



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 10 2025

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

Dear Chairman Davis:

On August 11, 2016, the Scotts Valley Band of Pomo Indians (“Scotts Valley” or “Band”) requested that the United States Department of the Interior (Department) take 128.32 acres of land in the City of Vallejo, Solano County, California (the “Vallejo Site,” “Vallejo Parcel,” or “Parcel”) into trust on the Band’s behalf pursuant to 25 C.F.R. § 151.9.¹ In conjunction with that request, on January 28, 2016, the Band also requested a positive “restored lands” determination regarding the Parcel.²

On February 7, 2019, the Department issued an Indian Lands Opinion (ILO) denying the Band’s restored lands-specific request (2019 ILO),³ upon concluding that the Band had failed to demonstrate a “significant historical connection” to the Parcel as required by the regulations implementing the Indian Gaming Regulatory Act (IGRA) and governing restored lands determinations.⁴ The Band subsequently challenged the 2019 ILO on multiple grounds.⁵ On September 30, 2022, the United States District Court for the District of Columbia (“*Scotts Valley Court*” or “*Court*”) held that the 2019 ILO was “arbitrary and capricious when considered in accordance with the Indian canon of statutory construction,”⁶ reasoning that the Department had failed to give adequate consideration to the policy underlying IGRA⁷ and to the Federal Government’s role in weakening the historical connection between the Band and its land.⁸ The Court remanded the ILO to the Department.

On remand, the Department must reconsider whether the Parcel, if taken into trust, would qualify as restored lands under the IGRA and the Department’s implementing regulations, codified at 25 C.F.R. part 292 (Part 292). If the Parcel qualifies as restored lands, then it would be exempt from IGRA’s general prohibition on gaming on lands acquired by the Secretary of the Interior (Secretary) in trust after October 17, 1988.⁹

¹ See Letter and accompanying application from Gabriel Ray, Chairman, Scotts Valley Band of Pomo Indians, to Amy Dutschke, Reg’l Dir., Pac. Reg’l Office, Bureau of Indian Affairs (Aug. 11, 2016); see also 25 U.S.C. § 5108 (authorizing the Secretary of the Interior to acquire land for the purpose of providing land to Indians). The Band subsequently updated its request, and the size of the Parcel is now 160.33 acres.

² Letter from Gabriel Ray, Chairman, Scotts Valley Band of Pomo Indians, to Lawrence S. Roberts, Acting Assistant Sec’y – Indian Affairs, Dep’t of the Interior (Jan. 28, 2016); see also 25 C.F.R. § 292.3(b) (regarding gaming on “newly acquired lands that require a land-into-trust application”).

³ Letter from John Tahsuda, Principal Deputy Assistant Sec’y - Indian Affairs, U.S. Dep’t of the Interior, to Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians 19 (Feb. 7, 2019) [hereinafter “2019 ILO”].

⁴ 25 C.F.R. § 292.12.

⁵ See generally Complaint, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-1544 (ABJ)) [hereinafter “Complaint”].

⁶ *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132, 171 (D.D.C. 2022).

⁷ See *id.* at 156.

⁸ See *id.* at 165.

⁹ See 25 U.S.C. § 2719(b)(1)(B)(iii) (listing the exception from the prohibition for restored lands).

The Department has reviewed the Band’s request in light of the *Scotts Valley* decision and has given additional consideration to (1) the historical circumstances underlying the Band’s landless status; and (2) the policy underlying IGRA and the restored lands exception. Based on the reasoning below, I conclude that the Parcel qualifies as restored lands. The Band has satisfied the restored lands-specific criteria in 25 C.F.R. § 292.12 by demonstrating not only “modern connections to the land” at issue and “a temporal connection between the date of the acquisition of the land and the date of the tribe’s restoration” but also “a significant historical connection to the land.” As discussed below, the Department will acquire the Vallejo Site in trust for the Band, and the Band may conduct gaming on the Vallejo Site once it is acquired in trust, provided that the Band is not gaming on other lands.¹⁰

PART 292 ANALYSIS

I. PROCEDURAL BACKGROUND.

On February 7, 2019, the Department issued the 2019 ILO denying the Band’s request for a positive restored lands determination.¹¹ The 2019 ILO concluded that the Band failed to demonstrate a “significant historical connection” to the Parcel as required by 25 C.F.R. § 292.12.¹² On May 24, 2019, the Band filed a lawsuit challenging the 2019 ILO on multiple grounds.¹³

First, the Band argued that the significant historical connection requirement in § 292.12 impermissibly narrowed IGRA’s statutory restored lands exception.¹⁴ Second, the Band argued that even if Part 292 were valid, the Department acted arbitrarily and capriciously by requiring greater evidence of a significant historical connection than what is required under Part 292.¹⁵ Third, the Band argued that the Department acted arbitrarily and capriciously by failing to consider the Band’s evidence *in toto* and by failing to take into consideration IGRA’s policy goals when evaluating the Band’s request.¹⁶ Fourth, the Band argued that the Department violated the “privileges and immunities” clauses of the Indian Reorganization Act (IRA) by applying a more stringent standard to the Band than it had to tribes that had received favorable restored lands determinations prior to Part 292’s promulgation.¹⁷ Finally, the Band alleged procedural impropriety, arguing that the official who signed the 2019 ILO (a former Principal Deputy Assistant Secretary – Indian Affairs (PDAS)) did not have the authority to do so and that the Department’s Office of Indian Gaming (OIG) was improperly excluded from the evaluation of the Band’s request.¹⁸ The Band and the Department ultimately filed cross-motions for summary judgment¹⁹ with briefing concluding on November 22, 2021.

On September 30, 2022, the Court partially granted the Band’s motion and remanded the 2019 ILO to the Department for further consideration.²⁰ In doing so, the Court ruled in favor of the Department on several

¹⁰ See 25 C.F.R. § 292.12(c)(2).

¹¹ 2019 ILO, *supra* note 3, at 19.

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

¹³ See generally Complaint, *supra* note 5.

¹⁴ Plaintiff’s Motion for Summary Judgment at 22, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-1544 (ABJ)) [hereinafter “Plaintiff’s Motion for Summary Judgment”].

¹⁵ Complaint, *supra* note 5, at 12–13, ¶¶ 51–55.

¹⁶ Plaintiff’s Motion for Summary Judgment, *supra* note 14, at 33–34, 37.

¹⁷ Complaint, *supra* note 5, at 14–15, ¶¶ 60–62.

¹⁸ Plaintiff’s Motion for Summary Judgment, *supra* note 14, at 11–19.

¹⁹ See generally Memorandum in Support of Federal Defendants’ Cross Motion for Summary Judgment & in Opposition to Plaintiff’s Motion for Summary Judgment, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-1544 (ABJ)).

²⁰ *Scotts Valley*, 633 F. Supp. 3d at 171.

claims. First, the Court concluded that the Department did not exceed its authority by promulgating Part 292 and by requiring a significant historical connection between the Band and the Parcel.²¹ Second, the Court concluded that, “for purposes of the [Administrative Procedure Act (“APA”)], the agency examined the relevant data and set forth a reasoned basis for its decision in the ILO.”²² Third, the Court concluded that the Department did not violate the privileges and immunities clauses of the IRA; the Court observed that the Department did not apply a standard in the ILO different from that applied in previous restored lands determinations (including determinations predating the promulgation of Part 292).²³ Fourth, the Court concluded that the 2019 ILO “was not procedurally deficient” as alleged in the Band’s claims about the alleged involvement or lack thereof of the PDAS and OIG.²⁴

The Court ruled against the Department on one issue, however, holding that the 2019 ILO was “arbitrary and capricious when considered in accordance with the Indian canon of statutory construction.”²⁵ Although the Court concluded that the Department had “provided a reasoned basis for its decision . . . from a pure administrative law perspective” and that “the agency’s application of Part 292 to the facts presented by Scotts Valley comports with the APA,” the Court also concluded that an “equally important evaluation of the decision through the lens of the Indian canon of construction requires that the decision be vacated and remanded to the agency.”²⁶ The Court explained that “[t]he determination here turns upon the application of an imprecise adjective – ‘significant’ – and this means that the agency was operating in an arena filled with ambiguity and discretion.”²⁷ According to the Court, “that is exactly when the canon demands that any doubt be resolved in favor of the Tribe.”²⁸ Finding that the Department did not resolve certain doubts in the Band’s favor,²⁹ the Court concluded that the 2019 ILO was arbitrary and capricious specifically when viewed through the lens of the Indian canon and remanded the 2019 ILO to the Department.³⁰

On remand, we have carefully reconsidered the Band’s request in light of the Court’s opinion and conclude that the Vallejo Site qualifies as restored lands. Our conclusion is based on the extensive documentation in the administrative record for the 2019 ILO, which includes materials submitted by the Band³¹ and parties opposed to the Band’s request,³² as well as publicly available documents and records. We note that, in reconsidering the

²¹ *Id.* at 136.

²² *Id.*

²³ *Id.* at 155 (“Part 292 was intended to memorialize – not alter – Interior’s practice of requiring tribes to have a significant historical connection to a parcel for the land to be considered ‘restored lands’ under the IGRA”).

²⁴ *Id.* at 169–71 & n.27.

²⁵ *Id.* at 171.

²⁶ *Id.* at 165.

²⁷ *Id.* at 166.

²⁸ *Id.*

²⁹ *See id.* at 168.

³⁰ *Id.* at 171.

³¹ *See, e.g.*, Letter and accompanying materials from Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians, to John Tahsuda III, Principal Deputy Assistant Sec’y – Indian Affairs, Dep’t of the Interior (May 3, 2018); Memorandum and accompanying materials from Steven J. Bloxham, Fredericks Peebles & Morgan LLP, to Lawrence S. Roberts, Acting Assistant Sec’y – Indian Affairs (Nov. 14, 2016); Letter from Steven J. Bloxham, Fredericks Peebles & Morgan LLP, to Eric Shepard, Assoc. Solicitor, Div. of Indian Affairs, Office of the Solicitor, Dep’t of the Interior (Sept. 15, 2016); Letter and accompanying table from Patrick R. Bergin, Fredericks Peebles & Morgan LLP, to Paula L. Hart, Dir., Office of Indian Gaming (Apr. 5, 2016); Legal Analysis by Steven J. Bloxham, Fredericks Peebles & Morgan LLP (Jan. 29, 2016); Report by Albert L. Hurtado, Historian (Jan. 29, 2016); Report by Dorothea J. Theodoratus, Anthropological Consultant (Jan. 29, 2016); Consolidated Report by Heather H. Howard et al. (Steven J. Bloxham ed. 2016).

³² Those opposed to the request include the Yocha Dehe Wintun Nation (“Yocha Dehe”), the United Auburn Indian Community of the Auburn Rancheria (“Auburn Tribe”), and local governments. *See, e.g.*, Letter, legal memorandum, and

2019 ILO on remand, the Department neither solicited nor considered any additional evidentiary materials from outside parties, including the Band and those opposed to the Band's request. Below, we set out the applicable legal framework and an analysis of the evidence demonstrating a significant historical connection between the Band and the Parcel.

II. LEGAL FRAMEWORK.

The IGRA was enacted “to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming.”³³ IGRA generally prohibits gaming on lands taken into trust after October 17, 1988 (“newly acquired lands”).³⁴ However, Congress expressly carved out an exception to that prohibition, known as the restored lands exception, authorizing gaming on lands that were “taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition.”³⁵ One of the reasons for the restored lands exception is to “ensur[e] that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones.”³⁶

In 2008, the Department promulgated Part 292 “to explain to the public how the Department interprets [IGRA's] exceptions,” including the restored lands exception.³⁷ Pursuant to Part 292, for a parcel to meet the requirements of the restored lands exception, a tribe must satisfy both of the following conditions:

- (1) the tribe has been restored to federal recognition, as defined in §§ 292.7(a)–(c), 292.8–292.10 (“restored tribe criteria”); and
- (2) the lands qualify as restored lands, as defined in §§ 292.7(d), 292.11–292.12 (“restored lands criteria”).

These criteria are further explained and applied below.

accompanying materials from James Kinter, Tribal Sec'y, Yocha Dehe Wintun Nation, to Lawrence S. Roberts, Principal Deputy Assistant Sec'y – Indian Affairs, Dep't of the Interior (Nov. 8, 2016); Letter, legal memorandum, and accompanying materials from Leland Kinter, Tribal Chairman, Yocha Dehe Wintun Nation, to Lawrence S. Roberts, Principal Deputy Assistant Sec'y – Indian Affairs, Dep't of the Interior (Nov. 22, 2016) [hereinafter “Yocha Dehe's Supplemental Legal Memorandum”]; Letter and accompanying report from Gene Whitehouse, Chairman, United Auburn Indian Cmty. of the Auburn Rancheria, to Lawrence S. Roberts, Principal Deputy Assistant Sec'y – Indian Affairs, Dep't of the Interior (Nov. 7, 2016); Letter from Erin Hannigan, Chairwoman, Bd. of Supervisors, Solano Cnty., to Lawrence S. Roberts, Acting Assistant Sec'y – Indian Affairs, Dep't of the Interior (Aug. 23, 2016); Letter from Claudia Quintana, City Attorney, City of Vallejo, to Lawrence S. Roberts, Acting Assistant Sec'y – Indian Affairs, Dep't of the Interior (July 28, 2016).

³³ *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004); *see also* 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”).

³⁴ 25 U.S.C. § 2719(a); *see also* 25 C.F.R. § 292.2 (defining “[n]ewly acquired lands” as “land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988”).

³⁵ 25 U.S.C. § 2719(b)(1)(B)(iii).

³⁶ *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003); *see also* *Scotts Valley*, 633 F. Supp. 3d at 167–68 (explaining that the point of the restored lands exception is “to place a tribe on an equal footing with other tribes that had not been rendered as unable to maintain a connection to their own land or that had been restored earlier” (citing *Citizens Exposing Truth About Casinos v. Kempthorne (CETAC)*, 492 F.3d 460, 468 (D.C. Cir. 2007))).

³⁷ Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,354 (May 20, 2008).

III. DISCUSSION.

We begin the discussion below with a brief explanation of why the Band has satisfied the restored tribe criteria. We then review the restored lands criteria, which requires a tribe to demonstrate modern, temporal, and significant historical connections to a parcel.³⁸ After establishing that the Band has demonstrated modern and temporal connections to the Parcel, we analyze the Band's significant historical connection to the Parcel.

In analyzing the Band's historical connection to the Parcel, we explain that, as a preliminary matter, the Band is a successor-in-interest to two tribelets located in the Clear Lake area of California and that the tribelets' historical connections to the Parcel are attributable to the Band. We, then, apply the first part of the definition of "significant historical connection" in Part 292 to the facts, reviewing whether the Parcel is located within the boundaries of the Band's last reservation.³⁹ After finding that the Parcel is not located within those boundaries and is not proximate to those boundaries, we explain why the Parcel's location within territory ceded by the Band's predecessors-in-interest does not automatically establishes the requisite historical connection.

Next, we apply the second part of the definition of "significant historical connection" to the facts, reviewing whether the Band "can demonstrate by historical documentation the existence of the [Band's] villages, burial grounds, occupancy or subsistence use in the vicinity of the land,"⁴⁰ and we conclude that the Band has demonstrated occupancy in the vicinity of the Parcel. In line with the *Scotts Valley* Court's decision, we base our conclusion on additional consideration of (1) the historical circumstances underlying the Band's landless status and (2) IGRA's policy goals. We explain that upon further consideration of the historical circumstances, it is reasonable to attribute certain experiences previously attributed to only one of the Band's ancestors to the Band as a whole. We then explain that, based on a broad interpretation of key terms in the definition of "significant historical connection" (in furtherance of IGRA's goal to help restored tribes), those experiences constitute occupancy in the vicinity of the Parcel. Finally, we explain that while the Parcel's location within ceded territory does not automatically establish the requisite connection, it creates a favorable inference that reinforces the connection established through other evidence of occupancy in the vicinity of the Parcel.

A. Restored Tribe Criteria.

In a memorandum dated November 18, 2008, the Department's Office of the Solicitor (SOL) opined that the Band qualifies as a restored tribe for the purpose of IGRA's restored lands exception.⁴¹ That opinion, previously "incorporated by reference" into a 2012 ILO regarding a different set of parcels ("2012 ILO"),⁴² explains that the Band was terminated pursuant to the California Rancheria Termination Act⁴³ and restored to federal recognition pursuant to a stipulation for entry of judgment ("1991 Stipulated Judgment") in *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*.⁴⁴ The Department published notice of the Band's federally recognized status in the *Federal Register* on February 12, 1992.⁴⁵ Based on those facts and others set

³⁸ 25 C.F.R. § 292.12.

³⁹ *Id.* § 292.2.

⁴⁰ *Id.*

⁴¹ Memorandum from Edith R. Blackwell, Assoc. Solicitor, Div. of Indian Affairs, Office of the Solicitor, Dep't of the Interior, to George T. Skibine, Acting Assistant Sec'y for Policy & Econ. Dev., Dep't of the Interior (Nov. 18, 2008).

⁴² Letter from Donald E. Laverdure, Acting Assistant Sec'y – Indian Affairs, Dep't of the Interior, to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians 4 (May 25, 2012) [hereinafter "2012 ILO"], available at <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc-018517.pdf>.

⁴³ Act of Aug. 18, 1958, Pub. L. No. 85-671, 72 Stat. 619, amended by Act of Aug. 11, 1964, Pub. L. 88-419, 78 Stat. 390.

⁴⁴ No. C-86-3660 WWS (N.D. Cal. Mar. 15, 1991).

⁴⁵ Notice of Reinstatement to Former Status for the Guidiville Band of Pomo Indians, the Scotts Valley Band of Pomo Indians and Lytton Indian Community of CA, 57 Fed. Reg. 5,214 (Feb. 12, 1992).

forth in SOL's 2008 memorandum, the Band qualifies as a restored tribe under §§ 292.7(a)–(c) and 292.8–292.10, satisfying the restored tribe criteria of the two-part restored lands exception analysis above.

B. Restored Lands Criteria.

Section 292.11 sets forth the requirements for newly acquired lands to qualify as restored lands. Under that section, because the Band was “restored by a Federal court determination in which the United States [was] a party or by a court-approved settlement agreement entered into by the United States” (namely, the 1991 Stipulated Judgment), the Band must satisfy the criteria in § 292.12.⁴⁶ Section 292.12, in turn, requires that the Band demonstrate (a) “modern connections” to the newly acquired land; (b) “a significant historical connection to the land”; and (c) “a temporal connection between the date of the acquisition of the land and the date of the tribe’s restoration.”

1. Modern and temporal connections.

The Band has demonstrated both modern and temporal connections to the Parcel. First, the Band and the Parcel are located within the same state, and the Parcel is within a 25-mile radius of the Band’s “headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust.”⁴⁷ Therefore, the Band has demonstrated modern connections. Second, the Band requested to take the Parcel into trust on August 11, 2016,⁴⁸ which is within twenty-five years of Band’s restoration to federal recognition.⁴⁹ Additionally, the Band is “not gaming on other lands.”⁵⁰ Thus, the Band has established the requisite temporal connection.

2. Significant historical connection.

Because the Band has demonstrated both modern and temporal connections to the Parcel, the only question at issue is whether the Band has demonstrated a significant historical connection to the Parcel, as required under § 292.12(b). Section 292.2 defines “[s]ignificant historical connection” to mean that “[1] the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or [2] a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” As explained below, we conclude that that the Band has demonstrated a significant historical connection to the Parcel through evidence of occupancy in the vicinity of the Parcel.

a. As a Preliminary Matter, the Evidence Indicates that the Band Is a Successor-in-Interest to the Ca-la-na-po and the Mo-al-kai.

Because the Band is seeking to establish a significant historical connection to the Parcel through evidence of occupancy by the Band’s predecessors, the Department first must identify those predecessors. In the 2012 ILO, the Department concluded that the Band had established a line of political succession and significant

⁴⁶ 25 C.F.R. § 292.11(c).

⁴⁷ *Id.* § 291.12(a); see generally Memorandum from Scotts Valley Band of Pomo Indians 1 n.3, 4 n.6 (May 3, 2018); Fee-to-Trust Application, Scotts Valley Band of Pomo Indians, 16–18 (Aug. 11, 2016).

⁴⁸ See Letter and accompanying application from Gabriel Ray to Amy Dutschke, *supra* note 1.

⁴⁹ See 57 Fed. Reg. at 5,214 (listing the “[e]ffective” date of reinstatement of the Band’s pre-termination status as September 6, 1991).

⁵⁰ 25 C.F.R. § 292.12(c)(2).

genealogical descent from the Ca-la-na-po tribelet and that the Band is therefore a successor-in-interest to the Ca-la-na-po.⁵¹

Additionally, in the 2019 ILO, the Department explained that the Band provided persuasive evidence of political succession or significant genealogical descent from another tribelet, the Mo-al-kai.⁵² The 2019 ILO noted the “flexibility of Pomo social and political structure” and the evidence of fluidity that existed between the Ca-la-na-po (also known as the Kulanapo or Hoolanapo) and the Mo-al-kai (also known as the Molkai, Yimaba, or Yimabak).⁵³ In a 1928 interview with Band ancestor Joe Augustine, anthropologist Omer Stewart explained that “Joe Augustine was identified as being chief of the ‘Yimaba of Scotts Valley,’ with parents from the ‘village of Kulanapo.’”⁵⁴ Aside from evidence linking the Mo-al-kai with the Band, the fact that the aboriginal territory of the Mo-al-kai overlaps with the land presently occupied by the Band is also significant. The Mo-al-kai were located in Scotts Valley, west of Lakeport, on the western shore of Clear Lake,⁵⁵ and the Band continues to reside there, with a tribal government headquarters at Lakeport.⁵⁶

Based on the information above, evidence of both the Ca-la-na-po’s and Mo-al-kai’s historical connection to the Parcel is relevant to the analysis in this legal opinion. While the Band also claims to be a successor to the Ha-bi-na-po tribelet that occupied the eastern portion of Big Valley,⁵⁷ the 2019 ILO concluded that the evidence does not establish that connection.⁵⁸ Regardless, the Band can satisfy Part 292’s significant historical connection requirement through the connections of the Band’s Ca-la-na-po and Mo-al-kai ancestors, as discussed below.

b. *The Vallejo Parcel Is Not Located Within the Boundaries of the Band’s Last Reservation Under a Ratified or Unratified Treaty.*

Part 292 defines “[s]ignificant historical connection” to mean either (1) “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty”; or (2) “a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the

⁵¹ See 2012 ILO, *supra* note 42, at 12 (“According to the record, when the Scotts Valley Rancheria was established in 1911, the Band existed as a strong political entity led by the Augustine family, both politically and genealogically descended from the Ca-la-na-po.”).

⁵² 2019 ILO, *supra* note 3, at 4–5; see also *Scotts Valley*, 633 F. Supp. 3d at 138 (“As the lengthy administrative record in this case reflects, the documented history of the Scotts Valley Band of Pomo Indians stretches back to at least the 1800s,” with the Band being “the modern day successor of the Mo-al-kai . . . and Ca-la-na-po . . . bands of Pomo Indians”).

⁵³ 2019 ILO, *supra* note 3, at 4 (quoting Comments on Documents Regarding “Restored Lands” in the Vicinity of Vallejo, Solano County, CA by Dorothea J. Theodoratus 2 (Nov. 13, 2016)).

