IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS,
2727 Syston Drive, Concord, CA 94520

Plaintiff,

v.

DOUGLAS BURGUM, in his official capacity as Secretary of the U.S. Department of the Interior;
1849 C Street, NW, Washington, D.C. 20240

SCOTT DAVIS, in his official capacity as Senior Advisor to the Secretary of the U.S. Department of the Interior,
1849 C Street, NW, Washington, D.C. 20240
and

UNITED STATES DEPARTMENT OF THE INTERIOR,
1849 C Street, NW, Washington, D.C. 20240

Defendants.

Case No. 1:25-cv-00958-TNM

BRIEF OF *AMICI CURIAE* UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA, YOCHA DEHE WINTUN NATION, AND KLETSEL DEHE WINTUN NATION OF THE CORTINA RANCHERIA IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

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INTERESTS OF *AMICI*

Amici are three federally recognized Indian Tribes with a strong interest in the Court's adjudication of this case and its disposition of the present motion. This case involves the proposed development of an urban gaming facility that poses significant economic and cultural threats to *amici*. Plaintiff Scotts Valley Band of Pomo Indians ("Scotts Valley" or "Band") seeks to enjoin the Department of the Interior ("DOI") from reconsidering a January 10, 2025, Indian Lands Opinion ("ILO"), which approved Scotts Valley's application for off-reservation gaming without engaging in proper tribal consultation and in violation of federal statutes and regulations concerning Indian gaming, historical preservation, and environmental protection. *Amici* have previously filed litigation related to the January 10 ILO in the interest of protecting their substantive rights, preventing harm to their tribal resources and sovereignty, and safeguarding the integrity of the Indian gaming regulatory system.[1] *Amici* have the same interest in ensuring that their interests are represented and their voices are heard in the present case and in response to Scotts Valley's pending preliminary injunction motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

Nothing about the ordinary agency reconsideration at issue here justifies the extraordinary remedy of preliminary injunctive relief. Recognizing reasonable concerns about the exclusion of relevant evidence from the decision-making process that produced the January 10 ILO, DOI decided to take a closer look at that decision. On March 27, 2025, less than three months after its initial decision, DOI invited all interested parties to submit (or, in some

[1] *See United Auburn Indian Cmty. of the Auburn Rancheria v. U.S. Dep't of the Interior et al.*, No. 1:25-cv-00873-TNM, ECF 1 ("UAIC Compl."); *Yocha Dehe Wintun Nation & Kletsel Dehe Wintun Nation of the Cortina Rancheria v. U.S. Dep't of the Interior et al.*, No. 1:25-cv-00867-TNM, ECF 1 ("Patwin Compl.").

cases, re-submit) their evidence as part of a transparent reconsideration process (the "March 27 Letter"). The March 27 Letter also advised that DOI's prior decision (the "January 10 ILO") was temporarily rescinded pending the outcome of the reconsideration process and should not be relied on in the meantime. Nothing about this was unreasonable. And all of it fit squarely within the agency's inherent power to reconsider its prior decisions—a power no party disputes. Put simply, DOI saw a problem and moved promptly to correct it.

Concerned that DOI's full review of the relevant evidence might work to its detriment, Scotts Valley seeks to nullify the March 27 Letter, to enjoin the reconsideration process, and to prevent DOI from considering or even accepting any evidence that might demonstrate the error of the January 10 ILO. There is no legal or factual basis for doing so.

Amici are among the federally recognized tribal governments whose evidence was excluded from DOI's prior decision-making process. They support reconsideration; they have an interest in the correct disposition of Scotts Valley's underlying application for off-reservation gaming; and they respectfully submit this brief to help explain why Scotts Valley falls well short of the showing necessary to justify a preliminary injunction.

ARGUMENT

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008); *see also Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011); *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004). To prevail, the plaintiff must demonstrate: (1) a substantial likelihood of success on the merits; (2) that it would suffer irreparable harm without injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the requested injunction would be in the public interest. *Winter*, 555 U.S. at 20.

