January 27 letter documented facility completion, employees, and vendors. Bergin Decl. ¶ 11; Jan. 27 Letter at 2, Suppl. Bergin Decl. Ex. I. The final Decision recites the warning but does not assess these commitments or explain their weight. 2026 Decision at 3, 31–39. Though timing and risk could reduce that weight, counsel's categorical litigation position cannot substitute for the agency's assessment. *Regents*, 591 U.S. at 20–23, 30–33. Nor does the Band's request for sufficient response time excuse that omission. Opp'n at 35. Seeking a meaningful response period did not withdraw the reliance interests already disclosed.

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

Defendants characterize the Band's injuries as a "nullity," Opp'n at 36, but the Decision closed an operating facility, interrupted Tribal regulation, and left approximately $235,247 in monthly expenses and obligations. Davis Decl. ¶¶ 50, 54–55, 62–63. Those concrete burdens must be weighed against the interests in maintaining the July determination.

The Department's countervailing interests must likewise be assessed concretely. At the prior preliminary injunction hearing, the Court asked what harm the Department would suffer from enjoining the rescission while allowing reconsideration to proceed. Government counsel answered: "None that the record shows here." Tr. of Prelim. Inj. Hr'g at 32:13-17, *Scotts Valley Band of Pomo Indians v. Burgum*, No. 25-cv-00958 (TNM) (D.D.C. May 23, 2025), Suppl. Bergin Decl. Ex. K. Although that concession concerned the temporary rescission, the same question remains for the preliminary injunction the Band requests here: what concrete harm would the Department suffer from temporarily restoring gaming eligibility while this Court reviews the July decision? Same answer. Defendants invoke the administration of IGRA and third-party interests but identify no quantified or otherwise specific interim harm from the continued operation of the Preview Casino. Opp'n at 36. Temporary relief would not preclude defense of the 2026 Decision or adjudicate the competing tribes' challenges.

Furthermore, the Department's asserted interest in implementing a correct decision is weighty only to the extent the 2026 Decision is correct. By the same token, the Band's "likelihood of success on the merits is a strong indicator that a preliminary injunction would serve the public interest. There is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016).

IGRA expressly promotes "tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). The restored-lands exception seeks to avoid disadvantaging tribes that lacked reservations when IGRA was enacted. *Scotts Valley I* at 167-68. That purpose warrants weight alongside the competing tribes' interests; it neither excuses regulatory compliance nor guarantees a competitive outcome. On the Band's showing of likely unlawfulness, preserving its opportunity to operate during review advances that purpose.

IV. The requested preliminary relief would appropriately restore the status quo.

The status quo prior to the 2026 Decision was that the 2025 Decision was in effect, meaning the Band possessed the right to control and conduct gaming on the Vallejo Site under IGRA. It is that pre-2026 Decision status quo that the preliminary relief requested by the Band would restore.

Reconsideration and warnings did not suspend the operative 2025 determination after the rescission was vacated. As *Scotts Valley II* explained, "no further legal barrier stood in the way of class II gaming." 808 F. Supp. 3d at 25. Defendants' proposed status quo conflates uncertainty about future eligibility with the legal effect of the then-operative determination. Opp'n at 37.

The requested relief at issue here is temporary, not a final adjudication of gaming eligibility. Defendants' remand argument likewise overlooks vacatur: setting aside unlawful action ordinarily accompanies remand. 5 U.S.C. § 706(2); *Ctr. for Bio. Diversity v. EPA*, 141 F.4th 153, 182 (D.C. Cir. 2025) ("the ordinary response to a violation is to vacate the unlawful agency action" and remand without vacatur is the exception). Here, temporarily setting aside the 2026 Decision would temporarily restore the preceding 2025 Decision's operative effect. This preliminary relief would be based on the likely success of the Band's challenges to the 2026 Decision; it would not establish a final, determinative holding on the merits of the Band's significant historical connection. The requested injunction would preserve the Band's position as it stood before the 2026 Decision, pending review, not substitute the Court's own restored-lands determination for the Department's.

CONCLUSION

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

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Respectfully submitted,

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