⁵⁴ Memorandum from Steven J. Bloxham, Fredericks Peebles & Morgan LLP, to Lawrence S. Roberts, Acting Assistant Sec’y – Indian Affairs 11 (Nov. 14, 2016). That Joe Augustine is related to members of the present-day Band is undisputed. See, e.g., *Scotts Valley Band of Pomo: Preliminary Report for “Indian Lands Determination,” Vallejo, Solano County, California* from Stephen D. Beckham to United Auburn Indian Cmty. 26–26 (Nov. 7, 2016) [hereinafter “Beckham Report”] (stating, in a report opposing the Band’s request, that Joe Augustine is “a collateral relative of several current members of the Scotts Valley Band of Pomo”).

⁵⁵ Memorandum from Steven J. Bloxham to Lawrence S. Roberts, *supra* note 54, at 12; see also Comments on Reports Submitted by the Yocha Dehe Nation Regarding SVBI Request for Determination from Albert L. Hurtado, Historian, to Lawrence S. Roberts, Acting Assistant Sec’y – Indian Affairs 8 (Nov. 14, 2016) [hereinafter “Hurtado Comments”] (“Scotts Valley . . . was the home of Molkai and Yimabak Pomo.”).

⁵⁶ Report by Dorothea J. Theodoratus, *supra* note 31, at 5.

⁵⁷ Legal Analysis by Steven J. Bloxham, *supra* note 31, at 12.

⁵⁸ 2019 ILO, *supra* note 3, at 5 n.27.

vicinity of the land.”⁵⁹ Because the Vallejo Parcel is not located within the boundaries of the Band’s last reservation (or the reservation promised to the Band’s ancestors), the Band cannot establish a significant historical connection through the first type of evidence listed above. A map showing the location of the reservation relative to the Parcel appears below.

As background, the Ca-la-na-po and Mo-al-kai tribelets were two of eight tribal signatories to an unratified treaty with the United States, signed in August 1851 (1851 Treaty).⁶⁰ The tribal signatories “jointly and severally” ceded “their right, title, claim, or interest of any kind” to lands in California.⁶¹ In exchange, the United States designated a tract of land to be set apart as an Indian reservation, on the western shore of Clear Lake, Lake County, California.⁶² In the late 1800s, cartographer Charles Royce compiled maps purporting to depict Indians’ land cessions in the United States (including the land that would have been ceded under the 1851 Treaty), as well as tracts set apart for reservations (including the reservation at Clear Lake).⁶³ The area numbered “296” in the map below (Area 296) corresponds to the ceded territory, and the area numbered “295” (Area 295) corresponds to the Clear Lake reservation.⁶⁴



⁵⁹ 25 C.F.R. § 292.2.

⁶⁰ Treaty with Ca-la-na-po, etc. (Aug. 20, 1851), in 4 Indian Affairs, Laws and Treaties (Charles J. Kappler ed., 1927), available at <https://dc.library.okstate.edu/digital/collection/kapplers/id/24015>.

⁶¹ *Id.* art. 3.

⁶² *Id.* art. 4.

⁶³ Charles C. Royce & Cyrus Thomas, *Indian Land Cessions in the United States* (1899), available at <https://www.loc.gov/resource/g3701em.gct00002> (select “Image 7 of 67” (“California 1”).

⁶⁴ See Letter from Larry Echo Hawk, Assistant Sec’y – Indian Affairs, Dep’t of the Interior, to Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians 11 (Sept. 1, 2011) [hereinafter “Guidiville ILO”], available at <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc015051.pdf> (stating that “[t]he lands ceded pursuant to [the 1851 Treaty] are documented on the Royce Maps”).

The Vallejo Parcel is located in the southwestern portion of Area 296, south of Napa, clearly outside of the boundaries of the reservation under the 1851 Treaty. The Parcel is likewise outside of the boundaries of the rancheria that the United States acquired for the Band in 1911 (“Scotts Valley Rancheria” or “Sugar Bowl Rancheria”), which Area 295 encompasses.

c. *The Vallejo Parcel Is Not Proximate to the Boundaries of the Band’s Last Reservation Under a Ratified or Unratified Treaty.*

In previous restored lands determinations for California Indian tribes, the Department noted that “[a] parcel’s proximity to a tribe’s historic reservation or rancheria is evidence that the tribe has a significant historical connection to that parcel.”⁶⁵ For example, in a favorable restored lands determination for the Wilton Rancheria, the Department observed that the tribe’s proposed site was less than six miles from the tribe’s historic rancheria.⁶⁶ Similarly, in a favorable determination for the Mechoopda Indian Tribe of Chico Rancheria, the Department observed that the land at issue was only ten miles from the tribe’s former rancheria.⁶⁷ Here, the Parcel is located approximately 90 driving miles (75 straight-line miles) southeast of the former Scotts Valley Rancheria, which was near the present-day city of Lakeport. Therefore, the distance between the Vallejo Parcel and the Band’s historic rancheria does not help demonstrate a significant historical connection.

d. *The Joint-and-Several Land Cession by the Eight Tribal Signatories of the 1851 Treaty Does Not Automatically Demonstrate a Significant Historical Connection Between the Band and the Parcel.*

The Band argues that its predecessors’ cession of land pursuant to the 1851 Treaty “per se” demonstrates a significant historical connection to the Parcel given that the ceded territory in the map above (Area 296) surrounds the Parcel.⁶⁸ In support of that argument, the Band cites the federal district court’s opinion in *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*,⁶⁹ as well as a formal legal opinion, issued by SOL, regarding the Pokagon Band of Potawatomi Indians’ request for restored lands (“Pokagon Band Opinion”).⁷⁰ According to the Band, those opinions indicate that lands ceded by treaty per se qualify as restored lands.

In the 2019 ILO, the Department explained that neither *Grand Traverse* nor the Pokagon Band Opinion created a rule automatically deeming lands ceded by treaty to be restored lands.⁷¹ Rather, a parcel’s location within ceded territory was considered “an important[] but non-dispositive” factor in both *Grand Traverse* and the Pokagon Band Opinion.⁷² In the *Scotts Valley* opinion, the Court concurred with the Department’s interpretation, stating that “the ILO correctly observed that neither opinion established that ‘lands ceded by treaty and subsequently returned to a tribe qualify, *per se*, as restored lands for the purposes of the restored lands exception.’”⁷³

⁶⁵ Record of Decision, Trust Acquisition of 35.92 +/- Acres in the City of Elk Grove, California, for the Wilton Rancheria 67 (Dep’t of the Interior Jan. 2017).

⁶⁶ *Id.*

⁶⁷ Letter from Kevin K. Washburn, Assistant Sec’y – Indian Affairs, Dep’t of the Interior, to Dennis Martinez, Chairman, Mechoopda Indian Tribe of Chico Rancheria 25 (Jan. 24, 2014).

⁶⁸ Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 47, at 24–25 (emphasis omitted) (citations omitted).

⁶⁹ 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff’d*, 369 F.3d 960 (6th Cir. 2004).

⁷⁰ Sol. Op. M-36991 (Sept. 19, 1997), available at <https://solicitor.doi.gov/opinions.html>.

⁷¹ 2019 ILO, *supra* note 3, at 8–10.

⁷² *Id.* at 8.

⁷³ *Scotts Valley*, 633 F. Supp. 3d at 160.

Nevertheless, in a separate section of the Court’s opinion, it stated that, “[e]ven if the agency was correct when it concluded that neither [*Grand Traverse* nor the Pokagon Band Opinion] required the agency to find the necessary connection on this evidence alone, . . . it is certainly a ‘significant’ circumstance under any ordinary understanding of the meaning of the word.”⁷⁴ We understand the Court to emphasize that circumstance as an important, but non-dispositive, factor, which is consistent with the Part 292 regulations. Under Part 292, which the Court upheld as valid against the Tribe’s challenge,⁷⁵ only land “located within the boundaries of the tribe’s last reservation” is entitled to the presumption of demonstrating a significant historical connection.⁷⁶ The definition of “significant historical connection” in Part 292 plainly states that there are two ways to establish the requisite connection;⁷⁷ if the Parcel is not located within the boundaries of the Band’s last reservation, then the first method does not apply, and the Band must resort to the second method and demonstrate the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the Parcel.⁷⁸ To conclude otherwise, in an ad hoc manner outside of the rulemaking process, could itself be arbitrary and capricious given the Department’s obligation to adhere to its regulations.⁷⁹

In sum, although a parcel’s location within ceded territory is “certainly a ‘significant’ circumstance,”⁸⁰ entitling the Band to a favorable inference of occupancy on the Parcel (as discussed under Section e. below), it is not dispositive, and the Department is not acting arbitrary or capriciously, under the Indian canon or otherwise, by requiring additional evidence of the requisite connection.⁸¹ The Indian canon is a tool of construction,⁸² requiring ambiguous laws to be interpreted in favor of the Indians.⁸³ It has no applicability to the weighing of evidence, for example, regarding occupancy or use of a given plot of land. On remand, the Department maintains its ability to exercise its discretion in weighing the evidence.⁸⁴ For the reasons set forth below, we conclude that there is sufficient evidence to demonstrate a significant historical connection.

e. *The Band Has Demonstrated Occupancy in the Vicinity of the Vallejo Parcel.*

Even though the Parcel is not “located within the boundaries of the tribe’s last reservation,” the Band has demonstrated a significant historical connection through evidence of “the existence of the tribe’s villages, burial

⁷⁴ *Id.* at 168 (emphasis in original).

⁷⁵ *Id.* at 154 (stating that “Part 292 did not narrow or contravene the IGRA in a way that changed the test to be applied, raise[] the bar to be overcome, frustrate[] its purposes, or favor[] the federal government over all tribes,” and that “the Indian canon does not mandate invalidating the long-standing regulation”).

⁷⁶ 25 C.F.R. § 292.2.

⁷⁷ *Id.*; see also 73 Fed. Reg. at 29,366 (explaining that the definition of “significant historic connection” specifies certain criteria that a tribe must show in order to meet the definition” (emphasis added)).

⁷⁸ 25 C.F.R. § 292.2.

⁷⁹ *ACLU Found. v. Wash. Metro. Area Transit Auth.*, No. 17-1598 (TSC), 2023 U.S. Dist. LEXIS 131445, at *9 (D.D.C. July 28, 2023) (quoting *Webster v. Doe*, 486 U.S. 592, 602 n.7 (1988)).

⁸⁰ *Scotts Valley*, 633 F. Supp. 3d at 168.

⁸¹ *Cf.* Yocha Dehe’s Supplemental Legal Memorandum, *supra* note 32, at 6 (asserting that “it is unreasonable to assume the map of Area 296, without more, establishes Scotts Valley’s use and occupancy of the Vallejo area”).

⁸² Transcript of Bench Ruling at 16–17, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, No. 19-1544 (ABJ) (D.D.C. May 8, 2023) [hereinafter “Transcript”]; COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 2.02[1] (Nell Jessup Newton ed., 2023) (stating that “[t]he basic Indian law canons of construction require that treaties, agreements, statutes, and executive orders be liberally construed in favor of the Indians”).

⁸³ Transcript, *supra* note 82, at 22.

⁸⁴ See *N. Air Cargo v. U.S. Postal Serv.*, 674 F.3d 852, 861 (D.C. Cir. 2012) (“When a district court reverses agency action and determines that the agency acted unlawfully, ordinarily the appropriate course is simply to identify a legal error and then remand to the agency.”); see also *Scotts Valley*, 633 F. Supp. 3d at 168 (acknowledging that “it is not [the Court’s] role to scour through the ILO and substitute its judgment for that of the agency” (citing *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983))).

grounds, occupancy or subsistence use in the vicinity of the land.”⁸⁵ The Band does not assert that the Parcel is in the vicinity of the Band’s villages or burial grounds.⁸⁶ Thus, the Band must show occupancy or subsistence use in the vicinity of the Parcel. Evidence of occupancy or use by the Band’s predecessors, the Ca-la-na-po and Mo-al-kai, is relevant to the Department’s analysis.⁸⁷

The Band argues that its documented, historical connection to the Vallejo Parcel has existed since the 1840s or earlier, upon the advent of the ranching economy in the San Pablo Bay region.⁸⁸ In support of the Band’s claim, it submitted documentation regarding an individual named Augustine, a “chief of the Hoolanapo Indians” who lived and worked in the North Bay region during the mid-1800s.⁸⁹ “Many in the Scotts Valley Tribe trace ancestry back to Augustine,” and the Band contends that Augustine’s biography helps establish the Band’s significant historical connection to the Parcel.⁹⁰ According to the anthropologist commissioned by the Band, Augustine’s whereabouts and activities are representative of those of the Band’s ancestors in general and shed light on their shared experiences.⁹¹ Furthermore, Augustine’s life is relatively well-documented, which is unique given the disruption in Pomoan village life, economy, and culture that occurred during the timeframe at issue.⁹² The Band’s documentation includes contemporaneous accounts and anecdotal evidence tracking his movement, as well as genealogical data about his family.⁹³ What follows is an abbreviated discussion of Augustine’s life and the surrounding context, as presented in the 2019 ILO, followed by a discussion of additional information given further consideration on remand, in accordance with the Court’s decision in *Scotts Valley*.

⁸⁵ 25 C.F.R. § 292.2.

⁸⁶ See, e.g., Legal Analysis by Steven J. Bloxham, *supra* note 31, at 20 (stating that, prior to the 1850s, “the area in and around what is now the City of Vallejo and adjacent portions of southern Napa and Solano counties were part of the territory of the Patwin people” and that “the record indicates that by 1851 there were no surviving Patwin (*or any other Indian*) villages, and not independent bands or tribes, in southern Napa and Solano Counties” (emphasis added) (citations omitted)).

⁸⁷ See 2012 ILO, *supra* note 42, at 7 (“The tribe’s history of use and occupancy inherently includes the use and occupancy of its tribal predecessors, even if those tribes had different political structures and were known under different names.”).

⁸⁸ Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 47, at 11 (stating that “the record is clear that between 1842 and 1847, Clear Lake Indians became a significant source of labor on all of the ranchos north of San Francisco”).

⁸⁹ Lyman L. Palmer, *History of Napa and Lake Counties* 49 (1881).

⁹⁰ Dorothea J. Theodoratus et al., *Clear Lake Indian Census Data Early 1800s to 1911 (Emphasis on Eastern Pomo)* 81 (2018) (stating, further, that by 1958, “when the tribe was terminated under the Rancheria Act, 90.1% of the tribe were Augustine descendants”); see also Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region by Albert L. Hurtado et al. 15 (May 3, 2018) [hereinafter “Supplemental Report”] (explaining how that percentage was calculated).

⁹¹ See Albert L. Hurtado, *Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians* 11 (2018) (“Augustine’s history illustrates a significant connection between [the Band’s ancestors] and the region that includes the [Vallejo Parcel].”).

⁹² See Theodoratus et al., *supra* note 90, at 5 (stating that, in the mid-1800s, “[a]lthough some concentrated village life continued to exist among Indian communities, many previous Indian village-life patterns were forced into a new, somewhat dispersed, living pattern accompanied by new labor patterns”); see also Lowell J. Bean & Dorothea J. Theodoratus, Western Pomo and Northeastern Pomo, in 8 *Handbook of North American Indians* 299 (Robert F. Heizer ed., 1978) (explaining that, in the 1830s, “diseases, plus displacement, enslavement, massacres, raids, and the beginnings of Anglo-American migration set the stage for the ever more rapid decline of the Pomo people and their cultural heritage” in the ensuing decades).

⁹³ See generally Hurtado, *supra* note 91 (containing excerpts from such material); Theodoratus et al., *supra* note 90, at 29–31 (summarizing census data pertaining to Augustine and his family).

i. Augustine and the agricultural economy in the North Bay region.

The earliest reference to Augustine seems to be on a list of Indian children baptized in 1837 at Mission San Francisco Solano, located in the city of Sonoma, 17 miles from the Parcel.⁹⁴ The list includes a six-year-old child named Agustin who “could have been [the Band’s ancestor] Augustine, but this is not verified.”⁹⁵ According to the Band, 29 other Pomo children were baptized at the mission at that time, at least 14 of whom were from the same village as Augustine, and at least two of whom were ancestors of the present-day Band.⁹⁶ The Band alleges that the children “were instructed in the Roman Catholic faith and trained to do manual labor, including ranch work,” at the mission.⁹⁷

Based on an 1880 interview with historian Lyman Palmer, Augustine had returned to the Clear Lake area by around 1840, where he observed Salvador Vallejo take “formal possession” of the valley where the Band’s ancestors lived.⁹⁸ Salvador Vallejo’s older brother was Mariano Vallejo, a Mexican military commander who, according to the Band’s historian, “exercised nearly absolute personal and official power over land and life in the North Bay region.”⁹⁹ Mariano Vallejo acquired huge swaths of land formerly associated with Mexican missions,¹⁰⁰ including Ranchos Suscol and Petaluma.¹⁰¹ Andrés Reséndez, a historian commissioned by Yocha Dehe (which opposes the Band’s request), states that Rancho Suscol (the rancho within which the Vallejo Parcel is located) was an 84,000-acre property, and Rancho Petaluma was 66,000 acres.¹⁰² The Band’s historian estimates that by 1846 the Vallejo family’s landholdings totaled 220,000 acres “from the Pacific Ocean to Suisun Bay and north to Clear Lake.”¹⁰³

The livestock operations on those ranchos were labor-intensive, and, according to Yocha Dehe’s historian, a study of Rancho Petaluma estimates that “at any one time there may have been between 600 and 1000 Indian laborers living there.”¹⁰⁴ Although Rancho Suscol was located in traditional Patwin territory,¹⁰⁵ and Rancho Petaluma was located in traditional Coast Miwok territory,¹⁰⁶ Salvador Vallejo raided Pomo Indian communities

⁹⁴ Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 47, at 14–15.

⁹⁵ Theodoratus et al., *supra* note 90, at 29.

⁹⁶ Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 7–8.

⁹⁷ *Id.* at 8.

⁹⁸ Palmer, *supra* note 89, at 49; *see also* Beckham Report, *supra* note 54, at 106 (discussing Palmer’s interview with Augustine); Hurtado Comments, *supra* note 55, at 8 (explaining that Salvador Vallejo oversaw the creation of Rancho Lup-Yomi in an area known as Big Valley, near Clear Lake).

⁹⁹ Report by Albert L. Hurtado, *supra* note 31, at 23.

¹⁰⁰ Hurtado Comments, *supra* note 55, at 7.

¹⁰¹ Report by Albert L. Hurtado, *supra* note 31, at 42–43.

¹⁰² Comments About the Historical Basis for the Scotts Valley Band of Pomo Indians’ Request for Indian Lands Determination in the City of Vallejo by Andrés Reséndez, Professor, Dep’t of History, Univ. of Cal., Davis 3 (Nov. 2016) [hereinafter “Reséndez Comments”].

¹⁰³ Report by Albert L. Hurtado, *supra* note 31, at 43.

¹⁰⁴ Reséndez Comments, *supra* note 102, at 3.

¹⁰⁵ Hurtado Comments, *supra* note 55, at 6; *see also* Jennifer Whiteman, *Native American Ethnogeography and Ethnohistory in the Vicinity of Vallejo, California* 33 (2016) (“The Yocha Dehe and Cortina Indian Rancheria are recognized by the Native American Heritage Commission (NAHC) as Most Likely Descendants for the City of Vallejo and vicinity.”) [hereinafter “Whiteman Report”]; Letter from Leland Kinter, Chairman, Yocha Dehe Wintun Nation, to Lawrence Roberts, Acting Assistant Sec’y – Indian Affairs, Dep’t of the Interior (June 29, 2016) (“Solano County is within the [Yocha Dehe Wintun] Nation’s ancestral territory . . .”).

¹⁰⁶ Reséndez Comments, *supra* note 102, at 3.

“in order to force them to work on the ranchos owned by the Vallejos and others.”¹⁰⁷ Ultimately, Indians from the Clear Lake area, Coast Miwok, Southern Patwin, and Wappo all labored on ranchos established in what had been Coast Miwok and Patwin territory.¹⁰⁸ According to the Band’s historian, the Band’s ancestors, including Augustine, helped “tend the thousands [of] animals that roamed in Big Valley” and drove cattle to slaughter grounds on San Pablo Bay.¹⁰⁹ In 1847, Salvador Vallejo sold Rancho Lup-Yomi to new owners,¹¹⁰ who at one point used Augustine and other Indians as forced labor to build adobe houses in Sonoma.¹¹¹ Augustine escaped after about a month and fled back to Clear Lake, where his wife and infant child resided.¹¹²

Augustine next appears in an 1850 census (created in 1926 by anthropologist E.W. Gifford) that identifies him as a “Kulanapo” chief,¹¹³ living at Clear Lake in an Eastern Pomo village.¹¹⁴ The historical record is then scant in regard to Augustine’s whereabouts and activities between 1850 and 1870. During those decades, farming became an increasingly important part of the economy, and Indians from the Clear Lake area started engaging in a pattern of migrant labor on ranchos south of their aboriginal territory.¹¹⁵ By the 1860s, Clear Lake Indians mixed seasonal work on ranchos in Napa Valley and elsewhere in the North Bay region with subsistence farming and fishing at Clear Lake.¹¹⁶

The next reference to Augustine seems to be in the 1870 census data for Napa City Township, Napa County, which indicates that, at age thirty-eight, Augustine was living in a household of seventeen Indians of varying ages, a “collection of native people working out from the household.”¹¹⁷ The Band also identifies a few other possible or confirmed ancestors living in Napa in 1870.¹¹⁸ In total, the 1870 census lists forty-three Indians living in Napa County at the time, compared with 17 in Lake County (with only one in Big Valley and one in Lakeport).¹¹⁹ Augustine and the other Indians in the household may have been working at nearby Rancho Tulucay at the time,¹²⁰ approximately eleven miles north of the Vallejo Parcel.¹²¹ The name listed next to

¹⁰⁷ Hurtado Comments, *supra* note 55, at 8; *see also* Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 3 (explaining that, between the 1830s and 1860s, some Pomo Indians worked voluntarily for white ranchers as a matter of economic necessity, but others were enslaved as children and transported southward to Solano, Napa, and Sonoma counties); Report by Albert L. Hurtado, *supra* note 31, at 89 (stating that, in the early 1850s, “[t]he Indians were subject to . . . a law that gave whites legal authority to indenture Indian adults and children as farm workers and domestic servants”).

¹⁰⁸ Reséndez Comments, *supra* note 102, at 5.

¹⁰⁹ Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 4–5.

¹¹⁰ Report by Albert L. Hurtado, *supra* note 31, at 57.

¹¹¹ *Id.* at 64.

¹¹² *Id.*

¹¹³ Theodoratus et al., *supra* note 90, at 29.

¹¹⁴ *Id.* at 5.

¹¹⁵ Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 13.

¹¹⁶ *Id.* at 14 (quoting a federal agent who witnessed the “integration of wage labor in Napa Valley and subsistence farming at Clear Lake”).

¹¹⁷ Theodoratus et al., *supra* note 90, at 30.

¹¹⁸ Addendum to the Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region by Albert L. Hurtado et al. 7–8 (Dec. 2018) [hereinafter “Addendum to the Supplemental Report”].

¹¹⁹ *Id.* at 10. The 1870 census data, which documents a sizeable Indian presence in the North Bay region but a noticeable absence around Clear Lake, is consistent with the conclusion drawn by the Band’s historian and anthropologist that “the period from 1837 to 1870 was an era of diaspora” for the Band’s ancestors, followed by a period of repatriation to the Clear Lake area. Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 4.

¹²⁰ Hurtado, *supra* note 91, at 9 (stating that the census recorded Augustine living “just one household away” from Cayetano Juarez, the owner of Rancho Tulucay); *see also* Beckham Report, *supra* note 54, at 112 (stating that the 17 Indians in the household “were probably workers on Rancho Tulucay,” and, in regard to Augustine, stating that “[i]t is not known if he was identical to the Augustine of the Scotts Valley Rancheria or was another Indian named Augustine”).