Scotts Valley glosses over its burden, offering a skeletal recitation of the four-factor test, *see* ECF 3-1 at 10, and virtually no authority or competent evidence on the second, third, and fourth factors, *see id.* at 39-42; ECF 3-2 (Scotts Valley's "evidence"). The Band has not come close to the "clear showing" necessary to justify the "extraordinary remedy" of preliminary injunctive relief. *Winter*, 555 U.S. at 22; *see also U.S. Conf. of Catholic Bishops v. U.S. Dep't of State*, 2025 WL 763738, at *3 (D.D.C. Mar. 11, 2025) (movant "faces a high bar for success").

I. SCOTTS VALLEY DOES NOT FACE IRREPARABLE HARM

"[T]he basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Sampson v. Murray*, 415 U.S. 61, 88 (1974). Irreparable harm is "a high standard." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). The qualifying injury "must be both certain and great," "actual and not theoretical," and "of such imminence that there is a clear and present need for equitable relief" to prevent it. *Id.* (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)). None of Scotts Valley's supposed injuries satisfy these criteria, and its motion fails for that reason alone. *See Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019) (injunctive relief must be denied absent proof of irreparable harm "even if the other three factors" favor injunctive relief).

A. Scotts Valley's alleged injuries are neither certain nor imminent.

Scotts Valley does not meet its burden to show certain or imminent injury. The Band vaguely refers to "resources" committed to its casino development, now supposedly "placed at risk." *See* ECF 3-1 at 39-40. The Band also claims the March 27 Letter affects "project momentum," "undermines the Tribe's credibility," and "frustrates the Tribe's ability to negotiate in good faith with the State and local governments." *Id.* at 40. All of this, Scotts Valley alleges, somehow implicates roughly $1.8 million in invoices "authorized" by the Band. These broad,

conclusory assertions of harm—all allegedly associated with DOI's March 27 Letter, but without any specific explanation or substantiation—come nowhere near the proof required for a preliminary injunction.

First, Scotts Valley's claimed injuries are neither certain nor imminent. *Wisc. Gas Co.*, 758 F.2d at 674. Fundamentally, the Band is concerned the March 27 Letter will harm its casino project. But there is no basis to conclude any such injury is imminent or certain. On the contrary, it depends on "a series of contingent events" that render any genuine harm remote and speculative. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 540 F. Supp. 3d 45, 57 (D.D.C. 2021). As this Court recently observed when denying *amici*'s intervention requests (and as Scotts Valley itself admits), the Band's "prospects of opening a casino depend on several steps," including "federal and state approvals," contracting with a "third-party management company," and substantial "environmental compliance obligations" that could "potentially delay[] or derail[] the project entirely." ECF 38 at 7; ECF 31 at 31-32; *see also id.* at 31 ("Several critical contingencies stand in the way of Scotts Valley conducting any Class III gaming."). Scotts Valley *might* suffer harm to its interests—albeit still not the sort of irreparable harm appropriate for preliminary injunctive relief—if it is ultimately and permanently prohibited from completing the Project in the future. But just as contingencies standing in the way of Scotts Valley's Project were deemed sufficient to prevent *amici's* intervention, ECF 38 at 7-8, they likewise foreclose Scotts Valley's claim of immediate irreparable injury, which is subject to a *higher* standard. *See Cal. Ass'n of Priv. Postsecondary Schs. v. DeVos*, 344 F. Supp. 3d 158, 170 (D.D.C. 2018) ("A prospective injury that is sufficient to establish standing . . . does not necessarily satisfy the more demanding burden of demonstrating irreparable injury . . . ."); *Standing Rock*, 540 F. Supp. 3d at 49-50 (unlawful pipeline operation did not justify a

preliminary injunction where the asserted injury—the risk of harm to freshwater resources—depended on other intervening events).