¹²¹ Memorandum from Scotts Valley Band of Pomo Indians, *supra* note 47, at 15.

Augustine's on the census is that of Chi-Bem, who may have signed the 1851 Treaty on behalf of the How-ru-ma (one of the eight tribal signatories to the treaty).¹²²

Augustine's name next appears in the 1880 census data for Lakeport Township, Lake County, which places him, age fifty, in a household with his wife Mary, his brother or Mary's brother, and two younger males, ages fifteen and forty.¹²³ The 1880 Lakeport census lists many other households occupied by Indian families in the area, which is approximately ninety miles by road (seventy-five straight-line miles) northwest of the Vallejo Parcel, including the household next to Augustine's consisting of Augustine's brother Pete, Pete's wife, and their son.¹²⁴ By 1911, the year that the United States acquired the Scotts Valley Rancheria for the Band, "a number of Augustine descendants and relatives were present at the rancheria" and "continued to reside at Lakeport" through the mid-1900s,¹²⁵ though the Band contends that it also maintained a connection with Napa County through 1918, as demonstrated by a contemporaneous record indicating that several Scotts Valley people contracted the Spanish influenza there.¹²⁶ Augustine died around 1919 at or near the age of eighty-nine.¹²⁷

ii. Analysis of the narrative above in the 2019 ILO.

In the 2019 ILO, the Department explained that, as a preliminary matter, the fact that the Parcel falls within aboriginal territory of the Patwin people, and not the Pomo, was not a barrier to a favorable determination for the Band. As the National Indian Gaming Commission explained in a 2012 ILO for the Karuk Tribe, "IGRA's restored lands exception does not require the [tribe] to demonstrate that it was the only tribe with historical connections to the area or that the subject area was the only place where the [tribe] has historical connections."¹²⁸ However:

evidence of the presence of . . . Pomos, generally, on ranchos in the Bay Area, by itself, does not demonstrate the Band's occupancy or subsistence use on or in the vicinity of the Parcel. The Band must offer historical documentation of its significant historical connection to the Parcel, not simply evidence of Pomoan presence in the much larger Bay Area.¹²⁹

In the 2019 ILO, the Department concluded that the Band's evidence did not show "that [the Band's] specific predecessors (the Ca-la-na-po and Mo-al-kai)—as opposed to Indians generally (Pomo or otherwise) in the Clear Lake area—occupied land or engaged in subsistence use in the vicinity of the Parcel."¹³⁰ The Department reasoned that "it would be erroneous to attribute the connections made by a specific tribal member like Augustine, or a handful of members, to the entire Band, or to its predecessors."¹³¹ The Department further reasoned that, "even assuming that Augustine's living and labor patterns are representative of those of the Band's ancestors, such patterns do not constitute occupancy or subsistence use" because "Augustine's back-and-forth movements between the Clear Lake area and the North Bay region reveal an inconsistent, if not transitory, presence."¹³² Finally, the Department concluded that, "even if Augustine's experience as [a] migrant worker

¹²² Theodoratus et al., *supra* note 90, at 53.

¹²³ *Id.* at 30, 78.

¹²⁴ *Id.* at 30, 71–78.

¹²⁵ *Id.* at 31.

¹²⁶ Addendum to the Supplemental Report, *supra* note 118, at 8–9.

¹²⁷ Report by Dorothea J. Theodoratus, *supra* note 31, at 11.

¹²⁸ Memorandum from John R. Hay, Senior Attorney, to Tracie Stevens, Chairwoman, Nat'l Indian Gaming Comm'n 12 (Apr. 3, 2012), available at <https://www.nigc.gov/images/uploads/indianlands/Karuk4912.pdf>.

¹²⁹ 2019 ILO, *supra* note 3, at 15–16 (quoting Guidiville ILO, *supra* note 64, at 14).

¹³⁰ *Id.* at 16.

¹³¹ *Id.*

¹³² *Id.* at 17.

extended to the Band's other ancestors, and even if such work constituted occupancy or subsistence use, there is no evidence—direct or inferential—indicating that the Band's ancestors conducted such activity on the Parcel (as opposed to elsewhere).¹³³ Based on that analysis, the Department in the 2019 ILO concluded that the evidence discussed above did not demonstrate the required significant historical connection, and the Department denied the Band's request for a positive restored lands determination.¹³⁴

iii. Additional analysis on remand.

On remand, we have reviewed the conclusions in the 2019 ILO in light of the *Scotts Valley* Court's opinion. The Court faulted the 2019 ILO for "not tak[ing] the government's role in weakening the historical connection between the Band and its land into account."¹³⁵ The Court also faulted the 2019 ILO for being "inconsistent with the policy underlying the IGRA."¹³⁶ As a result, we have specifically given additional consideration to (1) the historical circumstances underlying the Band's landless status; and (2) the purpose of the restored lands exception.

(1) Additional consideration of historical circumstances.

The narrative regarding the Band's ancestor Augustine above begins in 1837, during a time of upheaval for California's Indian tribes. Mission San Francisco Solano, where Augustine may have been baptized, was the last of twenty-one missions established in California between 1769 and 1823.¹³⁷ The missions ostensibly served religious purposes, to Christianize the Indigenous peoples of California, but they also functioned as "large agricultural operations,"¹³⁸ "where Indians were enslaved to provide labor and produce goods for the Spanish presidios and economy."¹³⁹

Albert Hurtado, a historian commissioned by the Band, explained in a report prepared for the Band that extensive livestock grazing during the mission period "alter[ed] the environment and affect[ed] Indian society."¹⁴⁰ According to Dr. Hurtado, "[e]ach mission owned thousands of animals that grazed on tens of thousands of acres that Indians had formerly used for gathering plant foods and hunting," and, consequently, "the once abundant landscape became less productive of customary foods."¹⁴¹ The mission economy disrupted the traditional Native economy and interfered with the Indians' ability to acquire food, forcing many to work in the mission economy (for example, tending the missions' vast livestock herds).¹⁴² The Indians' exposure to

¹³³ *Id.* at 18.

¹³⁴ *Id.* at 19. The Department also considered whether "Vallejo's designation in the 1851 Treaty as a pick-up site for promised provisions and the subsequent collection of provisions at that site" demonstrated occupancy or subsistence use in the vicinity of the Parcel by the Band or its ancestors and concluded that they did not. *Id.* at 10–12.

¹³⁵ *Scotts Valley*, 633 F. Supp. 3d at 165; *see also* Transcript, *supra* note 82, at 4 (stating that the ILO "did not give fair consideration to the historical circumstances that severed [Scotts Valley's] connection . . . to its land in the first place"); *id.* at 31 (stating that the agency failed to consider "how the Band came to be landless in the first place").

¹³⁶ *Scotts Valley*, 633 F. Supp. 3d at 156; *see also* Transcript, *supra* note 82, at 4 (stating that the ILO "failed to consider the fundamental remedial nature of the statute at the heart of the case").

¹³⁷ William Wood, *The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias*, 44 TULSA L. REV. 317, 321 & n.10 (2008).

¹³⁸ Report by Albert L. Hurtado, *supra* note 31, at 6.

¹³⁹ Wood, *supra* note 137, at 321.

¹⁴⁰ Report by Albert L. Hurtado, *supra* note 31, at 7.

¹⁴¹ *Id.* at 6; *see also id.* at 8 (explaining that "[l]arge livestock herds permanently altered the California environment by destroying native plants through overgrazing and spreading new plants with seeds in their dung and hair," so much so that "[b]y the 1840s wild oats were so common that observers thought that they were a native species" (citation omitted)).

¹⁴² *Id.* at 7–8.

diseases introduced by the Spaniards (smallpox and measles, among others) also had devastating impacts on tribal populations and greatly reduced their numbers.¹⁴³

After Mexico established independence from Spain in 1821, the Mexican government secularized the missions, and large, private landholders known as *rancheros* or *Californios* took possession of the missions' vast rangelands.¹⁴⁴ Rangelands associated with Mission San Francisco Solano, for example, came under the control of Mariano Vallejo through a government-issued land grant and became Rancho Petaluma.¹⁴⁵ As noted above in the narrative on Augustine, Vallejo also acquired the lands that became Rancho Suscol (the boundaries of which would have surrounded the Vallejo Parcel), among other lands, and "exercised nearly absolute personal and official power over land and life in the North Bay region."¹⁴⁶

The disruption to "long standing patterns of Indian land use and tenure throughout California" that started during the mission period became worse during the period of Mexican rule.¹⁴⁷ The Band's historian explained that "private *rancheros* exacerbated these changes with demands for more land and Indian labor."¹⁴⁸ Violence against California Indians increased during the Mexican period, with Mariano Vallejo's brother, Salvador Vallejo, raiding Pomo Indian communities and forcing the inhabitants to work on Vallejo-owned ranchos.¹⁴⁹ The Vallejos' raids left "Indian babies . . . without parents," and Indian children were sometimes taken from their villages and educated "in the trades associated with farming, ranching, and domestic services."¹⁵⁰

After the United States took control of California around 1846,¹⁵¹ "these excesses grew even worse."¹⁵² Federal authorities in the early American period "established two classes of Indians in California": "livestock thieves," who "could be shot on sight," and "laborers," who, like Augustine, could be forced to work under "deplorable conditions."¹⁵³ The gold rush in the late 1840s "further dislocated native people and forced them to adapt to yet another set of changed circumstances as thousands and then tens of thousands of newcomers invaded Indian

¹⁴³ *Id.* at 7; see also Whiteman Report, *supra* note 105, at 21 ("Missionization, casualties from military and settler retribution, raids for Indian labor, and disease resulted in the decimation [of] the native population of central California.").

¹⁴⁴ Report by Albert L. Hurtado, *supra* note 31, at 18.

¹⁴⁵ *Id.* at 22.

¹⁴⁶ *Supra* page 14 (quoting Report by Albert L. Hurtado, *supra* note 31, at 23).

¹⁴⁷ Report by Albert L. Hurtado, *supra* note 31, at 2.

¹⁴⁸ *Id.*

¹⁴⁹ See *supra* page 15 (citations omitted); see also S.A. Barrett, *The Ethno-Geography of the Pomo and Neighboring Indians*, 8 UNIV. OF CAL. PUBL'NS IN AM. ARCHAEOLOGY & ETHNOLOGY 1, 45 (1908) (stating that "[i]n the days of the early Mexican settlers it was not uncommon for a *ranchero* . . . to surround a *rancheria*, kill any Indians who resisted, and then select from the remainder those most suited to his purpose").

¹⁵⁰ Report by Albert L. Hurtado, *supra* note 31, at 30–31; see also *id.* at 95 (mentioning the appearance of orphaned, possibly kidnapped Indian children in an 1852 census of Solano County, which fit a "pattern that was well established before the United States took control of California").

¹⁵¹ See *id.* at 2.

¹⁵² Barrett, *supra* note 149, at 45.

¹⁵³ Report by Albert L. Hurtado, *supra* note 31, at 57–58. This classification was reflected in the negotiation of the 1851 Treaty, in which federal agent Redick McKee explained that the Indians had to agree to "never move" off-reservation "without the President's permission," except that "young men [could] hire out to work upon the different ranches." *Id.* at 82 (citation omitted). That explanation, in turn, suggests that the Indians' livelihood depended on working on ranches located throughout the territory ceded under the 1851 Treaty.

homelands.”¹⁵⁴ The result was that “Indian people were forced off their land, relocated away from populated areas, and often served as a source of indentured labor for the largely White population.”¹⁵⁵

Compounding the devastation that those events wrought, the United States Senate, “under pressure from the California congressional delegation,” refused to ratify numerous treaties that the federal government had entered with the tribes in 1851 and 1852,¹⁵⁶ including with the Band’s predecessors. According to the Advisory Council on California Indian Policy (Advisory Council) (a council established by Congress in 1992 to conduct a study of the status of California Indians¹⁵⁷), the tribes’ “fate as landless Indians was . . . sealed when the Senate refused to ratify the treaties.”¹⁵⁸ “Deprived of protected legal title to their lands by treaty or formal claim, the California Indians, with [certain exceptions], became homeless.”¹⁵⁹ The consequences of violent displacement for California’s Indian tribes were dire; the Advisory Council explained that the state’s Indian population declined from a conservative estimate of 100,000 in 1851 to 15,293 in 1890, an 85% decline.¹⁶⁰

The backdrop above, which sheds light on “how the Band came to be landless in the first place,”¹⁶¹ informs our reconsideration of the connection between the Band and the Vallejo Parcel. The historical circumstances underscore the devastating impact that changes in the North Bay region had on countless tribal communities, including those associated with the Band by Clear Lake. Although the narrative on Augustine originally presented in the 2019 ILO primarily focuses on his individual experiences, those experiences, viewed in light of the government’s role in displacing local tribes, are representative of what many Indigenous peoples across the region endured during the relevant time periods. In particular, Augustine’s possible baptism at Mission San Francisco Solano in the late 1830s is consistent with a broader, documented practice of the removal of Indian children from their villages and their placement in the missions. Additionally, his dwelling among other Indians in Napa in 1870, at a time when virtually no Indians were residing in the Band’s ancestral territory by Clear Lake,¹⁶² is consistent with the pervasive displacement of the region’s Indian tribes during the American period.

Taken together, the narrative on Augustine and the additional context above indicate that, as the Court put it, “Scotts Valley was a tribe that had . . . its people scattered to the winds,”¹⁶³ or, more precisely, scattered throughout the North Bay region. As early as the 1830s, the fate of the Band’s ancestors—their movements, their activities, and their lives—became inextricably tied to the mission economy, the livestock operations on the Vallejos’ ranchos, and the subsequent development of the region during the American period, when Indians became a primary labor source for ranches and farms in the region. Based on that context, as well as certain observations that the Court made in the *Scotts Valley* opinion, discussed below, it is reasonable to attribute at

¹⁵⁴ *Id.* at 2–3.

¹⁵⁵ ADVISORY COUNCIL ON CAL. INDIAN POL’Y: FINAL REPORTS AND RECOMMENDATIONS TO THE CONGRESS OF THE UNITED STATES PURSUANT TO PUBLIC LAW 102-416 4 (1997) [hereinafter “Advisory Council Report”]; *see also* Barrett, *supra* note 149, at 45 (stating that “there were those who made a regular business of kidnapping children and selling them in the settlements about San Francisco bay and southward”).

¹⁵⁶ Advisory Council Report, *supra* note 155, at 3.

¹⁵⁷ *See* Advisory Council on California Indian Policy Act of 1992, Pub. L. No. 102-416, §§ 4–5, 106 Stat. 2131, 2132–33.

¹⁵⁸ Advisory Council Report, *supra* note 155, at 4.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* (citations omitted); *see also* Wood, *supra* note 137, at 332–33 (stating that, “[b]y the turn of the twentieth century California Indians [had been] reduced through starvation, disease and murder to a population of only about 17,000—representing a 90 percent decline in population from estimated 1848 figures” (alternation in original) (citation and internal quotation marks omitted)).

¹⁶¹ Transcript, *supra* note 82, at 4.

¹⁶² *See supra* pp. 15–16.

¹⁶³ *Scotts Valley*, 633 F. Supp. 3d at 166; *see also id.* at 167 (describing the Band as having been “completely . . . dispersed”).

least some of Augustine’s experiences in the North Bay region to the Band as a whole, especially his possible baptism at Mission San Francisco Solano in 1837 and his dwelling in Napa in 1870.

In reaching those conclusions, this decision expressly departs from the 2019 ILO, which concluded that “Augustine’s varied and singular experiences,” including “his possible baptism at Mission San Francisco Solano in 1837 . . . [and] his dwelling in Napa in 1870,” are of limited evidentiary value in establishing the significant historical connections of [the] Band *in toto*.”¹⁶⁴ The revised conclusions reflect not only additional consideration of the historical circumstances but also consideration of the *Scotts Valley* Court’s opinion, which faulted the 2019 ILO for “declin[ing] to attribute Augustine’s connections . . . to the Band as a whole” and for “characterizing the evidence as if it related to just one man, when even the information it described clearly indicated the presence of others in the region.”¹⁶⁵ The Court specifically cited evidence of Augustine’s baptism as an example of evidence properly attributable to the Band, highlighting documentation corroborating the Band’s claim that other children from Augustine’s village were baptized at Mission San Francisco Solano at the same time that he was.¹⁶⁶ The Court also cited evidence of Augustine’s dwelling in Napa as an example, highlighting “evidence that other ‘possible or confirmed Band ancestors [were] living in Napa in 1870’ and may have been working at a rancho approximately 11 miles north of the Vallejo Parcel.”¹⁶⁷ Consistent with the Court’s observations, it is accordingly reasonable to credit those experiences of Augustine to the Band as a whole for the purposes of demonstrating a significant historical connection to the Parcel.

(2) Additional consideration of IGRA’s policy goals.

We also depart from certain conclusions in the 2019 ILO based on further consideration of IGRA’s policy goals, in response to the *Scotts Valley* Court’s observation that the 2019 ILO had “failed to consider the fundamental remedial nature of the [IGRA].”¹⁶⁸

The IGRA was enacted to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.”¹⁶⁹ The exceptions in IGRA that permit gaming on newly acquired lands,¹⁷⁰ in turn, “serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones.”¹⁷¹ According to the *Scotts Valley* Court, the specific purpose of the restored lands exception is to restore tribes that lost their Federal recognition and land to “some semblance of the status they enjoyed before, with the opportunity to sustain themselves economically.”¹⁷² The United States Court of Appeals for the District of

¹⁶⁴ 2019 ILO, *supra* note 3, at 17 (emphasis in original).

¹⁶⁵ *Scotts Valley*, 633 F. Supp. 3d at 168.

¹⁶⁶ *Id.* (quoting 2019 ILO, *supra* note 3, at 13 (citing Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 7–8)). Based on this documentation, as well as broader documentation of the removal of Indian children from their villages and their placement in the missions (discussed above), we assume for the purposes of this analysis that the six-year-old Agustin at the mission was the Band’s ancestor Augustine.

¹⁶⁷ *Id.* (alteration in original) (quoting 2019 ILO, *supra* note 3, at 14–15); *see also* Addendum to the Supplemental Report, *supra* note 118, at 7–8 (discussing evidence of “occupation of other Scotts Valley ancestors in other households in Napa township near Augustine” and asserting that Augustine’s movement “fit[s] a pattern of migration to and residence in the San Pablo Bay region that was long established by 1880”).

¹⁶⁸ Transcript, *supra* note 82, at 4.

¹⁶⁹ *Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 865 (D.C. Cir. 2006) (quoting 25 U.S.C. § 2702(1)).

¹⁷⁰ *See* 25 U.S.C. § 2719(b)(1)(B).

¹⁷¹ *City of Roseville*, 348 F.3d at 1030.

¹⁷² *Scotts Valley*, 633 F. Supp. 3d at 166; *see also id.* at 148 (“[T]he ‘restoration of lands’ is to a restored tribe what the ‘initial reservation’ is to an acknowledged tribe: the lands the Secretary takes into trust to re-establish the tribe’s economic viability.” (quoting *City of Roseville*, 348 F.3d at 1031)).

Columbia Circuit (“D.C. Circuit”) has similarly stated that the restored lands exception “compensates [a] Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim.”¹⁷³

Given the remedial nature of IGRA, “Congress intended for the restored lands exception ‘to be read broadly,’ in service of IGRA’s overall goal of ‘promoting tribal economic development and self-sufficiency.’”¹⁷⁴ To the extent that there is “any remaining doubt that Congress intended IGRA’s ‘restoration of lands’ exception to be read broadly,” the D.C. Circuit has clarified that “[t]he Indian Canon of statutory construction would resolve any doubt . . . in favor of the tribe.”¹⁷⁵ That canon requires “statutes . . . to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.”¹⁷⁶

When the Department promulgated Part 292, it codified a broad interpretation of the restored lands exception that comports with the D.C. Circuit’s application of the Indian canon to IGRA’s restored lands provision. As the *Scotts Valley* Court explained, “Part 292 is a permissible interpretation of the IGRA,”¹⁷⁷ and the “the Indian canon does not mandate invalidating the long-standing regulation.”¹⁷⁸ Nevertheless, the Court evaluated the 2019 ILO “through the lens of the Indian canon,”¹⁷⁹ reasoning that the ILO itself constituted a “sufficiently formal interpretation of the IGRA . . . also subject to the Indian canon.”¹⁸⁰ Upon doing so, the Court deemed the ILO arbitrary and capricious.¹⁸¹ According to the Court, the Department in the ILO:

[fell] short of construing the law liberally and interpreting any ambiguous provision to the tribe’s benefit, especially when one considers all of the things the Band could have done with its land in the years that went by before the United States acquired the Sugar Bowl Rancheria for the Band in 1911, or after 1958, when the government stripped the Band of that reservation and the recognition it had to litigate to restore.¹⁸²

The language quoted above suggests that the purpose of the restored lands exception—to compensate a tribe not only for what it lost by the act of termination but also for opportunities lost in the interim—supports a broad interpretation of the exception, not only in Part 292 but also in the ILO applying Part 292. In light of that guidance from the Court, we construe key terms in Part 292 in a way that reflects greater consideration of the policy behind the exception. Specifically, we adopt broad understandings of the terms “occupancy” and

¹⁷³ *City of Roseville*, 348 F.3d at 1029.

¹⁷⁴ *Koi Nation of Northern California v. U.S. Dep’t of the Interior*, 361 F. Supp. 3d 14 (D.D.C. 2019) (quoting *City of Roseville*, 348 F.3d at 1030–32).

¹⁷⁵ *City of Roseville*, 348 F.3d at 1032.

¹⁷⁶ *Scotts Valley*, 633 F. Supp. 3d at 142 (quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985)).

¹⁷⁷ *Id.* at 152.

¹⁷⁸ *Id.* at 154.

¹⁷⁹ *Id.* at 165.

¹⁸⁰ *Id.* at 166 (citing *CETAC*, 492 F.3d at 464–65, 471).

¹⁸¹ *Id.* at 171.

¹⁸² *Id.* at 168. When the Band was terminated, the Sugar Bowl Rancheria consisted of a 56.63-acre tract in Lake County. Press Release from the Bureau of Indian Affairs (Sept. 1, 1965) (on file with the Office of Indian Gaming). Following termination, deeds were given to individual distributives. *Id.* However, because the tract lacked basic infrastructure like a potable water supply or a functioning sewer system, Scotts Valley members moved away, and the land was seized for failure to pay taxes. See Consolidated Report by Heather H. Howard et al., *supra* note 31, at 68–69. By 1972, “only three of the original distributives still owned property at the former Scotts Valley Rancheria site.” *Id.* at 70. However, the land was “uninhabitable,” *id.* at 75, and the California Rancheria Task Force recommended removal of the entire Band to an unspecified, “suitable location.” *Id.* at 72. According to the Band’s consultants, “there is no indication in the federal record that the United States acted on the recommendation.” *Id.*

“vicinity” in the definition of “significant historical connection” in Part 292,¹⁸³ both of which are subject to agency interpretation.¹⁸⁴ Upon application of a broad understanding of those terms, we conclude that evidence of the presence of the Band’s ancestors at Mission San Francisco Solano in Sonoma in the late 1830s and in Napa in the early 1870s demonstrates occupancy in the vicinity of the Parcel.

First, we conclude that the presence of the Band’s ancestors at the mission and in Napa constitutes occupancy. While it is true that, as the Department indicated in the 2019 ILO, the Band’s dispersed presence in the North Bay region throughout the mid-nineteenth century contrasts with “the Grand Traverse Band’s continuous, centuries-old connection” to a parcel,¹⁸⁵ the definition of “significant historical connection” in 25 C.F.R. § 292.2 “does not require that the occupancy . . . be ‘long term’ or that the tribe claim any ownership or control, exclusive or otherwise, over the land.”¹⁸⁶ Indeed, an interpretation of occupancy requiring ownership or control would undermine the purpose of the restored lands exception, which is “to make restitution for past wrongs,”¹⁸⁷ including “the depredations of the 19th century” that diminished tribal ownership or control of land in the first place.¹⁸⁸ As discussed above, the Band’s predecessors lost their ancestral territory by Clear Lake by around 1840,¹⁸⁹ and the Band did not reacquire a land base until 1911. In the intervening period, the Band’s ancestors survived by participating, often involuntarily, in the economy of the North Bay region, and they necessarily occupied spaces throughout that region in doing so. To conclude otherwise—that is, to deem the Band’s “inconsistent” or unsettled presence in the North Bay region at odds with “occupancy,” as the Department did in the 2019 ILO¹⁹⁰—would give insufficient consideration to the Band’s landless status, which resulted “through no fault of [their] own,”¹⁹¹ and insufficient consideration to “all of the things the Band could have done with its land in the years that went by before the United States acquired the Sugar Bowl Rancheria for the Band in 1911.”¹⁹²

A broad understanding of the term “occupancy” not only furthers the goals of IGRA and the restored lands exception but also accords with the “ordinary, contemporary, common meaning” of that term,¹⁹³ defined, in part, as “the fact or condition of . . . residing in or on something.”¹⁹⁴ Here, the Band has met this broad definition of occupancy through historical documentation of residency at Mission San Francisco Solano in Sonoma in the

¹⁸³ 25 C.F.R. § 292.2

¹⁸⁴ See Transcript, *supra* note 82, at 33 (stating that “even the [regulation] which defined . . . what significant historical connection was certainly left room for agency discretion”).

¹⁸⁵ 2019 ILO, *supra* note 3, at 17.

¹⁸⁶ *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).

¹⁸⁷ *City of Roseville*, 348 F.3d at 1026–27 (describing the Secretary and the Auburn Tribe’s shared interpretation of the restored lands exception and stating that “[t]here is much to commend [in] the interpretation of the Secretary and the Auburn Tribe regarding the scope of the ‘restoration of lands’ exception”).

¹⁸⁸ *City of Roseville v. Norton*, 219 F. Supp. 2d 130, 134 (D.D.C. 2002), *aff’d*, 348 F.3d 1020 (D.C. Cir. 2003).

¹⁸⁹ See *supra* p. 14 (explaining that, by around 1840, the Vallejos took “formal possession” of the valley where the Band’s ancestors lived (citation omitted)).

¹⁹⁰ 2019 ILO, *supra* note 3, at 17.

¹⁹¹ *Scotts Valley*, 633 F. Supp. 3d at 167.

¹⁹² *Id.* at 168.

¹⁹³ *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)).

¹⁹⁴ *Occupancy*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/occupancy> (last visited Dec. 5, 2024); see also *Occupancy*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “occupancy,” in part, as “[t]he act, state, or condition of . . . residing in or on something”); Guidiville ILO, *supra* note 64, at 14 (valuing evidence of “dwellings” to demonstrate occupancy).

1830s, the years leading up to the Vallejos' takeover of the Band's ancestral territory.¹⁹⁵ As discussed above, the record suggests that Augustine was taken to the mission as a child, where, according to the Band's historian, he would have resided in a dormitory while receiving education in various trades,¹⁹⁶ and for the reasons provided in the preceding section, that experience is attributable to the Band as a whole.

Furthermore, we conclude that the Band has demonstrated occupancy through historical documentation of Augustine's residency in Napa in the 1870s.¹⁹⁷ As discussed above, Augustine was listed in the 1870 census data for Napa City Township, where he resided in a house with other Indian workers.¹⁹⁸ Although that house was not a "family dwelling" but a potentially less stable "house of migrant workers" (as the 2019 ILO noted),¹⁹⁹ deeming that experience to be evidence of occupancy is consistent with a broad understanding of the term and accounts for the difficult circumstances faced by the Band's ancestors, who would have presumably chosen more stable living arrangements had they not been forced off of their land in the first place.²⁰⁰

Second, we conclude that the occupancy described above was "in the vicinity of the land," as required to establish a significant historical connection.²⁰¹ Relevant here, Mission San Francisco Solano is approximately seventeen miles from the Vallejo Parcel,²⁰² and Napa is approximately eleven miles from the Parcel.²⁰³ Both fall within the bounds of what might be considered the vicinity of the Parcel, particularly if the term "vicinity" is interpreted broadly, in line with the *Scotts Valley Court's* directive to "constru[e] the law liberally" in furtherance of IGRA's policy goals.²⁰⁴ Departmental precedent supports that conclusion. For example, in a 2013 record of decision acquiring a parcel in trust for the Cowlitz Indian Tribe, the Department determined that evidence of occupancy and use fourteen miles from the parcel was sufficiently "in the vicinity" to help establish the requisite connection.²⁰⁵ Similarly, in a 2007 ILO for the Mooretown Rancheria of Maidu Indians of California ("Mooretown ILO"), the existence of the tribe's villages fifteen to twenty miles from the parcel was a determinative factor.²⁰⁶ Although the Mooretown ILO predated the promulgation of Part 292 and did not invoke

¹⁹⁵ See Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 3 n.7 (stating that "[a]s early as 1836 Salvador Vallejo took a military force to Clear Lake" and that "[a]fter such forays Vallejo usually took prisoners back to Sonoma").

¹⁹⁶ Addendum to the Supplemental Report, *supra* note 118, at 3; see also *id.* (quoting a contemporary of the Vallejos who explained that, following the Vallejos' raids into the Clear Lake country, "[t]he young women were put in the Monjero [a female dormitory] and the children taken care of" (alteration in original) (citations omitted)).

¹⁹⁷ As is the case with Augustine's residency at the mission, Augustine's residency in Napa is attributable to the Band as a whole, for the reasons provided in the preceding section.

¹⁹⁸ *Supra* pp. 15–16.

¹⁹⁹ 2019 ILO, *supra* note 3, at 17.

²⁰⁰ See *supra* p. 15 (citing Report by Albert L. Hurtado, *supra* note 31, at 64 (explaining that, at one point, Augustine escaped his abusive captors in Sonoma and fled to Clear Lake, where his wife and child resided)).

²⁰¹ 25 C.F.R. § 292.2.

²⁰² *Supra* p. 14.

²⁰³ See *supra* p. 16 (explaining that a rancho bordering Napa, Rancho Tulucay, was 11 miles north of the Vallejo Parcel); see also Geo. G. Lyman et al., *Official Map of the County of Napa, California* (1876), available at <https://www.loc.gov/item/2005625303/> (showing the locations of Napa and Rancho Tulucay).

²⁰⁴ *Scotts Valley*, 633 F. Supp. 3d at 168.

²⁰⁵ Record of Decision, Trust Acquisition of, and Reservation Proclamation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe 121 (Dep't of the Interior Apr. 2013); see also *Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 566–67 (D.C. Cir. 2016) (summarizing the relevant determination in the record of decision).

²⁰⁶ Memorandum from John R. Hay, Staff Attorney, Nat'l Indian Gaming Comm'n, to Philip N. Hogen, Chairman, Nat'l Indian Gaming Comm'n 10–11 (Oct. 25, 2007), available at <https://www.nigc.gov/images/uploads/indianlands/mooretownfnl.pdf>.

the phrase “in the vicinity,” the villages’ proximity to the parcel was the basis for finding the requisite historical connection between the tribe and the parcel.²⁰⁷

As with the term “occupancy,” a broad understanding of the term “vicinity” not only furthers the goals of IGRA and the restored lands exception but also accords with the ordinary, contemporary, common meaning of that term, defined, in part, as “a surrounding area or district.”²⁰⁸ What constitutes an area in the vicinity of or surrounding a parcel is relative, but “[i]n a sparsely settled region a person residing fifteen miles from a road might be regarded as being in the vicinity of it.”²⁰⁹ Given the historically rural nature of the region, characterized by agricultural operations, it is reasonable to conclude that the area in the vicinity of the Vallejo Parcel extends as far north and west as Napa and Sonoma.²¹⁰ That is especially true given that Augustine and other ancestors of the Band may have been laboring on large swaths of land located between Napa and the Parcel (on Rancho Tulucay²¹¹) and Sonoma and the Parcel (on Rancho Petaluma²¹²) while living in those places. To the extent that the 2019 ILO suggested that only land within Rancho Suscol (the boundaries of which would have encompassed the Parcel) would qualify as in the vicinity of the Parcel,²¹³ that warrants revision based on the broad interpretation of the term “vicinity” described above.

Finally, even absent direct evidence of occupancy or use on the Parcel itself (as opposed to in the vicinity), the evidence nonetheless should “lead[] to a natural inference of historic use or occupancy” on the Parcel itself.²¹⁴ The inference of occupancy on the Parcel need not be obvious or unquestionable given that the paramount purpose of the restored lands exception is to “to make restitution for past wrongs,”²¹⁵ not to bring land previously under tribal ownership or control back to its “original state.”²¹⁶ As the D.C. Circuit explained in *City of Roseville v. Norton*, “a ‘restoration of lands’ could easily encompass new lands given to a restored tribe to re-establish its land base and compensate it for historical wrongs.”²¹⁷

Here, there are several reasons to infer that the Band occupied the Parcel for the purposes of the restored lands exception. First, the Parcel is located within Area 296, a fact that, as the 2019 ILO noted, entitles the Band to a “favorable inference” of occupancy.²¹⁸ Even though that fact is not conclusive proof of a significant historical

²⁰⁷ *Id.*

²⁰⁸ *Vicinity*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/vicinity> (last visited Dec. 5, 2024).

²⁰⁹ *Vicinity*, BALLENTINE’S LAW DICTIONARY (3d ed. 1969) (citing *Sterling v. Carter*, 185 P. 11 (Kan. 1919)).

²¹⁰ *Cf.* 25 C.F.R. § 292.2 (defining “[s]urrounding community” as “local governments and nearby Indian tribes located within a 25-mile radius of the site of the proposed gaming establishment”).

²¹¹ *See supra*, p. 16 (noting that “Augustine and the other Indians in the household may have been working at nearby Rancho Tulucay” while living in Napa (citations omitted)).

²¹² *See* Supplemental Report by Albert L. Hurtado et al., *supra* note 90, at 3 & n.7 (explaining that, following their baptism at Mission San Francisco Solano, the Band’s ancestors would have been “divided among the different ranches of the mission and put to work at the different trades”); *see also* Scotts Valley Band of Pomo Indians, Map of Vallejo Landholdings, Present Day (Jan. 29, 2016) (on file with the Department) (showing the locations of Sonoma and Rancho Petaluma); L.E. Ricksecker et al., *Official Map of Sonoma County, California* (1900), available at <https://www.loc.gov/resource/g4363s.la000044/> (showing the locations of Sonoma and Rancho Petaluma).

²¹³ *See* 2019 ILO, *supra* note 3, at 19 (stating that “a general connection to Rancho Suscol would place the Band’s ancestors in the vicinity of the Parcel”).

²¹⁴ *Id.* at 18; *see also Grand Ronde*, 830 F.3d at 566 (contrasting the regulation implementing IGRA’s initial-reservation exception, which requires only that the land in question be “within an area where the tribe has significant historical connections,” with the regulation implementing the restored lands exception, which requires “a significant historical connection to the land itself” (emphasis in original) (citations and internal quotation marks omitted)).

²¹⁵ *Supra*, p. 23 (quoting *City of Roseville*, 348 F.3d at 1026–27).

²¹⁶ *City of Roseville*, 348 F.3d at 1027 (internal quotation marks omitted).

²¹⁷ *Id.*

²¹⁸ 2019 ILO, *supra* note 3, at 10.

connection (for the reasons set forth above), neither should it be “devalue[d],” as the *Scotts Valley* Court found it had been in the 2019 ILO.²¹⁹ In response to the Court’s observation, we clarify here that the Parcel’s location within ceded territory helps establish the requisite connection by supporting an inference of occupancy on the Parcel itself.

Additionally, Vallejo’s designation in the 1851 Treaty as a pick-up site for promised provisions and the subsequent collection of provisions at that site supports the inference.²²⁰ While the pick-up of provisions may have been too transitory in nature to constitute occupancy in and of itself (as discussed in the 2019 ILO²²¹), the reference to Vallejo in the treaty is consistent with Royce’s inclusion of Vallejo in Area 296 and reinforces the reasonableness of granting a favorable inference to the Band based on the Parcel’s location within Area 296, notwithstanding the fact that the 1851 Treaty “d[id] not specifically describe the land that its [tribal] signatories used, occupied, or purposed to cede.”²²²

Lastly, the historical circumstances support the inference. As discussed above, the record indicates that the fate of the Band’s ancestors became inextricably tied to the livestock operations on the Vallejos’ ranchos, which were located throughout Area 296.²²³ During the Mexican period, Mariano Vallejo took possession of the Band’s ancestral territory and Rancho Petaluma (the rangelands associated with Mission San Francisco Solano, where the Band’s ancestors resided), and relied on their labor in the ensuing years.²²⁴ Although no documentation links the Band’s ancestors specifically to Rancho Suscol (the boundaries of which would have encompassed the Parcel), it is reasonable to assume that the Band’s ancestors worked there after Vallejo acquired it in 1843²²⁵ and used or occupied the Parcel in the process. While the 2019 ILO concluded that an inference granting the presence of the Band’s ancestors on Ranch Suscol “cannot serve as the basis to connect the Band with the Parcel itself,”²²⁶ that conclusion warrants revision based on further consideration of the strength of the inference required and IGRA’s policy goal to provide compensation for historical wrongs.

IV. CONCLUSION.

Based on the reasoning above, I have determined the Band has demonstrated a significant historical connection to the Vallejo Parcel. Consequently, the Vallejo Parcel qualifies as restored lands within the meaning of applicable law. The Department will acquire the Vallejo Site in trust for the Band, and the Band may conduct gaming on the Vallejo Site once it is acquired in trust, provided that the Band is not gaming on other lands.²²⁷

²¹⁹ *Scotts Valley*, 633 F. Supp. 3d at 168. The Court’s finding might reflect a lack of clarity in the 2019 ILO about how the inference worked in the Band’s favor.

²²⁰ See Legal Analysis by Steven J. Bloxham, *supra* note 31, at 21–25 (discussing documentation of those activities).

²²¹ 2019 ILO, *supra* note 3, at 10–12.

²²² Brief of the Yocha Dehe Wintun Nation as *Amicus Curiae* in Support of the Federal Defendants at 11, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-1544 (ABJ)); see also Yocha Dehe’s Supplemental Legal Memorandum, *supra* note 32, at 5 (stating, in part, that the 1851 Treaty “ceded no particular land”).

²²³ See Hurtado Comments, *supra* note 55, at 14 (stating that “Area 296 is a fair approximation of the region that Kearny assigned to sub-Indian agent Vallejo in 1847”).

²²⁴ See *supra*, p. 14–15 (noting the labor-intensive nature of the livestock operations, requiring hundreds of Indian laborers).

²²⁵ See 2012 ILO, *supra* note 42, at 16 (describing Rancho Petaluma and Rancho Suscol).

²²⁶ 2019 ILO, *supra* note 3, at 18.

²²⁷ See 25 C.F.R. § 292.12(c)(2).

PART 151 ANALYSIS

Trust Acquisition Determination Pursuant to 25 C.F.R. § 151

The Department's authority for acquiring the land in trust is found in Section 5 of the Indian Reorganization Act ("IRA").²²⁸ The Department's land acquisition regulations at 25 C.F.R. Part 151 sets forth the procedures for implementing Section 5 of the IRA. Pursuant to the Department's regulations and absent a request from the Band, this application has been processed under the regulations that were in effect prior to January 11, 2024.²²⁹

25 C.F.R. § 151.3 - Land Acquisition Policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian Tribe:

- (1) When the property is located within the exterior boundaries of the Tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the Tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate Tribal self-determination, economic development, or Indian housing.

The Band's application satisfies § 151(b)(3). The Department's review of the Band's application found that acquisition of the Vallejo Site in trust is necessary to facilitate Tribal self-determination and economic development. As discussed here, the Band needs an economic driver to generate funds to provide much-needed housing for its members and governmental facilities.²³⁰ Therefore, the acquisition satisfies the condition in 25 C.F.R. §151.3(a)(3).

25 C.F.R. § 151.11 - Off-reservation acquisitions

The Band's application will be considered under the off-reservation criteria of Section 151.11. The off-reservation regulations add requirements to the on-reservation criteria. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), and (e) through (h), as discussed below.

25 C. F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition, and if such authority exists, to consider any limitations contained in it including the effect, if any, of the decision in *Carciere v. Salazar*. In *Carciere*, the United States Supreme Court held that the Secretary's authority to take

²²⁸ Act of June 18, 1934, Ch. 576, § 5, 48 Stat. 984 (IRA) (codified at 25 U.S.C. § 5108) ("The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.").

²²⁹ 25 C.F.R. § 151.17(a). The revised Part 151 regulations allow Tribes who had applications submitted before their effective date to continue the process under the prior regulations unless they requested that the application be processed under the new revisions.

²³⁰ Band's Application at 4 and 9.

land into trust for an Indian tribe under the first definition of “Indian” in the IRA extends only to those tribes that were “under federal jurisdiction” on June 18, 1934, when the IRA was enacted.²³¹

The Solicitor has concluded that a Tribe’s election under Section 18 of the IRA whether to adopt or reject application of the IRA unambiguously and conclusively establishes that the United States understood that this particular tribe was under federal jurisdiction in 1934.²³² On June 8, 1935, the Band held a vote to determine if the Band would accept or reject the IRA.²³³ Ten of the Band’s members residing on the Band’s reservation voted to reject the IRA.²³⁴

This is conclusive evidence that the Band was “under Federal Jurisdiction” in 1934, and the Department is authorized to acquire land in trust under Section 5 of the IRA.

25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land

Section 151.10(b) provides that the Secretary will consider a tribe's need for additional land when reviewing a tribe’s request to have land acquired in trust.

As discussed here, the Band is a landless tribe. The acquisition in trust of the Vallejo Site will allow the band to consolidate its government offices in one place, instead of its current two office setup, encouraging self-governance and self-determination.²³⁵ Additionally, the Band will be able to provide needed housing for its members and pursue economic development that will encourage these ends.²³⁶ In summary, the Band needs trust land in order to help the Band restore its land base capable of supporting the economic, governmental, and housing needs of the Band’s members.

The Regional Director found, and I concur, that the Band has established a need for additional land, and the acquisition of the Vallejo Site in trust will help address the Band’s needs.

25 C.F.R. § 151.10(c) - The purpose for which the land will be used

Section 151.10(c) requires consideration of the purposes for which the land will be used.

The Proposed Project is a destination resort-style casino with approximately 381,455 square feet of space.²³⁷ The project will include a five-story hotel with approximately 211 guest rooms and suites, food and beverage facilities, a spa and health club, retail, a reception and lobby, common areas, and recreation.²³⁸ The Band would also construct parking including 3,978 spaces across a three-level parking garage with 2,884 spaces and a surface parking lot with 1,094 spaces.²³⁹ Therefore, the Band’s application satisfies the requirements of this section.

²³¹ *Carcieri v. Salazar*, 555 U.S. 379 (2009).

²³² M-37029 at 20.

²³³ Band’s Application at 15.

²³⁴ *Id.*

²³⁵ *Id.* at 3-4.

²³⁶ *Id.*

²³⁷ *Id.* at 21.

²³⁸ *Id.*

²³⁹ *Id.*

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls

This section requires the consideration of the impact on the state and its political subdivision resulting from the removal of land from the tax rolls. The Department's regulations at 25 C.F.R. 151.11(d) require a notice of application be sent to state and local governments having regulatory jurisdiction over the land which solicits comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments and provides a 30-day response period.

The Department, by correspondence dated July 5, 2024, provided the required notice to the State and local governments, and as a courtesy, to certain interested parties:

- Office of the Governor, State of California
- Department of Justice, State of California
- Solano County Assessor
- Tax Collector, Solano County Treasurer
- Solano County Board of Supervisors
- City of Vallejo
- Lytton Rancheria
- Yocha Dehe Wintun Nation
- Federated Indians of Graton Rancheria
- Central California Agency, Bureau of Indian Affairs

The Department received requests to extend the comment period. The Department extended the comment period to end on August 26, 2024. While this application was under review, the Department received letters of opposition to the acquisition of the Vallejo Site.

In response to the Part 151 notification, the Department received responses from the Yocha Dehe Wintun Nation, the Federated Indians of Graton Rancheria, the City of Vallejo, and Solano County. Only Solano County made comments regarding removal of the land from the tax rolls.

Solano County noted that the removal of the Vallejo Site would result in a loss of \$86,948 in tax revenues for the first year, \$7,656,000 for the second year, and up to 2% compound interest on the year two amount each year afterwards.²⁴⁰ The second-year tax amount was determined using a comparable sales approach, estimating the tax value of 419 housing units and 730 residential homes.²⁴¹

The removal of the land will result in minimal loss of tax revenue. Firstly, the Department considers current taxes not estimated future taxes. Proposed housing built on the Vallejo Site would not be subject to Solano County taxes, meaning that using taxable income from those properties to estimate total loss in the second year would not result in a realistic number. The fiscal year 2023 taxes of \$86,948 represent less than 0.01% of the \$713 million in property taxes that Solano County collected in 2022.²⁴² This minimal loss of tax revenue would

²⁴⁰ Letter from Lee Axelrad, Deputy County Counsel, Solano County, California, to Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs, dated August 26, 2024.

²⁴¹ *Id.*, Attachment 1, Memorandum from Todd Cooper, Assessor/Recorder Department, Solano County, California, to Lee Axelrad, Deputy County Counsel, Solano County, California, dated August 19, 2024.

²⁴² EA § 3.7.2.

be offset by increased business activity from the Proposed Project.²⁴³ The Proposed Project would bring in one-time construction local tax revenues of \$157 million.²⁴⁴ The estimated 2026 annual operational local tax revenues the Proposed Project will be \$79 million.²⁴⁵ Further, the Proposed Project would result in a total of 8,980 one-time construction jobs in 2026, with a \$1.813 billion economic impact and \$617 million in labor income.²⁴⁶

The Regional Director found, and I concur, that the impact of removing the Vallejo Site from the tax rolls is minimal and will be offset by the benefits that will accrue to the region from the increased economic activity from the Proposed Project.

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

As discussed in Section 151.10(e) above, the Department requested comment regarding jurisdictional problems and potential conflicts of land use from state and local governments as well as other interested parties. As noted above, the Vallejo Site is located in Solano County.

Land Use

The City of Vallejo commented that the Band's Proposed Project violates the zoning code as the City of Vallejo does not have a use classification for a casino.²⁴⁷ Additionally, the Band's housing plans violates the zoning code because the area allotted for housing is zoned for parks, recreation, and open space, and residential housing is not permitted.²⁴⁸

While the City of Vallejo does not have a use classification for a casino, the Proposed Project is similar in nature to the existing public commercial uses in the area.²⁴⁹ Additionally, once acquired in trust status, the Vallejo Site will no longer be under the jurisdiction of the City, and, thus, the policies and land use regulations of the City of Vallejo would no longer apply.²⁵⁰ Therefore, while the proposed uses of the Vallejo Site are not consistent with the allowable uses under the existing zoning code, this inconsistency with existing zoning would not result in significant adverse land use effects.²⁵¹

Jurisdiction

In 1953, Congress passed Public Law 83-280, a statute granting to five states, including California, jurisdiction over most crimes and some civil regulatory matters on Indian reservations in the

²⁴³ *Id.* § 3.7.3.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Letter from Andrew Murray, City Manager, City of Vallejo, California, to Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs, dated August 22, 2024, at 2.

²⁴⁸ *Id.*

²⁴⁹ EA § 3.9.3.

²⁵⁰ *Id.*

²⁵¹ *Id.*

states.²⁵² Public Law 83-280 left intact the inherent civil and criminal jurisdiction of Indian nations because it did not specifically extinguish Tribal jurisdiction. Placing the Vallejo Site in trust will not create jurisdictional problems under Public Law 83-280. Once the Site has been accepted into trust for the benefit of the Band, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian lands within the State.

As discussed above, the Regional Director has found, and I concur, that the acquisition of the Vallejo Site would not cause conflicts of land use or other jurisdictional problems.

25 C.F.R. § 151.10(g) - If land to be acquired is in fee status, whether BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

The Regional Director has found, and I concur, that accepting the Vallejo Site into trust will not impose any significant additional responsibilities or burdens on the Bureau of Indian Affairs.²⁵³

25 C.F.R. § 151.10(h) - The extent of information to allow the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* The Department must also complete and Environmental Site Assessment (ESA) pursuant to Departmental Manual at 602 DM 2. The Department finalized a Phase 1 ESA and certified it on November 5, 2024, determining that there were no hazardous materials or contaminants on the Site.²⁵⁴ This satisfies the requirements of 602 DM 2.

As described in more detail below, an Environmental Assessment (EA) was prepared to evaluate the potential impacts of the Proposed Project. Based on the facts and available evidence, the EA concluded that the Proposed Project would not result in significant impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, or noise.²⁵⁵

On July 8, 2024, the Department published a Notice of Availability of an EA published July 2024, pursuant to NEPA (42 U.S.C. § 4321 *et seq.*).²⁵⁶ The EA comment period was open from July 8, 2024, to August 26, 2024.²⁵⁷ The EA provided extensive information on the existing environment and provided environmental analysis of the four alternatives.²⁵⁸ Of the alternatives, the Proposed Project, listed in the EA as Alternative A, was the Band's preferred option. The EA found that after evaluating the potential impacts and hazardous materials, the project design and implementation of the best management practices would ensure impacts to these resources would be less-than-significant.

²⁵² Act of Aug. 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, and 28 U.S.C. § 1360; *see generally* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 6.04(3)(a), at 537 (Nell Jessup Newton ed., 2012).

²⁵³ Regional Director's Finding of Fact from Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs, to Paula Hart, Director, Office of Indian Gaming, dated November 8, 2024, at 28 [hereinafter "Regional Director's Finding of Fact"].

²⁵⁴ *See* Phase I Site Assessment, Scotts Valley, dated August 15, 2022.

²⁵⁵ Regional Director's Finding of Fact, *supra* note 253, at 5.

²⁵⁶ Notice of Availability, Environmental Assessment for the Scotts Valley Casino and Tribal Housing Project, dated July 8, 2024.

²⁵⁷ Two requests for extension were received, and the total comment period was extended by 30 days.

²⁵⁸ EA § 2.

The Proposed Project consists of the following components: (i) the transfer of the 160-acre project site into federal trust status for the benefit of the Band for gaming purposes; and (ii) the subsequent development by the Band of a casino facility, Tribal housing, a Tribal administrative building, and associated parking and infrastructure.²⁵⁹ The other three alternatives included measures of reduced intensities that included a casino but no Tribal housing or administration buildings, the development of a commercial center, two hotels, Tribal housing, and a Tribal administration building, but no casino, and a no action alternative. The EA contains more detailed information about the various alternatives. As detailed in the EA, however, the Proposed Project is anticipated to have less-than-significant impacts. The enclosed Finding of No Significant Impact concludes the Department's compliance with NEPA for the Band's application to transfer the Vallejo Site in trust for gaming and other purposes.

25 C.F.R. § 151.11(b)- Location of Land Relative to State Boundaries and its distance from the Boundaries of the tribe's reservation.

The Vallejo Site is located in Solano County, California, approximately 305 driving miles from Hornbook, California, in close proximity to the California-Oregon border and 157 driving miles from Lake Tahoe, in close proximity to the California-Nevada border.²⁶⁰ The Band is landless, though, approximately 18%, or about one-fifth, of the Band's members live within a 36-mile radius of the Vallejo Site.²⁶¹

25 C.F.R. § 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use

The Band engaged the services of Global Market Advisors, a gaming industry analyst, to conduct a gaming market analysis using a gravity model as part of the Band's Business Plan and provided the Business Plan to the Department.²⁶² The Business Plan includes the pro-forma income statement and a revenue statement for the first five years of operation.²⁶³ The Band's submissions provide adequate support to demonstrate the economic benefits associated with the proposed use.

I find the Band's application meets the requirements of this section.

25 C.F.R. §§ 151.10 and 151.11(d). Contact with state and local governments pursuant to sections 151.10(e) and (f).

As more fully discussed in Sections 151.10(e)-(f) above, the Department sent a notice of application dated July 5, 2024, to state and local governments having regulatory jurisdiction over the land which solicits comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments.²⁶⁴ While not required by the regulations the Department also provided the notice of application to certain interested parties. The notice requirement of this section has been met.

²⁵⁹ *Id.*

²⁶⁰ Band's Application at 31.

²⁶¹ *Id.*

²⁶² Scotts Valley Business Plan for Fee to Trust Application, Scotts Valley Resort and Casino, dated August 2016.

²⁶³ *Id.*

²⁶⁴ Notice of Gaming Land Acquisition Application from Amy Dutschke, Regional Director, Pacific Office, Bureau of Indian Affairs, dated July 5, 2024.

Conclusion

Having thoroughly considered the *Scotts Valley* Court's opinion, the IRA, the IGRA, the Department's regulations at 25 C.F.R. Part 151 and Part 292, and all of the documents in the record, I conclude that the Band's application meets all of the regulatory requirements. Therefore, the Vallejo Site will be acquired in trust for the Band as a restoration of land for a restored tribe.

Decision to Approve the Band's Fee-to-Trust Application and Part 292 Determination

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Vallejo Site in trust for the Band. Furthermore, I have determined that the Band may conduct gaming on the Vallejo Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii). Consistent with applicable law and the Department's requirements, the Regional Director shall immediately acquire the land in trust. This decision constitutes final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Wizipan Garriott
Principal Deputy Assistant Secretary – Indian Affairs
Exercising by delegation the authority of the
Assistant Secretary – Indian Affairs

Enclosures:

1. Legal Description of the Vallejo Site
2. Finding of No Significant Impacts

Enclosure 1

Legal Description of the Vallejo Site

GRANT DEED RECORDED MARCH 15, 2016, DOCUMENT NO. 2016-00020200

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THAT CERTAIN PARCEL OF LAND DELINEATED ON THE MAP ENTITLED "RECORD OF SURVEY OF A PARCEL OF LAND EAST OF U.S. 40 AND NORTH OF COLUMBUS PARKWAY, VALLEJO, CALIFORNIA", MADE BY EDWARD F. SCHWAFEL, ENGINEER, INC., FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON JULY 28, 1965, IN BOOK 9 OF SURVEYS, AT PAGE 61.

EXCEPTING THEREFROM AN UNDIVIDED 11/24 INTEREST IN AND TO ALL OIL, GAS, ASPHALTUM, HYDROCARBONS, MINERALS AND KINDRED SUBSTANCES IN AND UNDER SAID LAND BELOW THE DEPTH OF 500 FEET FROM THE SURFACE THEREOF, BUT WITHOUT THE RIGHT OF ENTRY UPON OR THROUGH THE SURFACE OF SAID LANDS AS RESERVED IN THE DEED DATED NOVEMBER 1, 1965, RECORDED NOVEMBER 12, 1965, IN BOOK 1368 OF OFFICIAL RECORDS, PAGE 280, INSTRUMENT NO. 31220, EXECUTED BY HENRY SHAPRIO, ET AL, TO ROBERT LANRER, ET UX.

ALSO EXCEPTING THEREFROM UNDIVIDED 13/24 INTEREST IN AND TO ALL OIL, GAS, ASPHALTUM, HYDROCARBONS, MINERALS AND KINDRED SUBSTANCES IN AND UNDER SAID LAND BELOW A DEPTH OF 500 FEET FROM THE SURFACE THEREOF BUT WITHOUT THE RIGHT OF ENTRY UPON OR THROUGH THE SURFACE OF SAID LANDS AS RESERVED IN THE DEED EXECUTED BY ROBERT LARNER AND BEVERLY LARNER, HIS WIFE, DATED DECEMBER 31, 1968 AND RECORDED DECEMBER 31, 1968, IN BOOK 1542 OF OFFICIAL RECORDS, PAGE 397, INSTRUMENT NO. 23899.

ALSO EXCEPTING THEREFROM THE PARCEL OF LAND DESCRIBED AS PARCEL 10A IN THE FINAL ORDER OF CONDEMNATION HAD ON APRIL 14, 1972 IN THE SUPERIOR COURT, SOLANO COUNTY, CASE NO. 50096, A CERTIFIED COPY OF WHICH WAS RECORDED APRIL 14, 1972, IN BOOK 1744 OF OFFICIAL RECORDS, AT PAGE 151, INSTRUMENT NO. 8056.

ALSO EXCEPTING THEREFROM THE PARCEL OF LAND DESCRIBED IN THE GRANT DEED FROM CHARLES G. MOYER AND DIANE E. MOYER, HUSBAND AND WIFE, TO THE STATE OF CALIFORNIA, DATED SEPTEMBER 22, 1980 AND RECORDED DECEMBER 4, 1980, INSTRUMENT NO. 53746, PAGE 88104, SOLANO COUNTY RECORDS.

APN: 0182-010-010

QUITCLAIM DEED RECORDED January 11, 2024, Instrument No. 202400001365

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SOLANO, CITY OF VALLEJO, DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF COLUMBUS PARKWAY (COUNTY ROAD NO. 233) WITH THE WESTERLY LINE OF PARCEL 1 OF THE RECORD OF SURVEY OF THE UPPER AND MIDDLE HUNTER RANCHES, FILED FOR RECORD 17 MARCH, 1965 IN BOOK 9 OF SURVEYS AT PAGE 42, SOLANO COUNTY RECORDS; THENCE 650 FEET EASTERLY, ALONG THE NORTHERLY LINE OF COLUMBUS PARKWAY TO THE SOUTHWEST CORNER OF PARCEL A; THENCE; THENCE NORTHERLY 650.00 FEET ALONG THE WESTERLY LINE OF PARCEL A; THENCE WESTERLY AT 90° TO THE PROCEEDING COURSE 629.29 FEET TO THE WESTERLY LINE OF SAID PARCEL 1; THENCE SOUTH 12°02'48" WEST, 651.32 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF COLUMBUS PARKWAY (COUNTY ROAD NO. 233), WITH THE WESTERLY LINE OF PARCEL 1 OF THE RECORD OF SURVEY OF THE UPPER & MIDDLE HUNTER RANCHES, FILED FOR RECORD 17 MARCH, 1965, IN BOOK 9 OF SURVEYS AT PAGE 42, SOLANO COUNTY RECORDS; THENCE 650 FEET EASTERLY ALONG THE NORTHERLY LINE OF COLUMBUS PARKWAY TO THE TRUE POINT OF BEGINNING; THENCE NORTHERLY AT RIGHT ANGLES TO THE NORTHERLY RIGHT-OF-WAY LINE OF COLUMBUS PARKWAY, 950 FEET; THENCE EASTERLY, 950 FEET; THENCE SOUTHERLY, 950 FEET TO THE NORTHERLY LINE OF COLUMBUS PARKWAY; THENCE WESTERLY 950 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

THAT PORTION OF THE HEREIN DESCRIBED PROPERTY AS DESCRIBED IN THE AMENDED FINAL JUDGEMENT IN CONDEMNATION PURSUANT TO STIPULATION SUPERIOR COURT CASE NO. 48484, RECORDED SEPTEMBER 7, 1970, IN BOOK 1643 OF OFFICIAL RECORDS, AT PAGE 112, AS INSTRUMENT NO. 16338.

PARCEL THREE:

THAT PORTION OF THE PARCEL OF LAND SHOWN AS 301.669 +/- ACRES LYING NORTH OF THE CENTERLINE ST. JOHN'S MINE ROAD IN BOOK 15 OF SURVEYS AT PAGE 18, SOLANO COUNTY RECORDS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF PARCEL A SHOWN AS "N.D.S DEV. CORP., BOOK 1796 O.R. PAGE 333 S.C.R." IN BOOK 15 OF SURVEYS AT PAGE 18, SOLANO COUNTY RECORDS; THENCE NORTH 57°28'48" WEST, 280.54

FEET; THENCE NORTH 88°25'41" WEST, 464.40 FEET; THENCE SOUTH 17°42'05" EAST, 224.00 FEET; THENCE SOUTH 12°02'48" WEST, 159.71 FEET; THENCE SOUTH 81 °42'05" EAST, 629.29 FEET; THENCE NORTH 8°17'55" EAST, 300.00 FEET TO THE POINT OF BEGINNING.

APN: 0182-020-010 (AFFECTS PARCEL ONE), 0182-020-020 (AFFECTS PARCEL TWO), 0182-020-080 (AFFECTS PARCEL THREE)

Enclosure 2

Finding of No Significant Impacts

**MITIGATED FINDING OF NO SIGNIFICANT IMPACT
FOR THE SCOTTS VALLEY BAND OF POMO INDIANS CASINO AND TRIBAL HOUSING
PROJECT**

The Scotts Valley Band of Pomo Indians (Tribe) submitted an application requesting that the Bureau of Indian Affairs (BIA) acquire a 160-acre property (Project Site) into federal trust for the benefit of the Tribe for the purposes of gaming, economic development and tribal housing (Proposed Action). Following the acquisition of the Project Site into federal trust, the Tribe proposes to develop a casino facility, Tribal housing, a Tribal administration building, and associated parking and infrastructure on the Project Site (Proposed Project). The Project Site is located in the City of Vallejo (City) in Solano County (County), California (State), and lies within Section 32, Township 4 North, Range 3 West and Section 5, Township 3 North, Range 3 West as depicted on the Mount Diablo Meridian U.S. Geological Survey (USGS) 7.5' quadrangle map.

Approval of the fee-to-trust gaming acquisition constitutes a federal action under the governing regulations for compliance with the National Environmental Policy Act (NEPA). The Proposed Action was analyzed within an Environmental Assessment, dated July 2024 that was released to the public on July 8, 2024, for an extended 45-day public comment period that ended on August 22, 2024. A virtual public hearing was held on July 23, 2024. The comments received during the public review period and hearing were responded to within a Final Environmental Assessment (Final EA) dated December 2024¹, prepared in accordance with NEPA, the Department of the Interior's Procedures for the Implementation of NEPA (43 CFR Part 46); the Council on Environmental Quality (CEQ) Guidelines for Implementing NEPA (40 CFR Parts 1500-1508)²; and the BIA NEPA guidebook (59 Indian Affairs Manual 3-H). Based on the analysis contained in the Final EA, the BIA makes a mitigated finding of no significant impact for the Proposed Action. This finding constitutes a determination that the Proposed Action is not a federal action that would result in significant adverse effects to the quality of the human environment with mitigation; therefore, additional environmental review and preparation of an Environmental Impact Statement (EIS) is not required.

BACKGROUND

The Tribe is a federally recognized landless tribe governed by its Constitution and a Tribal Council headquartered in two government offices it currently maintains in leased facilities in the City of Lakeport, Lake County and the City of Concord, Contra Costa County in California. The current membership spans across Alameda, Contra Costa, Lake, Mendocino, and Sonoma Counties, and consists of approximately 300 tribal members with 41% of the members under the age of 18 years. The Tribe has no reservation and no land held in trust or restricted status. Due to the lack of trust lands and tribally owned economic

¹ The December 2024 Final EA is hereby incorporated by reference as part of this mitigated finding of no significant impact. The Final EA is available for public review at <https://www.scottsvalleycasinoea.com/>

² The Department of the Interior (Department) is aware of the November 12, 2024 decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the Council on Environmental Quality (CEQ) regulations implementing NEPA are not judicially enforceable or binding on this agency action, the Department has nonetheless elected to follow those regulations at 40 C.F.R. Parts 1500– 1508, in addition to the Department's regulations implementing NEPA at 43 CFR Part 46, to meet the Department's obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

development, the Tribe relies on federal funding to support Tribal government functions and the needs of its members. However, federal funding is insufficient to meet Tribal member needs, and future funding of Indian programs are regularly endangered by budgetary considerations and constraints. The Tribe seeks to have the Project Site accepted in trust status to reestablish its homeland and establish a tribal government headquarters. The Project Site is at the southern end of land that the Tribe's ancestors ceded to the United States in an unratified treaty. It is centrally located between the primary Tribal population centers in Northern California. The Tribe has selected this property for the purpose of reuniting its citizens in one location and in an area that will provide substantial social, cultural, and economic opportunities to its members. Furthermore, the Proposed Project is intended to enable the Tribe to meet its needs for economic development, self-sufficiency, and self-governance; and will provide its membership with employment and educational opportunities and needed social and governmental services.

PURPOSE AND NEED FOR THE PROPOSED ACTION

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior's (Department) land acquisition policy as articulated in the Department's trust land regulations at 25 CFR Part 151, and the principal goal of IGRA as articulated in 25 USC § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 CFR § 151.10(h) and 151.12.

DESCRIPTION OF THE PROPOSED ACTION

The federal Proposed Action is the acquisition of the 160-acre Project Site into trust for the Tribe for gaming and tribal housing purposes. The statutory authority for acquiring this land into federal trust status on behalf of the Tribe is provided in the Indian Reorganization Act of 1934 (25 USC Parts 5108 and 5110), with regulations codified at 25 Code of Federal Regulations (CFR) Part 151. Pursuant to 25 CFR Part 151, the Assistant Secretary of Indian Affairs, who has delegated authority from the Secretary of the Interior, is charged with reviewing and approving Tribal applications to place land into federal trust status.

ALTERNATIVES CONSIDERED

The BIA considered four alternatives. A description of the alternatives is provided below. Of the alternatives, Alternative A is considered the Proposed Project that is the subject of this mitigated FONSI.

Alternative A – Proposed Project: Alternative A consists of the transfer of the Project Site into federal trust status for the benefit of the Tribe for gaming and tribal housing purposes and the subsequent development of the Project Site by the Tribe with a casino facility, Tribal housing, a Tribal administration building, and associated parking and infrastructure (refer to detailed description in the Final EA Section 2.1). Environmental impacts resulting from Alternative A would be reduced to less than significant levels with the inclusion of best management practices (BMPs) and mitigation measures. Among the alternatives, Alternative A would best meet the stated purpose to facilitate tribal self-sufficiency and self-determination as it would provide the greatest economic and workforce opportunities.

Alternative B – Reduced Intensity: Similar to Alternative A, Alternative B consists of the transfer of the Project Site into federal trust status for the benefit of the Tribe for gaming purposes and the subsequent

development of the Project Site by the Tribe with a casino facility; however, tribal housing and administration buildings are not proposed under Alternative B. Potential effects associated with most environmental issue areas would be less due to the reduced amount of development and the smaller project footprint; for example, more habitat would be preserved under Alternative B. However, this alternative would not assist in meeting the housing needs of the Tribe.

Alternative C - Alternative C consists of the transfer of the 160-acre Project Site into federal trust status for the benefit of the Tribe; and the subsequent development by the Tribe of a commercial center, two hotels, tribal housing, and tribal administration building. Potential effects associated with most environmental issue areas would be less due to the smaller sized development that would be constructed under Alternative C, however, economic benefits would be reduced.

Alternative D – No Action: Under Alternative C, the Project Site would not be placed in federal trust for the benefit of the Tribe, and no construction or economic development activities would occur on the Project Site. This alternative would not meet the stated purpose of facilitating economic development, tribal self-sufficiency, and self-determination.

Alternatives Eliminated from Further Analysis: Alternatives that were considered but not analyzed are discussed in the Final EA Appendix F.

ENVIRONMENTAL IMPACTS

The Final EA assessed the potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, public services and utilities, noise, hazardous materials and hazards, and visual resources were evaluated, with the following conclusions:

- Having considered potential land resources impacts during project design/planning, and with the implementation of BMPs incorporated into the project, impacts to land resources would be less than significant. See EA Sections 2.1.9 and 3.2.
- Having considered potential water resources impacts during project design/planning, and with the implementation of BMPs incorporated into the project, impacts to water resources would be less than significant. See EA Sections 2.1.9 and 3.3.
- Having considered potential air quality impacts during project design/planning, and with the implementation of BMPs incorporated into the project, there would be no significant adverse effects associated with the regional air quality environment. See EA Sections 2.1.9 and 3.4.
- Having considered potential biological resources impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, impacts to biological resources would be less than significant. See EA Sections 2.1.9, 3.5, and 4.0.
- Having considered potential cultural and paleontological resources impacts during project design/planning, and with the implementation of mitigation measures incorporated into the project, impacts to cultural and paleontological resources would be less than significant. See EA Sections

3.6 and 4.0.

- Having considered potential socioeconomic conditions and environmental justice impacts during project design/planning, and with the implementation of BMPs incorporated into the project, impacts to socioeconomic conditions and environmental justice would be less than significant. See EA Sections 2.1.9 and 3.6.
- Having considered potential transportation and circulation impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, impacts to transportation and circulation would be less than significant. See EA Sections 2.1.9, 3.8 and 4.0.
- Having considered potential land use conflicts during project design/planning, and with the implementation of visual resource BMPs incorporated into the project to manage lighting impacts, impacts regarding land use would be less than significant. See EA Sections 2.1.9 and 3.9.
- Having considered potential public services and utility impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, impacts to public services and utilities would be less than significant. See EA Sections 2.1.9, 3.10, and 4.0.
- Having considered potential noise impacts during project design/planning, and with the implementation of BMPs incorporated into the project, no significant impacts to the ambient noise environment would occur during construction or operation. See EA Sections 2.1.9 and 3.11.
- Having considered potential hazardous materials and hazards impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, hazardous materials and hazards impacts would not be significant. See EA Sections 2.1.9, 3.12, and 4.0.
- Having considered potential visual resource impacts during project design/planning, and with the implementation of BMPs incorporated into the project, no adverse effects to visual resources would occur. See EA Sections 2.1.9 and 3.13.
- BMPs and/or mitigation measures incorporated would ensure that cumulative impacts to land resources, water resources, air quality and climate change, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation/circulation, land use, public services, noise, hazardous material/hazards, and visual resources are not significant. There would be no significant growth-inducing or other indirect effects. See EA Section 3.14.

BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES

Best Management Practices

Protective measures and BMPs, including regulatory requirements and voluntary measures that would be implemented by the Tribe, have been incorporated into the design of the Alternative A to eliminate or substantially reduce environmental consequences and are listed below.

Land Resources

- Erosion control measures will be implemented during construction as described further under the Water Resources BMPs.
- A registered design professional will prepare a project-specific design-level geotechnical report conducted in accordance with standards in the CBC or IBC, whichever is more stringent. This will

include additional subsurface investigations beneath the proposed development areas and improvements, laboratory testing, engineering analysis, consultation with the design team, and reporting of conclusions and design-level recommendations for the development. A corrective grading plan will be developed along with the design-level geotechnical study to clarify geotechnical recommendations related to keyways, benches, cut/fill transition sub-excavation, and subdrains. The Tribe will adhere to the recommended measures within the report.

- The project-specific design-level geotechnical report will include at a minimum:
 - Additional mud-rotary borings with rock coring within the footprint of the proposed building locations to confirm depth of fill, colluvial/alluvial soil, and landslide deposits, and to collect samples for laboratory testing.
 - Additional test pits and/or trenches to further constrain geometry of existing landslides and confirm depth of fill and colluvial/alluvial soil.
 - Soil sample collection at depths relevant to foundation design.
 - Laboratory testing, including, but not limited to, moisture content, unit weight, gradation, Atterberg Limits, R-value, strength including remolded and residual strength, and corrosivity testing.
 - Design-level assessment of geologic and geotechnical hazards, including, but not limited to:
 - Characterization of subsurface conditions
 - Static and pseudo-static slope stability analysis of up to three critical cross sections
 - Recommendations for treatment of expansive soil
 - Preparation of a remedial grading plan.
 - Design recommendations for foundation system design.
 - Design recommendations for retaining wall design.
 - Foundation constructability recommendations.
 - Design-level earthwork and improvement design and construction recommendations.

Water Resources

- Coverage under the NPDES General Construction Permit shall be obtained from the USEPA for construction site runoff during the construction phase in compliance with the CWA.
- A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with General Construction Permit requirements. The SWPPP would include, but would not be limited to, the following BMPs to minimize storm water effects to water quality during construction:
 - Grading activities shall be limited to the immediate area required for construction.
 - Temporary erosion control measures (such as silt fences, fiber rolls, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed as needed for disturbed areas. Plastic monofilament or similar materials that could entangle wildlife shall not be used.
 - Construction activities shall be scheduled to minimize land disturbance during peak runoff periods to the extent feasible.

- Disturbed areas shall be paved, re-vegetated, and/or stabilized following construction activities.
- A spill prevention and countermeasure plan shall be developed that identifies proper storage, collection, and disposal measures for potential pollutants used on-site.
- Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 USC §§ 1251 to 1387).
- Construction materials shall be stored, covered, and isolated to prevent runoff loss and contamination of surface and groundwater.
- Fuel and vehicle maintenance areas shall be limited to the impact area.
- Sanitary facilities shall be provided for construction workers.
- To minimize dust generation during construction, soil will be wetted down with water prior to ground disturbance as needed.
- Generated waste shall be properly disposed of.
- To reduce water usage, low-flow toilets, faucets, and other water-using appliances shall be installed to the extent feasible.
- The Tribe will implement water saving measures during periods of restricted water supply availability consistent with those in the City's Water Shortage Contingency Plan.
- The stormwater system on the Project Site shall be designed according to City standards, including provisions of the Contra Costa Stormwater Guidebook.

Biological Resources

- Pets shall not be allowed on site during construction.
- Waste receptacles shall be made available within the Project Site and shall be properly maintained with regular trash removal. All trash and food items will be promptly contained within closed, wildlife-proof containers. These will be regularly removed from the Project Site to reduce the attractiveness of the area to ravens and other predators.
- Construction equipment shall be cleaned prior to use in the Project Site in order to prevent the spread of invasive or noxious species to the Project Site. When applicable, weed-free dirt, mulch, gravel, and other materials should be used.
- Open trenches shall be covered at the end of each workday or shall have ramps installed at regular intervals to prevent the entrapment of wildlife. In addition, the project proponent, its agents, or contractors shall cover or fill all potential pitfalls to wildlife or cavities in which wildlife may become trapped when not attended. These include pits, trenches, vats, buckets, pipes, etc.
- Equipment and materials that could provide refuge for wildlife shall be checked prior to use or movement to ensure wildlife are not present. If present, wildlife shall be allowed to vacate the area unharmed on their own. When not in use, materials such as pipes shall be inspected for wildlife and capped once confirmed vacant.
- Exterior lighting shall be downcast and shielded such that lighting and glare do not overspill the built environment.
- Uplighting, disruptive flashing lights, or materials that cause excessive glare shall not be used.

Socioeconomic Conditions and Environmental Justice

- The Tribe would obtain a license to serve alcohol from the State of California Department of Alcoholic Beverage Control. Casino patrons would be required to be 21 years of age or older in areas where alcohol is served, and a “Responsible Alcoholic Beverage Policy” would be adopted to include provisions related to identification verification and refusal of service to individuals who are visibly intoxicated.
- The Tribe will implement operation policies at the resort that will include, but are not limited to, employee training, self-help brochures available onsite, signage near automatic teller machines and cashiers, and self-banning procedures to help those who may be affected by problem gaming. The signage and brochures will include problem gambler hotlines and websites.
- The Tribe shall develop an anti-human trafficking program that will include training programs to help staff recognize potential victims of trafficking, including understanding the signs of trafficking and knowing how to report suspicious activity. The anti-trafficking program will also include an awareness program that will include visible signage and brochures to educate casino and hotel patrons on what constitutes human trafficking and how to report suspicious activity.

Air Quality

The following dust suppression measures will be implemented during construction to control the production of fugitive dust (particulate matter 10 microns in size [PM₁₀]) and prevent wind erosion of bare and stockpiled soils:

- Exposed soil will be sprayed with water or other suppressants twice a day or as needed to suppress dust.
- Non-toxic chemical or organic dust suppressants will be used on unpaved roads and traffic areas.
- Dust emissions during transport of fill material or soil will be minimized by wetting loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, cleaning the interior of cargo compartments on emptied haul trucks before leaving a site, and/or covering loads.
- Spills of transported fill material on public roads will be promptly cleaned.
- Traffic speeds on the Project Site will be restricted to 15 miles per hour (mph) to reduce soil disturbance.
- Wheel washers will be provided to remove soil that would otherwise be carried offsite by vehicles to decrease deposition of soil on area roadways.
- Dirt, gravel, and debris piles will be covered as needed to reduce dust and wind-blown debris.

The following measures will be implemented to reduce emissions of criteria air pollutants (CAP), greenhouse gases (GHG), and diesel particulate matter (DPM) from construction:

- The Tribe will control CAP and GHG emissions from the facility by requiring all diesel-powered equipment be properly maintained and limiting idling time to five minutes when construction equipment is not in use, unless per engine manufacturer’s specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines will be kept in good mechanical condition to minimize exhaust emissions. The Tribe will employ periodic and unscheduled inspections to accomplish the above measures.

- All construction equipment with a horsepower rating of greater than 50 will be equipped with diesel particulate filters, which would reduce approximately 85% of DPM, and be equipped with California Air Resources Board (CARB) rated Tier 4 Final engines.
- The use of low reactive organic gases (150 grams per liter or less) will be required for architectural coatings to the extent practicable.
- Environmentally preferable materials, including recycled materials, will be used to the extent readily available and economically practicable for construction of facilities.

The Tribe will reduce emissions of CAPs and GHGs during operation through the following actions:

- The Tribe will use clean fuel vehicles (i.e. electric, hybrid, hydrogen, or other fuels with reduced emissions) in the vehicle fleet where practicable, which would reduce CAPs and GHG emissions.
- The Tribe will provide preferential parking for employee vanpools, carpools, and or other rideshare vehicles, which would reduce CAPs and GHGs.
- Twenty percent of parking spaces will be constructed as electric vehicle (EV) capable spaces. Twenty-five percent of the EV capable spaces will be provided with EV supply equipment (i.e., chargers).
- The Tribe will use electric water heaters and space heating units in lieu of natural gas units. Electric cooktops and appliances will be used to the extent that they are commercially available.
- Shuttle service to and from select population centers will be provided to reduce CAPs and GHGs.
- Water consumption will be reduced through low-flow appliances, drought resistant landscaping, and the incorporation of “Save Water” signs near water faucets throughout the development.
- The Tribe will control CAPs, GHG, and DPM emissions during operation by requiring that all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use, unless per engine manufacturer’s specifications or for safety reasons more time is required.
- Landscape maintenance equipment (i.e., mowers, trimmers) used on the Project Site will be electric. No equipment with gasoline engines will be used.
- The Tribe will use energy efficient lighting and appliances to reduce energy usage, thus reducing indirect CAP and GHG emissions from the project.
- The Tribe will install recycling bins throughout the facility for glass, cans, and paper products. Trash and recycling receptacles will be placed strategically outside to encourage people to recycle. In addition, the Tribe will promote the use of non-polystyrene take-out containers and encourage food waste composting programs at all restaurants.
- The Tribe will discourage buses from idling for extended periods.
- Adequate ingress and egress at entrances will be provided to minimize vehicle idling and traffic congestion.
- High-Efficiency Particulate Air (HEPA) filters will be installed in all tribal residences to improve indoor air quality and reduce the effects of CAPs and DPM.
- The Tribe will implement a range of heat and cooling mitigation strategies, including the installation of shade screens, energy-efficient window glazing, and the planting of shade trees where feasible, to reduce the impacts of extreme heat.

If Option 2 for wastewater treatment is implemented, the following odor-reducing components and

designs will be incorporated into the design of the WWTP:

- Activated carbon filter/carbon adsorption.
- Biofiltration.
- Fine bubble aerator.
- Cover or enclose all anaerobic areas.
- Exhaust stack and vents will be positioned to limit odor exposure to sensitive receptors.

Public Services and Utilities

BMPs to be implemented during construction:

- The Tribe will contact the Utility Notification Center to notify the utility service providers of excavation at the work site. In response, the utility service providers will mark or stake the horizontal path of underground utilities, provide information about the utilities, and/or give clearance to dig.
- The site will be cleaned daily of trash and debris to the maximum extent practicable.

BMPs to be implemented during operation include:

- The Tribe will conduct background checks of all gaming employees and ensure that all employees meet licensure requirements established by the IGRA and the Tribe's Gaming Ordinance.
- Parking areas will be well lit and monitored by parking staff and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other similar criminal activities.
- Facilities will have "No Loitering" signs in place, be well lit, and be patrolled regularly by roving security guards.
- Security guards patrolling the facilities would carry two-way radios to request and respond to back up or emergency calls.
- Security cameras and tribal security personnel would provide surveillance of Project Site to both lessen and apprehend criminal activity onsite.

BMPs to be implemented during construction and operation:

- A solid waste management plan will be developed and adopted by the Tribe that addresses recycling and solid waste reduction and proper disposal onsite during construction and operation. These measures will include, but not be limited to, the installation of a trash compactor for cardboard and paper products, the installation of ample and visible trash and recycling bins to encourage proper disposal, and periodic waste stream audits.
- Organic wastes will be diverted and recycled to avoid unnecessary disposal to landfills and edible food will be recovered in accordance with State standards.

Visual Resources

- Lighting illumination levels will be designed to be consistent with the City of Vallejo zoning code, Section 16.506, Lighting and Glare
- Exterior lighting on buildings will be designed so as to not cast significant light or glare into the public right-of-way or any surrounding residentially zoned properties or natural areas.

- Lighting equipment at the project entrances will aim downward and backward toward the site to create only indirect illumination.
- No illumination would be directed towards the biological preserve area in the northeastern corner of the site, or the wetland area in the southern portion of the Project Site.
- No signage will be internally illuminated.
- Outdoor light fixtures will be fully or partially shielded and filtered and oriented downward when possible. Efforts shall be made to “capture” the light emitted upward with built or natural material.
- Exterior lighting will be designed in accordance with the International Dark-Sky Association’s Model Lighting Ordinance so as not to cast light or glare off site and will utilize a warm correlated color temperatures (3000K or less) for exterior lighting for reduced likelihood of blue wavelengths which stimulate the photoreceptors of humans and some wildlife. Lighting will consist of pole-mounted lights up to a maximum height of 16 feet and use high pressure sodium or light-emitting diodes (LEDs) with cut-off lenses and downcast illumination unless an alternative light configuration is needed for security or emergency purposes. Additionally, no strobe lights, spotlights, or flood lights will be used.
- Less reflective materials will be used in uncovered areas to reduce reflected light and glare. Structures will be constructed with low-sheen and non-reflective surface materials to reduce potential for glare. Unpainted metal surfaces will not be permitted.
- At a minimum, finishes will be matte and roughened and concrete will be painted or will use concrete colored integrally with a shade that is two to three shades darker than the general surrounding area. Paints will be of a dull, flat, or satin finish only to reduce potential for glare, and the use of glossy paints for surfaces will be avoided.

Noise

The following BMPs will be implemented during construction:

- Construction activities involving noise generating equipment will be limited to daytime hours between 7:00 a.m. and 7:00 p.m.
- All construction equipment powered by internal combustion engines will be properly muffled and maintained.
- Quiet construction equipment, particularly air compressors, will be selected whenever possible.
- All stationary noise-generating construction equipment such as generators or air compressors will be located as far as is practical from existing residences. In addition, the project contractor will place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the Project Site.
- Unnecessary idling of internal combustion engines will be prohibited.
- The construction contractor will locate on-site equipment staging areas to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the Project Site during all project construction.

The following BMPs will be implemented during operation:

- Heating, ventilation, and air conditioning equipment will be shielded to reduce noise.
- Under Wastewater Treatment Option 2, noise generating equipment associated with wastewater treatment facilities will be shielded, enclosed, or located within buildings.

Hazardous Materials and Hazards

To reduce asbestos dust generation the following BMPs are recommended as specified in Asbestos Airborne Toxic Control Measures (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations:

- Track-out prevention and control measures:
 - Removal of any visible track-out from a paved public road at any location where vehicles exit the construction site via wet sweeping or a HEPA filter-equipped vacuum device at the end of the workday or at least once per day.
 - Installation of one or more of the following track-out prevention measures:
 - A gravel pad designed using good engineering practices to clean the tires of exiting vehicles;
 - A tire shaker;
 - A wheel wash system; or
 - Pavement extending for not less than 50 consecutive feet from the intersection with the paved public road.
- Active storage piles will be adequately wetted or covered with tarps.
- Control for disturbed surface areas and storage piles that will remain inactive for more than seven (7) days shall have one or more of the following done:
 - Keep the surface adequately wetted;
 - Establishment and maintenance of surface crusting that is sufficient to satisfy the test in subsection (h)(6) of the Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations;
 - Application of chemical dust suppressants or chemical stabilizers according to the manufacturer's recommendations;
 - Covering with tarp(s) or vegetative cover;
 - Installation of wind barriers of 50% porosity around three sides of a storage pile; or
 - Installation of wind barriers across open areas.
- Control for traffic on on-site unpaved roads, parking lots, and staging areas shall include the following:
 - A maximum vehicle speed limit of 15 mph or less; and
 - One or more of the following:
 - Watering every two hours of active operations or sufficiently often to keep the area adequately wetted;
 - Applying chemical dust suppressants consistent with the manufacturer's directions; or
 - Maintaining a gravel cover with a silt content that is less than 5% and asbestos content that is less than 0.25%, as determined using an approved asbestos bulk test method, to a depth of 3 inches on the surface being used for travel.
- Control for earthmoving activities shall include one or more of the following:
 - Pre-wetting the ground to the depth of anticipated cuts;

- Suspending grading operations when wind speeds are high enough to result in dust emissions crossing the project boundary despite the application of dust mitigation measures; or
- Application of water before any land clearing.
- No trucks shall be allowed to transport excavated material offsite until the following are performed:
 - Trucks are maintained such that no spillage can occur from holes or other openings in cargo compartments; and
 - Loads are adequately wetted and either:
 - Covered with tarps; or
 - Loaded such that the material does not touch the front, back, or sides of the cargo compartment at any point less than 6 inches from the top and that no point of the load extends above the top of the cargo compartment.
- Upon completion of the Alternative A, disturbed surfaces shall be stabilized using one or more of the following methods:
 - Establishment of a vegetative cover;
 - Placement of at least 3 inches of non-asbestos-containing material;
 - Paving;
 - Any other measure sufficient to prevent wind speeds of 10 mph or greater from causing visible dust emissions.
- Personnel will follow BMPs for filling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving hazardous materials include the following.
 - Fuel, oil, and hydraulic fluids will be transferred directly from a service truck to construction equipment to reduce the potential for accidental release.
 - Catch-pans will be placed under equipment to catch potential spills during servicing.
 - Refueling will be conducted only with U.S. Department of Labor Occupational Safety and Health Administration (OSHA) approved pumps, hoses, and nozzles.
 - All disconnected hoses will be placed in containers to collect residual fuel from the hose.
 - Vehicle engines will be shut down during refueling.
 - Refueling will be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
 - Service trucks will be provided spill containment equipment, such as absorbents.
 - Should a spill contaminate soil, the soil will be put into containers and disposed of in accordance with local, State, and federal regulations.
 - All containers used to store hazardous materials will be inspected at least once per week for signs of leaking or failure.
- In the event that contaminated soil and/or groundwater is encountered during construction-related earthmoving activities, all work will be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe will consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Contaminated soils that are determined to be hazardous will be disposed of in accordance with federal regulations.

Personnel will follow the following BMPs that are designed to reduce the potential for igniting a fire during construction:

- Construction equipment will contain spark arrestors, as provided by the manufacturer.
- Staging areas, welding areas, or areas slated for development using spark-producing equipment will be cleared of dried vegetation or other materials that could serve as fire fuel.
- No smoking, open flames, or welding will be allowed in refueling or service areas.
- Service trucks will be provided with fire extinguishers.
- Diesel fuel storage tanks for on-site emergency generators would comply with the National Fire Protection Association standards for aboveground storage tanks and have secondary containments systems. Materials used for the emergency generators would be handled, stored, and disposed of according to federal and manufacturer's guidelines.

BMPs to be implemented during operation to address fire hazards:

- Annual maintenance will be conducted to ensure fire resistive materials and construction details are maintained at their highest level to reduce ember impacts.
- Fire protection devices including, but not limited to, fire sprinkler systems, alarm systems, commercial kitchens, and fire hydrants will be maintained, inspected, and tested per National Fire Protection Association standards.

Transportation and Circulation

- A Traffic Control Plan / Construction Traffic Management Plan shall be prepared parallel to address potential impacts related to demolition and construction activities. The plan shall include the following:
 - Truck drivers shall be notified of and required to use the most direct routes.
 - Site ingress and egress will occur only at the main driveways to the Project Site and construction activities may require installation of temporary traffic signals.
 - Designated travel routes for large vehicles will be monitored and controlled by flaggers for large construction vehicle ingress and egress;
 - Warning signs indicating frequent truck entry and exit will be posted on Columbus Parkway.
 - Debris and mud on nearby streets caused by trucks will be monitored daily and may require instituting a street cleaning program.
 - Provide for vehicle parking spaces during peak construction period for construction employees to ensure a safe flow of traffic.
 - A Traffic Control Plan will be implemented for major special events at the theater.

Mitigation Measures

The EA identifies the following mitigation measures for the Proposed Project³ to reduce potentially significant impacts to a less-than-significant level. The Tribe would exercise governmental jurisdiction over the Project Site once acquired into trust and will have the authority to enforce the mitigation measures

³ Note that mitigation measures not applicable to the Proposed Project/Alternative A are not listed below. Thus certain measure "letters" have not been included.

outlined below. The Tribe has committed to the implementation of these mitigation measures as a matter of tribal law (Final EA Appendix P). In accordance with 40 CFR 1501.6(d), a mitigation monitoring and compliance plan is provided in **Attachment 1**.

Biological Resources

The following measures shall be implemented to minimize or avoid impacts to waters of the U.S.:

- A. Potential waters of the U.S. shall be avoided to the extent feasible. Prior to construction within 200 feet of an aquatic resource, a qualified biologist shall demarcate or monitor the demarcation of the limits of unimpacted aquatic resources with pin flagging, construction fencing, or similar. No activity shall occur within the demarcated boundary, and the boundary shall remain in place throughout all construction activities within 200 feet of the demarcated feature. Where roadways cross waters of the U.S., such designs shall be through free-spanning or similar methods where possible. Impacts to the point of origin of the springs specifically shall be fully avoided. During construction, roadway crossings shall be limited to the minimum number of crossings within the development footprint necessary to provide equipment access. Such crossings shall only occur over bridges, wetland mats, or similar features designed in consultation with a qualified biologist to avoid impacts to aquatic resources from equipment crossings.
- B. If impacts to waters of the U.S. and wetland habitat are unavoidable, a 404 permit and 401 Certification under the CWA shall be obtained from the USACE and USEPA. Mitigation for loss of waters of the U.S. shall occur at a minimum 1:1 ratio through habitat creation, restoration, or purchase of USACE-approved credits. This may occur along the alignment of the re-routed drainage or within bioretention areas. All permit terms and conditions shall be adhered to.

The following measures shall be implemented to avoid construction-phase take of northwestern pond turtle and CRLF:

- C. To ensure that CRLF and northwestern pond turtle are not present in construction areas, a qualified biologist shall conduct pre-construction clearance surveys. A qualified biologist is defined as a person who has the educational background, training, and work experience (handling experience and/or permits) required to perform a specific biological task and has been approved by the USFWS. If either of these species are discovered during the survey, project construction activities shall not begin until the species have voluntarily vacated the construction area or USFWS has been consulted and avoidance and minimization measures established and then implemented.
- D. As CRLF is not detectable during aestivation, the pre-construction survey shall occur during the wet season, after fall rains have commenced and before the conclusion of spring rains. Once the pre-construction surveys confirm that CRLF and northwestern pond turtle are not present, the construction crew shall immediately install animal exclusion fencing to separate construction areas from marshes and channels proposed for avoidance. The fencing shall be constructed out of plastic weed cloth or construction fabric, shall be keyed into the ground, and shall be supported by stakes and wire mesh, as needed. Fencing shall also be opaque, a minimum of three feet in height, and installed with a smooth material such that it cannot be climbed. A qualified biologist shall oversee the installation of the exclusionary fencing to ensure its suitability. A qualified biologist shall also make regular inspections during the preconstruction period and during the construction periods

when grading and other ground disturbance activities are occurring to ensure the integrity of the fence.

- E. All construction personnel shall receive worker environmental awareness training before they enter the construction site. The training program shall include, at a minimum, descriptions of the focal species (Callippe silverspot and monarch butterflies, CRLF, and northwestern pond turtle), and how to identify and avoid these focal species. Personnel shall be trained to halt work in the event that one of these focal species is observed within the work area and allow the individual to leave the work site on their own. Personnel shall be instructed to limit work activities to the designated construction areas and to properly store equipment and materials in the designated laydown area. A qualified biologist shall make regular inspections during the construction periods when grading and other ground disturbance activities are occurring to ensure BMPs are being adequately followed.

The following measures shall be implemented to minimize impacts to CRLF and northwestern pond turtle, including impacts related to dispersal access:

- F. The development shall be designed such that culverts, free-span bridges, or similar will be installed where roadways cross drainages occur. Road crossings of drainages shall be designed such that CRLF and northwestern pond turtle can freely pass underneath proposed roadways. Additionally, a permanent barrier such as a curb shall be installed around the perimeter of paved areas, with the exception of points of access, to discourage CRLF and northwestern pond turtle from entering the built environment. Designs of the barrier shall be submitted to USFWS for coordination and approval.

The following measure shall be implemented to provide compensatory mitigation for loss of CRLF non-breeding aquatic habitat:

- G. Mitigation for impacted CRLF aestivation and terrestrial dispersal habitat shall be achieved through the biological preserve and through the purchase of mitigation credits as required by the USFWS Biological Opinion and summarized below.

Onsite Biological Preserve. Preservation of CRLF nonbreeding aquatic habitat within the biological preserve area shall mitigate for impacts to CRLF non-breeding aquatic habitat at a 3:1 ratio. Preservation of CRLF upland dispersal habitat shall be offset through the preservation of upland dispersal habitat within the biological preserve area at a 3:1 ratio. This area shall be protected via Tribal ordinance and a Memorandum of Understanding with the Service and the BIA. Funds shall be set aside for management of the preserve, and a long-term management plan shall be adopted by the Tribe in consultation with, and approved by, the Service and BIA. The Memorandum of Understanding shall be agreed upon by the Tribe, the Service, and BIA prior to construction. A total of 0.3 acre of non-breeding aquatic habitat and 48.8 acres of upland dispersal habitat for the California red-legged frog will be preserved onsite within the biological preserve. Signage shall be posted around the biological preserve to identify the preserve extent and warn the public against trespass.

Conservation Bank (Purchase of mitigation credits). Mitigation for the balance of the impacted non-breeding CRLF aquatic habitat shall be achieved through the purchase of CRLF credits from a Service-approved conservation bank at a 6:1 ratio. Mitigation for the balance of the

impacted CRLF upland dispersal habitat shall be achieved through the purchase of CRLF credits from a Service-approved conservation bank at a 3:1 ratio. A total of 132.4 acres of CRLF credits will be purchased from a bank that contains suitable habitat for the CRLF, such as: North Bay Highlands Conservation Bank in Marin County, Ohlone West Conservation Bank in Alameda County, Oursan Ridge Conservation Bank in Contra Costa County, or Ridge Top Ranch Wildlife Conservation Bank in Solano County. The selected bank must be approved by the Service to sell CRLF credits and must include the action area within the service area. Credits shall be purchased prior to construction. Joint species credits may be purchased to satisfy this mitigation.

The following measure shall be implemented to provide compensatory mitigation for loss of Callippe silverspot habitat and to reduce impacts associated with the potential for take of this species.

- H. Mitigation shall be achieved through the biological preserve and through the purchase of mitigation credits as required by the USFWS Biological Opinion and summarized below.

Onsite Biological Preserve. Impacts to callippe silverspot butterfly host plant habitat shall be offset by preservation of host plant habitat within the biological preserve area at a 3:1 ratio. Impacts to nectar resource habitat shall be mitigated through a combination of the biological preserve area and purchase of callippe silverspot butterfly credits from a Service-approved conservation bank. Impacts to nectar resource habitat offset through the biological preserve shall occur at a 3:1 ratio for in-kind preservation of nectar resource habitat, or at a 2:1 ratio for preservation of host plant habitat. The 49.1-acre biological preserve area shall be protected via Tribal ordinance and a Memorandum of Understanding with the Service and BIA.

The 49.1-acre biological preserve area will preserve and manage 34.8 acres of callippe silverspot butterfly host plant habitat and 14.3 acres of nectar only habitat. Therefore, 9.0 acres of host plant habitat within the biological preserve area will meet the recommended 3:1 ratio for the Proposed Project's effects to host plant habitat. The remaining 25.8 acres of host plant habitat within the biological preserve area will be counted towards lost nectar resource habitat. There would be a mitigation deficit for impacts to nectar resource habitat which will be mitigated through a conservation bank as described below.

Conservation Bank (Purchase of mitigation credits). Mitigation for the balance of the impacted callippe silverspot butterfly nectar resource habitat not offset through the biological preserve area (38.8 acres) shall be achieved through purchase of 116.4 acres of callippe silverspot butterfly mitigation credits at a Service-approved conservation bank such as Ridge Top Ranch Wildlife Conservation Bank in Solano County. Mitigation achieved through this method will be at a 3:1 ratio (refer to Table 2 of the Biological Opinion). The selected bank must be approved by the USFWS to sell callippe silverspot butterfly credits and must include the project site within the service area. Credits shall be purchased prior to construction. Joint species credits may be purchased to satisfy this mitigation.

The following measures shall be implemented to minimize or avoid operational impacts to Callippe silverspot and Monarch butterflies as required by the USFWS Biological Opinion and summarized below:

- I. Use of insecticides shall be prohibited; use of herbicides shall follow USFWS-approved BMPs.
- J. The development shall utilize only native species in landscaping, erosion control, and habitat

restoration.

- K. The Tribe shall time vegetation management activities (such as trimming, mowing, and brush-clearing) to between August 15 -April 30 when the callippe silverspot butterfly is not in flight.
- L. In the appropriate botanical identification window prior to impacts (generally the February-April host plant blooming period but to be verified by a qualified biologist at a reference site where the host plant is known to occur), a qualified biologist shall survey the action area for California golden violet. A qualified biologist is defined as a person who has the educational background, training, and work experience (handling experience and/or permits) required to perform a specific biological task and have been approved by the USFWS. The qualified biologist shall demarcate a 25-foot buffer around host plants. To the maximum extent feasible, the 25-foot buffer shall be maintained around all host plants outside of the project footprint.
- M. The development shall use only native, locally sourced, insecticide-free plants for habitat restoration and enhancement actions. If plants are grown via contract grow specifications that limit pesticide residues shall be used.
- N. Monarchs, callippe silverspot butterflies, other pollinators, and their habitats shall be protected from pesticides, including insecticides, fungicides, and herbicides. The Tribe shall avoid applying herbicides to blooming flowers between October 1 – August 15; this avoids the time period when monarch butterflies are likely around (October 1 – April 30) and when callippe silverspot butterflies are in flight (May 1 - August 15).
- O. To assist in maintaining normal migration behavior, milkweed shall not be planted.
- P. Landscaping activities shall maximize use of non-chemical weed and pest prevention.
- Q. Landscaping plans shall select a mosaic plant palate of native species that bloom throughout the year.

In addition to those described above, the following terms and conditions of the USFWS Biological Opinion shall be adhered to:

- R. Monitoring:
 - a. For those components of the action that will result in habitat degradation or modification whereby incidental take in the form of harm is anticipated, the Tribe shall provide a precise accounting of the total acreage of habitat impacted to the USFWS after completion of construction.
 - b. The Tribe shall immediately contact the USFWS's Sacramento Fish and Wildlife Office (SFWO) at (916) 414-6623 to report direct encounters between listed species and project workers and their equipment whereby incidental take in the form of, harm, injury, or death occurs. If the encounter occurs after normal working hours, the Tribe shall contact the SFWO at the earliest possible opportunity the next working day. When injured or killed individuals of the listed species are found, the Tribe shall follow the steps outlined in the Salvage and Disposition of Individuals section below.
 - c. For those components of the action that will require the capture and relocation of any listed species, the Tribe shall immediately contact the SFWO at (916) 414-6623 to report the action. If capture and relocation need to occur after normal working hours, the Tribe shall contact the

SFWO at the earliest possible opportunity the next working day.

- d. The Tribe shall submit to SFWO a post-project completion report.
 - e. The Tribe shall submit to SFWO every year annual reports on habitat management activities and callippe silverspot butterfly and California red-legged frog monitoring at the biological preserve.
 - f. All sightings of listed species shall be submitted to CDFW's CNDDDB.
- S. Salvage and Disposition of Individuals: Injured listed species must be cared for by a licensed veterinarian or other qualified person(s), such as the Service-approved biologist. Dead individuals must be sealed in a resealable plastic bag containing a paper with the date and time when the animal was found, the location where it was found, and the name of the person who found it, and the bag containing the specimen frozen in a freezer located in a secure site, until instructions are received from the Service regarding the disposition of the dead specimen.

The following measures shall be implemented to avoid impacts to nesting birds:

- T. If construction activities commence during the general nesting season (February 1 to August 31), a preconstruction nest survey shall be conducted by a qualified biologist on and within 100 feet of proposed construction, as accessible within 7 days of initiating ground disturbance. If active nests are identified, the qualified biologist shall determine a suitable avoidance buffer based on the needs of the species observed.
- U. Avoidance measures include establishment of a buffer zone using construction fencing or similar, or the postponement of construction until after the nesting season, or until after a qualified biologist has determined the nest is no longer active. Avoidance buffers may vary in size depending on habitat characteristics, project-related activities, and disturbance levels.
- V. Should work activity cease for 14 days or more during the nesting season, surveys shall be repeated to ensure birds have not established nests during inactivity.

Cultural Resources

The following measures shall be implemented to avoid or reduce potential impacts to previously unknown and unanticipated archaeological and historical resources that may exist on the Project Site:

- A. Ground-disturbing activities shall be monitored by a qualified archaeologist and Native American Tribal Monitor, particularly any activities that occur within 150 feet of the non-eligible prehistoric chert outcrop component of CA-SOL-275 (refer to Appendix I-4 for location). An archaeological monitoring program shall be established that includes consultation between the consulting archaeologist, BIA, and the project proponent. The program shall clearly define a monitoring schedule (e.g., continuous monitoring of project activity across the site or daily/weekly spot monitoring of project activity); the need, if any, for monitoring in areas consisting of fill material; the need, if any, for monitoring at the location of deep excavations (e.g., beyond a depth of ten feet); the authority to temporarily halt/redirect construction should resources be encountered; and the protocols (e.g., stopping work and individuals to contact) monitors and/or construction personnel should implement in case of an inadvertent discovery of cultural resources regarding the discovery. The monitoring program shall be prepared by a qualified archaeologist and approved by

BIA prior to project construction activities.

- B. In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA. All such finds shall be subject to Section 106 of the NHPA as amended (36 CFR Part 800); specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b) shall be followed. Consistent with 36 CFR § 800.13(b)(3), any Indian tribe that might attach religious and cultural significance to the affected property, the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) will be notified within 48 hours of the discovery. The notification shall describe the assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The Indian tribe(s), SHPO, and the ACHP shall be given 48 hours to respond to the notification. The BIA shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The BIA shall provide the Indian tribe(s), SHPO, and the ACHP a report of the actions when they are completed.
- C. If human remains are discovered during ground-disturbing activities on the Project Site, work within 50 feet of the find shall halt immediately consistent with 43 CFR Part 10.5(b)(1) and the BIA shall be notified. Construction activities may continue in other areas but may not resume within 50 feet of the find until a plan for avoidance, removal or other disposition of the remains has been developed and implemented. If the remains are determined to be of Native American origin, the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands shall apply. Consistent with NAGPRA requirements, 1) reasonable effort shall be made to secure and protect the human remains, including, as appropriate, stabilizing or covering the human remains (43 CFR Part 10.5(a)(2)); 2) the BIA shall consult with any Indian Tribe with potential cultural affiliation to discuss the recovery and treatment of the remains (43 CFR Part 10.4(b)); 3) no later than 30 days after the remains are determined to be of Native American origin, a written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR Part 10.5(d)(1) and 43 CFR Part 10.4); and 4) the disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR Part 10.6. If human remains are encountered during off-site improvements construction, work within 100 feet of the find shall halt immediately and the stipulations of the California Health and Safety Code Section 7050.5 shall be implemented. The California Health and Safety Code Section 7050.5 requires that the County Coroner be notified if human remains are discovered. In addition, the designated BIA representative for the project should be immediately contacted regarding the discovery. If the County Coroner determines that the remains are of Native American origin, the Coroner must, in accordance with PRC Section 5097, notify the Native American Heritage Commission (NAHC) within 24 hours of the identification. In turn, the NAHC will identify a Most Likely Descendent, who will work with the Tribe, BIA, and the construction contractor to develop a plan for avoidance, removal or other disposition of the remains.

Transportation and Circulation

While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make good faith efforts to assist with implementation of the following mitigation prior to construction of the casino building or prior to 2045, as applicable. The Tribe shall construct or fully fund (except as otherwise noted) the following improvements. Funding shall be for design standards consistent with those required for similar facilities in the region. The following measures shall be implemented to reduce traffic impacts:

Prior to initiating construction of the casino building (i.e. not required for initial site preparation, construction of contractor staging and parking, and internal roadway construction):

- A. For intersection 1) Columbus Parkway (also known as Auto Mall Parkway) & Admiral Callaghan Lane and the Project Site entrance – Widen Columbus Parkway to provide for a dual eastbound and westbound left turn movements and provide a right turn overlap phase (i.e., a green arrow for southbound traffic turning right out of the Project Site towards I-80).

Opening Year 2028:

- B. For intersection 17) SR 37 Eastbound Ramp at the I-80 Westbound Ramp - Construct a concrete barrier/K-rail to separate the two off-ramp movements for an adequate distance to maintain safety without the need for a stop sign. The barrier may need to be extended by up to 200 feet beyond the ramp merge, depending on Caltrans' final design. This would allow for removal of the stop sign for the I-80 westbound off-ramp approach, which would essentially change it from an intersection to a ramp merge and eliminate the current LOS F operations. Based on Caltrans' method for calculating equitable mitigation measures, the Proposed Project's proportional share of this mitigation is estimated to be 42%.

Cumulative Year 2045:

- D. Pay the Solano County Regional Transportation Impact Fee consistent with fees for other commercial development projects in the City prior to operation of the project. The fees collected are transferred to Solano County and the funds are managed by the Solano Transportation Authority. These fees are used to fund regional capital transit and roadway improvement projects, including ramp improvements to the Redwood Parkway/I-80 interchange for both for eastbound and westbound directions.

Hazards

The following measures shall be implemented for all alternatives:

- A. Prior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan that includes, but is not limited to, the following procedures and BMPs:
 - The evacuation plan shall complement the County of Solano's EOP, Community Wildfire Protection Plan, MJHMP, supporting documents, and the standard operating procedures of fire, law, and emergency management agencies of the County and City.
 - Designated staff shall coordinate evacuation procedures with the lead agency for evacuations and other participating agencies during an evacuation event.
 - Staff shall post critical emergency evacuation information (e.g., Red Flag Warnings and

Fire Weather Watches) and handouts shall be made available to all visitors, guests, and staff. Staff shall incorporate the latest technology available, such as QR codes that contain links to web sites for mobile devices, or better technology as it evolves.

- Using the emergency evacuation information provided, guests shall be encouraged to make themselves familiar with available routes, stay informed and connected to all available emergency alert tools, and follow directions provided by staff, law enforcement, fire agencies, news media, and other credible sources.
- Staff and guests shall be provided with information on the local AM and FM radio stations to monitor for disaster information and all emergency alert tools like Emergency Alert System (EAS), Alert Solano, and Nixle.
- Guests, through the emergency evacuation information, shall also be advised to not rely just on navigation apps that may inadvertently lead them toward an approaching wildfire, flooding, hazardous materials, or other hazards.
- Staff shall be trained in how to connect to the available emergency alert notification tools such as EAS, Alert Solano, and Nixle. Staff shall monitor those services while at the facility.
- Designated staff shall be provided with Community Emergency Response Training. This training provides information on how to be prepared for disasters and emergencies and reorganize life-threatening conditions and apply life-saving techniques.
- A public address system shall be installed inside all occupied public buildings so that emergency notifications can be provided by staff to visitors and guests. Additionally, designated staff shall be issued handheld portable radios for communication during an emergency.
- Guests without cars or those who are uncomfortable driving themselves in an emergency shall be offered off-site transportation by staff in a casino vehicle, ride share, public transportation, and/or on-site shuttles. These options shall be directed to pre-established County Emergency Management approved community shelters.

B. Management and staff at the casino shall be trained on evacuation procedures for visitors as part of their new hire orientation and receive updated evacuation procedures training annually.

C. The Tribe shall coordinate with Solano County and the City of Vallejo on their respective EOPs and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. These measures could include, but would not be limited to:

- Installation of a wildfire detection camera within the Project Site and/or vicinity that would expand the coverage of the wildfire camera system. The wildfire camera(s) would be connected to the existing early detection system and be accessible to emergency officials.
- Installation of variable message signs for the outbound lanes at the project egress point. The variable message signs shall be connected to on-site staff and the County Emergency Operations Center so that evacuation-related messages can be controlled by fire personnel managing the evacuation.

PUBLIC AVAILABILITY AND RESPONSE TO EA COMMENTS

The Notice of Availability (NOA) for the July 2024 EA was submitted to the State Clearinghouse (SCH# 2024070295), published in local newspapers (The Times Herald and The Daily Republic), mailed and emailed to interested parties, and posted on the project website (<https://www.scottsvillecasinoea.com>). The EA was originally made available for public comment for a 30-day period, from July 8, 2024 to August 7, 2024. However, the BIA extended the public comment period for an additional 15-day period that concluded on August 22, 2024, resulting in a total comment period of 45 days. A virtual public hearing was held on July 23, 2024, that included an overview of the NEPA process, description of Proposed Action and Alternatives, summary of the contents of the EA, and an opportunity for the public to submit verbal comments on the EA.

During the comment period for the EA, the BIA received approximately 82 comment letters (including written letters and e-mails). There were 29 speakers who submitted comments during the public hearing. Copies of all of the comment letters received during the comment period and a transcript of the public hearing comments, as well as responses to substantive comments, are included in the Final EA Appendix O.

DETERMINATION

Based on consideration of the analysis contained in the December 2024 Final EA, comments received on the EA, and the entire administrative record, it is determined that by approval of the Proposed Action and the environmental mitigation measures specified above, the Proposed Project will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of NEPA, as amended, additional environmental review or an EIS will not be required. This determination is supported by the following findings:

1. Agency and public involvement was conducted and environmental issues related to construction and operation of the Proposed Project were identified. The EA discloses the environmental consequences of the Proposed Action. BMPs and mitigation measures were developed to address potential environmental effects.
2. Protective measures will be implemented to safeguard land resources, water resources, biological resources, air quality, and visual resources; minimize noise; address socioeconomic conditions; prevent the release of hazardous materials, reduce the demand on public services and utilities, and reduce impacts to transportation and circulation as outlined in the EA.
3. Mitigation measures described in Section 4 of the EA will be implemented to reduce impacts associated with biological resources, cultural resources, public services and utilities, transportation and circulation, and wildfire hazards.
4. With the incorporation of protective measures and mitigation measures, the Proposed Action will not jeopardize threatened or endangered species under the Federal Endangered Species Act as determined in the Biological Assessment (Final EA Appendix H-1), and the Biological Opinion issued by the U.S. Fish and Wildlife Service (USFWS) (Final EA Appendix H-5).

5. No known historic properties have been identified within the Project Site; any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470, the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq., and the Archaeological Resources Protection Act, 16 U.S.C. § 470aa-mm. Procedures for review of discoveries shall be followed pursuant to 36 C.F.R. § 800.13. Adherence to applicable laws and the BMPs incorporated into the project will ensure that no adverse effects to previously unknown cultural resources will occur.

6. The Proposed Action would improve the economic and social conditions of the affected tribal community and would also promote tribal self-sufficiency and self-determination.



Wizipan Garriott
Principal Deputy Assistant Secretary – Indian Affairs
Exercising by delegation the Authority of the
Assistant Secretary – Indian Affairs
U.S. Department of the Interior

1-10-25
Date

Attachments:

Attachment 1: Mitigation Monitoring and Compliance Plan

Attachment 1
Mitigation and Monitoring Plan

Scotts Valley Band of Pomo Indians Casino and Tribal Housing Fee-to-Trust Project Mitigation Monitoring and Compliance Plan

The purpose of this Mitigation Monitoring and Compliance Plan (MMCP) is to guide compliance and implementation of mitigation measures associated with the Scotts Valley Band of Pomo Indians (Tribe) Casino and Tribal Housing Fee-To-Trust Project (Project). The mitigation measures listed in **Table 1** were identified within the Final Environmental Assessment (EA) dated December 2024 and the Mitigated Finding of No Significant Impact (FONSI). This MMCP has been prepared consistent with the requirements of 40 CFR § 1501.6(d) and 1505.3 (c) and includes descriptions of the following:

- The mitigation measures identified within the EA;
- The parties responsible for monitoring and implementing the mitigation measures;
- The anticipated timeframe for implementing and completing the mitigation measures; and
- Compliance standards and entities responsible for the enforcement of the mitigation measures.

Mitigation measures detailed in **Table 1** were included in Section 4 of the EA and will be implemented to reduce potentially significant impacts to biological resources, cultural resources, public services and utilities, transportation and circulation, and hazardous materials and hazards-wildfires. The Tribe will be the primary agency responsible for funding, monitoring, and/or implementing the mitigation measures, and has committed to the implementation of the mitigation measures as matter of tribal law (see Scotts Valley Tribal Resolution included in Final EA Appendix P). Implementation of the mitigation measures will occur either during the planning phase, prior to beginning construction-related activities (pre-construction), during construction, or during operation. Where applicable, the mitigation measures will be monitored and enforced pursuant to federal law and agreements between the Tribe and appropriate governmental authorities. Non-compliance could result in the suspension of construction and/or regulatory fines.

Table 1: Mitigation Monitoring and Compliance

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
Biological Resources				
Waters of the U.S.				
<ul style="list-style-type: none"> ▪ Potential waters of the U.S. shall be avoided to the extent feasible. Prior to construction within 200 feet of an aquatic resource, a qualified biologist shall demarcate or monitor the demarcation of the limits of unimpacted aquatic resources with pin flagging, construction fencing, or similar. No activity shall occur within the demarcated boundary, and the boundary shall remain in place throughout all construction activities within 200 feet of the demarcated feature. Where roadways cross waters of the U.S., such designs shall be through free-spanning or similar methods where possible. Impacts to the point of origin of the springs specifically shall be fully avoided. During construction, roadway crossings shall be limited to the minimum number of crossings within the development footprint necessary to provide equipment access. Such crossings shall only occur over bridges, wetland mats, or similar features designed in consultation with a qualified biologist to avoid impacts to aquatic resources from equipment crossings. ▪ If impacts to waters of the U.S. and wetland habitat are unavoidable, a 404 permit and 401 Certification under the CWA shall be obtained from the USACE and USEPA. Mitigation for loss of waters of the U.S. shall occur at a minimum 1:1 ratio through habitat creation, restoration, or purchase of USACE-approved credits. This may occur along the alignment of the re-routed drainage or within bioretention areas. All permit terms and conditions shall be adhered to. 	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ U.S. Army Corp of Engineers, U.S. Environmental Protection Agency, Tribe ▪ Clean Water Act Sections 401 and 404 ▪ Scotts Valley Tribal Resolution 	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.
Northwestern Pond Turtle and California Red-Legged Frog				
<p>The following measures shall be implemented to avoid construction-phase take of northwestern pond turtle and CRLF:</p> <ul style="list-style-type: none"> ▪ To ensure that CRLF and northwestern pond turtle are not present in construction areas, a qualified biologist shall conduct pre-construction clearance surveys. A qualified biologist is defined as a person who has the educational background, training, and work experience (handling experience and/or permits) required to perform a specific biological task and has been approved by the USFWS. If either of these species are discovered during the survey, project construction activities shall not begin until the species have voluntarily vacated the construction area or USFWS has been consulted and avoidance and minimization measures established and then implemented. ▪ As CRLF is not detectable during aestivation, the pre-construction survey shall occur during the wet season, after fall rains have commenced and before the conclusion of spring rains. Once the pre-construction surveys confirm that CRLF and northwestern pond turtle are not present, the construction crew shall immediately install animal exclusion fencing to separate construction areas from marshes and channels proposed for avoidance. The fencing shall be constructed out of plastic weed cloth or 	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ U.S. Fish and Wildlife Service (USFWS), Tribe ▪ USFWS Biological Opinion, Federal Endangered Species Act ▪ Scotts Valley Tribal Resolution 	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
<p>construction fabric, shall be keyed into the ground, and shall be supported by stakes and wire mesh, as needed. Fencing shall also be opaque, a minimum of three feet in height, and installed with a smooth material such that it cannot be climbed. A qualified biologist shall oversee the installation of the exclusionary fencing to ensure its suitability. A qualified biologist shall also make regular inspections during the preconstruction period and during the construction periods when grading and other ground disturbance activities are occurring to ensure the integrity of the fence.</p> <ul style="list-style-type: none"> ▪ All construction personnel shall receive worker environmental awareness training before they enter the construction site. The training program shall include, at a minimum, descriptions of the focal species (Callippe silverspot and monarch butterflies, CRLF, and northwestern pond turtle), and how to identify and avoid these focal species. Personnel shall be trained to halt work in the event that one of these focal species is observed within the work area and allow the individual to leave the work site on their own. Personnel shall be instructed to limit work activities to the designated construction areas and to properly store equipment and materials in the designated laydown area. A qualified biologist shall make regular inspections during the construction periods when grading and other ground disturbance activities are occurring to ensure BMPs are being adequately followed. <p>The following measures shall be implemented to minimize impacts to CRLF and northwestern pond turtle, including impacts related to dispersal access:</p> <ul style="list-style-type: none"> ▪ The development shall be designed such that culverts, free-span bridges, or similar will be installed where roadways cross drainages occur. Road crossings of drainages shall be designed such that CRLF and northwestern pond turtle can freely pass underneath proposed roadways. Additionally, a permanent barrier such as a curb shall be installed around the perimeter of paved areas, with the exception of points of access, to discourage CRLF and northwestern pond turtle from entering the built environment. Designs of the barrier shall be submitted to USFWS for coordination and approval. <p>The following measure shall be implemented to provide compensatory mitigation for loss of CRLF non-breeding aquatic habitat:</p> <ul style="list-style-type: none"> ▪ Mitigation for impacted CRLF aestivation and terrestrial dispersal habitat shall be achieved through the biological preserve and through the purchase of mitigation credits as required by the USFWS Biological Opinion and summarized below. <ul style="list-style-type: none"> ○ <u>Onsite Biological Preserve.</u> Preservation of CRLF nonbreeding aquatic habitat within the biological preserve area shall mitigate for impacts to CRLF non-breeding aquatic habitat at a 3:1 ratio. Preservation of CRLF upland dispersal habitat shall be offset through the preservation of upland dispersal habitat within the biological preserve area at a 3:1 ratio. This area shall be protected via Tribal ordinance and a Memorandum of Understanding with the Service and the BIA. Funds shall be set aside for management of the preserve, and a long-term management plan shall be adopted by the Tribe in consultation with, and approved by, the Service and BIA. The Memorandum of Understanding shall be agreed upon by the Tribe, 				

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
<p>the Service, and BIA prior to construction. A total of 0.3 acre of non-breeding aquatic habitat and 48.8 acres of upland dispersal habitat for the California red-legged frog will be preserved onsite within the biological preserve. Signage shall be posted around the biological preserve to identify the preserve extent and warn the public against trespass.</p> <ul style="list-style-type: none"> ○ <u>Conservation Bank (Purchase of mitigation credits)</u>. Mitigation for the balance of the impacted non-breeding CRLF aquatic habitat shall be achieved through the purchase of CRLF credits from a Service-approved conservation bank at a 6:1 ratio. Mitigation for the balance of the impacted CRLF upland dispersal habitat shall be achieved through the purchase of CRLF credits from a Service-approved conservation bank at a 3:1 ratio. A total of 132.4 acres of CRLF credits will be purchased from a bank that contains suitable habitat for the CRLF, such as: North Bay Highlands Conservation Bank in Marin County, Ohlone West Conservation Bank in Alameda County, Oursan Ridge Conservation Bank in Contra Costa County, or Ridge Top Ranch Wildlife Conservation Bank in Solano County. The selected bank must be approved by the Service to sell CRLF credits and must include the action area within the service area. Credits shall be purchased prior to construction. Joint species credits may be purchased to satisfy this mitigation. 				
Callippe Silverspot Habitat				
<p>The following measure shall be implemented to provide compensatory mitigation for loss of Callippe silverspot habitat to reduce impacts associated with the potential for take of this species:</p> <ul style="list-style-type: none"> ▪ Mitigation shall be achieved through the biological preserve and through the purchase of mitigation credits as required by the USFWS Biological Opinion and summarized below. <ul style="list-style-type: none"> ○ <u>Onsite Biological Preserve</u>. Impacts to callippe silverspot butterfly host plant habitat shall be offset by preservation of host plant habitat within the biological preserve area at a 3:1 ratio. Impacts to nectar resource habitat shall be mitigated through a combination of the biological preserve area and purchase of callippe silverspot butterfly credits from a Service-approved conservation bank. Impacts to nectar resource habitat offset through the biological preserve shall occur at a 3:1 ratio for in-kind preservation of nectar resource habitat, or at a 2:1 ratio for preservation of host plant habitat. The 49.1-acre biological preserve area shall be protected via Tribal ordinance and a Memorandum of Understanding with the Service and BIA. <p>The 49.1-acre biological preserve area will preserve and manage 34.8 acres of callippe silverspot butterfly host plant habitat and 14.3 acres of nectar only habitat. Therefore, 9.0 acres of host plant habitat within the biological preserve area will meet the recommended 3:1 ratio for the Proposed Project's effects to host plant habitat. The remaining 25.8 acres of host plant habitat within the biological preserve area will be counted towards lost nectar resource habitat. There would be a mitigation deficit for impacts to nectar resource habitat</p>	Tribe	Operation Phase	<ul style="list-style-type: none"> ▪ USFWS, Tribe ▪ USFWS Biological Opinion, Federal Endangered Species Act ▪ Scotts Valley Tribal Resolution 	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
<p>which will be mitigated through a conservation bank as described below.</p> <ul style="list-style-type: none"> ○ <u>Conservation Bank (Purchase of mitigation credits)</u>. Mitigation for the balance of the impacted callippe silverspot butterfly nectar resource habitat not offset through the biological preserve area (38.8 acres) shall be achieved through purchase of 116.4 acres of callippe silverspot butterfly mitigation credits at a Service-approved conservation bank such as Ridge Top Ranch Wildlife Conservation Bank in Solano County. Mitigation achieved through this method will be at a 3:1 ratio (refer to Table 2 of the Biological Opinion). The selected bank must be approved by the USFWS to sell callippe silverspot butterfly credits and must include the project site within the service area. Credits shall be purchased prior to construction. Joint species credits may be purchased to satisfy this mitigation. 				
Callippe silverspot and Monarch Butterfly				
<p>The following measures shall be implemented to minimize or avoid operational impacts to Callippe silverspot and Monarch butterflies as required by the USFWS Biological Opinion and summarized below:</p> <ul style="list-style-type: none"> ▪ Use of insecticides shall be prohibited; use of herbicides shall follow USFWS-approved BMPs. ▪ The development shall utilize only native species in landscaping, erosion control, and habitat restoration. ▪ The Tribe shall time vegetation management activities (such as trimming, mowing, and brush-clearing) to between August 15 -April 30 when the callippe silverspot butterfly is not in flight. ▪ In the appropriate botanical identification window prior to impacts (generally the February-April host plant blooming period but to be verified by a qualified biologist at a reference site where the host plant is known to occur), a qualified biologist shall survey the action area for California golden violet. A qualified biologist is defined as a person who has the educational background, training, and work experience (handling experience and/or permits) required to perform a specific biological task and have been approved by the USFWS. The qualified biologist shall demarcate a 25-foot buffer around host plants. To the maximum extent feasible, the 25-foot buffer shall be maintained around all host plants outside of the project footprint. ▪ The development shall use only native, locally sourced, insecticide-free plants for habitat restoration and enhancement actions. If plants are grown via contract grow specifications that limit pesticide residues shall be used. ▪ Monarchs, callippe silverspot butterflies, other pollinators, and their habitats shall be protected from pesticides, including insecticides, fungicides, and herbicides. The Tribe shall avoid applying herbicides to blooming flowers between October 1 – August 15; this avoids the time period when monarch butterflies are likely around (October 1 – April 30) and when callippe silverspot butterflies are in flight (May 1 - August 15). 	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ USFWS, Tribe ▪ USFWS Biological Opinion, Federal Endangered Species Act ▪ Scotts Valley Tribal Resolution 	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.

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<ul style="list-style-type: none"> ▪ To assist in maintaining normal migration behavior, milkweed shall not be planted. ▪ Landscaping activities shall maximize use of non-chemical weed and pest prevention. ▪ Landscaping plans shall select a mosaic plant palate of native species that bloom throughout the year. 				
USFWS Biological Opinion				
<p>In addition to those described above, the following terms and conditions of the USFWS Biological Opinion shall be adhered to:</p> <ul style="list-style-type: none"> ▪ Monitoring: <ul style="list-style-type: none"> ○ For those components of the action that will result in habitat degradation or modification whereby incidental take in the form of harm is anticipated, the Tribe shall provide a precise accounting of the total acreage of habitat impacted to the USFWS after completion of construction. ○ The Tribe shall immediately contact the USFWS’s Sacramento Fish and Wildlife Office (SFWO) at (916) 414-6623 to report direct encounters between listed species and project workers and their equipment whereby incidental take in the form of, harm, injury, or death occurs. If the encounter occurs after normal working hours, the Tribe shall contact the SFWO at the earliest possible opportunity the next working day. When injured or killed individuals of the listed species are found, the Tribe shall follow the steps outlined in the Salvage and Disposition of Individuals section below. ○ For those components of the action that will require the capture and relocation of any listed species, the Tribe shall immediately contact the SFWO at (916) 414-6623 to report the action. If capture and relocation need to occur after normal working hours, the Tribe shall contact the SFWO at the earliest possible opportunity the next working day. ○ The Tribe shall submit to SFWO a post-project completion report. ○ The Tribe shall submit to SFWO every year annual reports on habitat management activities and callippe silverspot butterfly and California red-legged frog monitoring at the biological preserve. ○ All sightings of listed species shall be submitted to CDFW’s CNDDDB. ▪ Salvage and Disposition of Individuals: Injured listed species must be cared for by a licensed veterinarian or other qualified person(s), such as the Service-approved biologist. Dead individuals must be sealed in a resealable plastic bag containing a paper with the date and time when the animal was found, the location where it was found, and the name of the person who found it, and the bag containing the specimen frozen in a freezer located in a secure site, until instructions are received from the Service regarding the 	Tribe	Construction Phase and Operation Phase	<ul style="list-style-type: none"> ▪ USFWS, Tribe ▪ USFWS Biological Opinion, Federal Endangered Species Act ▪ Scotts Valley Tribal Resolution 	<p>A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.</p>

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disposition of the dead specimen.				
Nesting Birds				
<p>The following measures shall be implemented to avoid impacts to nesting birds:</p> <ul style="list-style-type: none"> ▪ If construction activities commence during the general nesting season (February 1 to August 31), a preconstruction nest survey shall be conducted by a qualified biologist on and within 100 feet of proposed construction, as accessible within 7 days of initiating ground disturbance. If active nests are identified, the qualified biologist shall determine a suitable avoidance buffer based on the needs of the species observed. ▪ Avoidance measures include establishment of a buffer zone using construction fencing or similar, or the postponement of construction until after the nesting season, or until after a qualified biologist has determined the nest is no longer active. Avoidance buffers may vary in size depending on habitat characteristics, project-related activities, and disturbance levels. ▪ Should work activity cease for 14 days or more during the nesting season, surveys shall be repeated to ensure birds have not established nests during inactivity. 	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ USFWS, Tribe ▪ Migratory Bird Treaty Act ▪ Scotts Valley Tribal Resolution 	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.
Cultural Resources				
<p>The following measures shall be implemented to avoid or reduce potential impacts to previously unknown and unanticipated archaeological and historical resources that may exist on the Project Site:</p> <ul style="list-style-type: none"> ▪ Ground-disturbing activities shall be monitored by a qualified archaeologist and Native American Tribal Monitor, particularly any activities that occur within 150 feet of the non-eligible prehistoric chert outcrop component of CA-SOL-275 (refer to Appendix I-4 for location). An archaeological monitoring program shall be established that includes consultation between the consulting archaeologist, BIA, and the project proponent. The program shall clearly define a monitoring schedule (e.g., continuous monitoring of project activity across the site or daily/weekly spot monitoring of project activity); the need, if any, for monitoring in areas consisting of fill material; the need, if any, for monitoring at the location of deep excavations (e.g., beyond a depth of ten feet); the authority to temporarily halt/redirect construction should resources be encountered; and the protocols (e.g., stopping work and individuals to contact) monitors and/or construction personnel should implement in case of an inadvertent discovery of cultural resources regarding the discovery. The monitoring program shall be prepared by a qualified archaeologist and approved by BIA prior to project construction activities. ▪ In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA. All such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 	Tribe BIA as needed	Construction Phase	<ul style="list-style-type: none"> ▪ BIA and SHPO ▪ Section 106 of the Tribal Historic Preservation Act ▪ Scotts Valley Tribal Resolution 	Requirements shall be identified in construction contracts. Documentation for inadvertent discoveries shall be prepared in accordance with NHPA and must be approved by the SHPO.

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<p>Part 800); specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b) shall be followed. Consistent with 36 CFR § 800.13(b)(3), any Indian tribe that might attach religious and cultural significance to the affected property, the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) will be notified within 48 hours of the discovery. The notification shall describe the assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The Indian tribe(s), SHPO, and the ACHP shall be given 48 hours to respond to the notification. The BIA shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The BIA shall provide the Indian tribe(s), SHPO, and the ACHP a report of the actions when they are completed.</p> <ul style="list-style-type: none"> ▪ If human remains are discovered during ground-disturbing activities on the Project Site, work within 50 feet of the find shall halt immediately consistent with 43 CFR Part 10.5(b)(1) and the BIA shall be notified. Construction activities may continue in other areas but may not resume within 50 feet of the find until a plan for avoidance, removal or other disposition of the remains has been developed and implemented. If the remains are determined to be of Native American origin, the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands shall apply. Consistent with NAGPRA requirements, 1) reasonable effort shall be made to secure and protect the human remains, including, as appropriate, stabilizing or covering the human remains (43 CFR Part 10.5(a)(2)); 2) the BIA shall consult with any Indian Tribe with potential cultural affiliation to discuss the recovery and treatment of the remains (43 CFR Part 10.4(b)); 3) no later than 30 days after the remains are determined to be of Native American origin, a written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR Part 10.5(d)(1) and 43 CFR Part 10.4); and 4) the disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR Part 10.6. 				
Public Services and Utilities				
Water Supply				
<ul style="list-style-type: none"> ▪ In accordance with the Cooperative Agreement between the Tribe and the City of Vallejo, the Tribe shall negotiate a Intergovernmental Service Agreement with the City of Vallejo that will provide payment for the water connection service and for any distribution infrastructure upgrades or renovations necessary to provide water service to the Project Site, if applicable. 	Tribe	Planning Phase	<ul style="list-style-type: none"> ▪ City of Vallejo/Tribe ▪ Intergovernmental Service Agreement between the Tribe and the City of Vallejo ▪ Scotts Valley Tribal Resolution 	An Intergovernmental Service agreement shall be negotiated between the Tribe and the City of Vallejo outlining the City's supply of water to the Project Site.
Wastewater Treatment				
<ul style="list-style-type: none"> ▪ The Tribe shall negotiate a service agreement with the VFWD that will provide payment for wastewater connection and service. ▪ In accordance with the contract between the Tribe and VFWD, the Tribe shall fund the preparation of a study to be overseen and directed by VFWD to determine any necessary infrastructure improvements to 	Tribe	Planning Phase	<ul style="list-style-type: none"> ▪ City of Vallejo/Tribe ▪ Scotts Valley Tribal Resolution 	A service agreement shall be negotiated between the Tribe and the Vallejo Flood and Wastewater District outlining the provision of

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
serve the project. If requested by VFWD, the Tribe shall pay fair-share payments to the District for infrastructure upgrades identified in the study needed to accommodate the wastewater generated by the development.				wastewater services to the Project Site.
Police, Fire, and Emergency Medical Service				
<ul style="list-style-type: none"> ▪ Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the Vallejo Police Department and/or SCSO to compensate for quantifiable direct and indirect costs incurred in conjunction with providing law enforcement services to the Project Site. The agreement shall include a provision requiring the Tribe to meet with the Vallejo Police Department and/or SCSO at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project. ▪ Prior to operation, in accordance with the Cooperative Agreement between the Tribe and the City of Vallejo, the Tribe shall make good faith efforts to enter into a service agreement with the Vallejo Fire Department to compensate the City for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and EMS to the Project Site. The agreement shall address any required conditions and standards for emergency access and fire protection systems. The agreement shall also address compensation to the SEMSC and Medic Ambulance for EMS services. ▪ If the Tribe does not enter into a service agreement with the Vallejo Police Department, SCSO, or the Vallejo Fire Department or another fire district/department, and SEMSC the Tribe shall establish, equip, and staff a police station/fire department on the Project Site. They shall follow the certification and standards of the BIA and shall be staffed at all times. The police station/fire department shall be located by the Project Site entrance, in an area devoid of sensitive environmental resources such as wetlands. The police station/fire department shall be built to comply with the building and construction standards of the CBC or alternatively such standards of the IBC and follow the BMPs listed in Section 2.1.12. 	Tribe	Planning Phase	<ul style="list-style-type: none"> ▪ City of Vallejo/Tribe ▪ Intergovernmental Service Agreement between the Tribe and the City of Vallejo ▪ Scotts Valley Tribal Resolution 	A service agreement shall be negotiated between the Tribe the Vallejo Police Department and/or the Solano County Sheriff's Office for compensation for law enforcement services. If an agreement is not reached, the Tribe shall establish a police station/fire department on the Project Site.
Transportation and Circulation				
While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make good faith efforts to assist with implementation of the following mitigation prior to construction of the casino building or prior to 2045, as applicable. The Tribe shall construct or fully fund (except as otherwise noted) the following improvements. Funding shall be for design standards consistent with those required for similar facilities in the region. The following measures shall be implemented to reduce traffic impacts:				
Prior to Initiating Construction of the Casino Building				
<ul style="list-style-type: none"> ▪ For intersection 1) Columbus Parkway (also known as Auto Mall Parkway) & Admiral Callaghan Lane and the Project Site entrance – Widen Columbus Parkway to provide for a dual eastbound and westbound left turn movements and provide. a right turn overlap phase (i.e., a green arrow for southbound traffic turning right out of the Project Site towards I-80). 	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ Intergovernmental Service Agreement between the Tribe and the City of Vallejo ▪ City of Vallejo Conditions of commercial access approval(s) and encroachment permits for 	Requirements shall be identified in construction contracts. Design plans must be submitted to City of Vallejo and/or Caltrans for review and approval. Access approvals and encroachment permits will be

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			<ul style="list-style-type: none"> work within right-of-way ▪ Scotts Valley Tribal Resolution 	obtained prior to construction of improvements.
Opening Year 2028				
<ul style="list-style-type: none"> ▪ For intersection 17) SR 37 Eastbound Ramp at the I-80 Westbound Ramp - Construct a concrete barrier/K-rail to separate the two off-ramp movements for an adequate distance to maintain safety without the need for a stop sign. The barrier may need to be extended by up to 200 feet beyond the ramp merge, depending on Caltrans' final design. This would allow for removal of the stop sign for the I-80 westbound off-ramp approach, which would essentially change it from an intersection to a ramp merge and eliminate the current LOS F operations. Based on Caltrans' method for calculating equitable mitigation measures, the Proposed Project's proportional share of this mitigation is estimated to be 42%. 	Tribe	Construction Phase	<ul style="list-style-type: none"> ▪ Intergovernmental Service Agreement between the Tribe and the City of Vallejo ▪ Scotts Valley Tribal Resolution 	Payment to be issued directly to the agency with jurisdiction at the time the improvement is planned, prior to construction of the improvement, and prior to operations.
Cumulative Year 2045				
<ul style="list-style-type: none"> ▪ For intersection 1) Columbus Parkway (Auto Mall Parkway) & Admiral Callaghan Lane and the Project Site entrance – Widen Columbus Parkway to provide for a dual eastbound and westbound left turn movements and provide a right turn overlap phase (i.e., a green arrow for southbound traffic turning right out of the Project Site towards I-80). ▪ Pay the Solano County Regional Transportation Impact Fee consistent with fees for other commercial development projects in the City prior to operation of the project. The fees collected are transferred to Solano County and the funds are managed by the Solano Transportation Authority. These fees are used to fund regional capital transit and roadway improvement projects, including ramp improvements to the Redwood Parkway/I-80 interchange for both for eastbound and westbound directions. 	Tribe	Traffic improvement due at time traffic volumes warrant improvement as determined by the City of Vallejo. Solano County Regional Transportation Impact Fee due prior to project operations.	<ul style="list-style-type: none"> ▪ Intergovernmental Service Agreement between the Tribe and the City of Vallejo ▪ Scotts Valley Tribal Resolution 	<p>Payment to be issued directly to the agency with jurisdiction at the time the improvement is planned and prior to construction of the improvement.</p> <p>Payment of Solano County Regional Transportation Impact Fee prior to project operations.</p>
Hazardous Materials and Hazards – Wildfire				
<ul style="list-style-type: none"> ▪ Prior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan that includes, but is not limited to, the following procedures and BMPs: <ul style="list-style-type: none"> ○ The evacuation plan shall complement the County of Solano's EOP, Community Wildfire Protection Plan, MJHMP, supporting documents, and the standard operating procedures of fire, law, and emergency management agencies of the County and City. ○ Designated staff shall coordinate evacuation procedures with the lead agency for evacuations and other participating agencies during an evacuation event. ○ Staff shall post critical emergency evacuation information (e.g., Red Flag Warnings and Fire 	Tribe	Planning Phase	<ul style="list-style-type: none"> ▪ Intergovernmental Service Agreement between the Tribe and the City of Vallejo ▪ Scotts Valley Tribal Resolution 	A project-specific emergency evacuation plan shall be developed. All management and staff shall be trained on the evacuation plan.

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<p>Weather Watches) and handouts shall be made available to all visitors, guests, and staff. Staff shall incorporate the latest technology available, such as QR codes that contain links to webs sites for mobile devices, or better technology as it evolves.</p> <ul style="list-style-type: none"> ○ Using the emergency evacuation information provided, guests shall be encouraged to make themselves familiar with available routes, stay informed and connected to all available emergency alert tools, and follow directions provided by staff, law enforcement, fire agencies, news media, and other credible sources. ○ Staff and guests shall be provided with information on the local AM and FM radio stations to monitor for disaster information and all emergency alert tools like Emergency Alert System (EAS), Alert Solano, and Nixle. ○ Guests, through the emergency evacuation information, shall also be advised to not rely just on navigation apps that may inadvertently lead them toward an approaching wildfire, flooding, hazardous materials, or other hazards. ○ Staff shall be trained in how to connect to the available emergency alert notification tools such as EAS, Alert Solano, and Nixle. Staff shall monitor those services while at the facility. ○ Designated staff shall be provided with Community Emergency Response Training. This training provides information on how to be prepared for disasters and emergencies and reorganize life-threatening conditions and apply life-saving techniques. ○ A public address system shall be installed inside all occupied public buildings so that emergency notifications can be provided by staff to visitors and guests. Additionally, designated staff shall be issued handheld portable radios for communication during an emergency. ○ Guests without cars or those who are uncomfortable driving themselves in an emergency shall be offered off-site transportation by staff in a casino vehicle, ride share, public transportation, and/or on-site shuttles. These options shall be directed to pre-established County Emergency Management approved community shelters. <ul style="list-style-type: none"> ▪ Management and staff at the casino shall be trained on evacuation procedures for visitors as part of their new hire orientation and receive updated evacuation procedures training annually. ▪ The Tribe shall coordinate with Solano County and the City of Vallejo on their respective EOPs and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. These measures could include, but would not be limited to: <ul style="list-style-type: none"> ○ Installation of a wildfire detection camera within the Project Site and/or vicinity that would expand the coverage of the wildfire camera system. The wildfire camera(s) would be 				

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<p>connected to the existing early detection system and be accessible to emergency officials.</p> <ul style="list-style-type: none"> ○ Installation of variable message signs for the outbound lanes at the project egress point. The variable message signs shall be connected to on-site staff and the County Emergency Operations Center so that evacuation-related messages can be controlled by fire personnel managing the evacuation. 				