The very language Scotts Valley uses to describe its supposed injury—"at risk," "in jeopardy," and "uncertainty"—betrays the lack of concrete harm. ECF 3-1 at 20, 39-40. This alone should be disqualifying. After all, "issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with [the Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22; *see also Univ. of Cal. Student Ass'n v. Carter*, -- F. Supp. 3d --, 2025 WL 542586, at *6 (D.D.C. 2025) (allegations of "risks" of harm are "entirely conjectural" and insufficient to establish irreparable injury). "By definition, uncertainty falls short of the type of actual and imminent threat needed to show irreparable injury." *Cal. Ass'n of Priv. Postsecondary Schs.*, 344 F. Supp. 3d at 172. And a notice of reconsideration is just that—notice that DOI is undertaking a review with an uncertain outcome.[2]

Second, to the extent Scotts Valley is claiming harm based on its current investments in project development, the Band's theory of injury—which is invalid and unsupported in any event, *see infra* section I.B—is premised on speculation that reconsideration will result in an unfavorable decision. A hypothetical future injury of this kind cannot form the basis for irreparable harm. *See, e.g.*, *Cal. Valley Miwok Tribe v. Haaland*, 2024 WL 4345787, at *3 (D.D.C. 2024) (rejecting tribe's request for a preliminary injunction where the alleged injury depended on future BIA action); *St. Croix Chippewa Indians of Wis. v. Kempthorne*, 535 F.

[2] Scotts Valley complains vaguely of the risk of delay. ECF 3-1 at 40. But again, this risk is speculative in light of the other factors affecting development—and delay on its own does not amount to irreparable injury. *See Nat'l Mining Assoc. v. Jackson*, 768 F.2d 34, 51-52 (D.D.C. 2011) (no irreparable injury from delay alone).

Supp. 2d 33 (D.D.C. 2008) (rejecting tribe's request for a preliminary injunction premised on risk of an unfavorable DOI gaming decision).

Third, Scotts Valley's suggestion that the March 27 Letter harms its "tribal sovereignty" is both speculative and unexplained. ECF 3-1 at 40. The two cases Scotts Valley cites in support of its position are inapposite. *Mashpee Wampanoag Tribe v. Bernhardt* involved DOI's decision to take land out of trust, which is not at issue here. 2020 WL 3034854, at *3 (D.D.C. 2020). And *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah* is an out-of-circuit case that involved the State of Utah's criminal prosecution of tribal members, in state court, for conduct occurring within tribal boundaries. 790 F.3d 1000 (10th Cir. 2015). Scotts Valley offers no support for its position that simply reconsidering an ILO impairs tribal sovereignty. And that is no surprise, for Scotts Valley itself requested reconsideration of an ILO in 2019. *See* Declaration of Matthew G. Adams ("Adams Decl.") ¶ 7, Ex. 5.

B. Scotts Valley's allegations of harm lack evidentiary support.

A party seeking a preliminary injunction "must provide proof that the [supposed] harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future." *Wisc. Gas Co.*, 758 F.2d at 674. "Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur." *Id.* In this Circuit, the degree of proof required for irreparable harm is "high." *Olu-Cole*, 930 F.3d at 529 (quoting *Chaplaincy*, 454 F.3d at 297). Here, even if Scotts Valley had properly articulated an injury supporting preliminary injunctive relief, it has failed to support that injury with adequate proof. Scotts Valley has failed, in other words, to "*substantiate* [its] claim that irreparable injury is 'likely' to occur." *Wis. Gas. Co.*, 758 F.2d at 674 (emphasis added). Indeed, critical materials Scotts Valley chose to omit from its motion demonstrate that preliminary injunctive relief would be inappropriate here.

First, the sparse evidence Scotts Valley does provide is both flawed and insufficient. In support of its speculative and conditional theory of economic harm, it relies on the declaration of its Chairman, Shawn Davis. *See* ECF 3-2 ¶¶ 11-14, 17, 21-22. According to Chairman Davis, the Band entered into "several" unspecified contracts based on the January 10 ILO, authorized the payment of $1,889,688 "in project-related invoices" pursuant to various contracts and "other agreements," and "presented the City of Vallejo with a signed agreement" to reimburse costs related to a "forthcoming intergovernmental agreement." *Id.* at ¶¶ 11-14. The March 27 Letter, Davis asserts, "jeopardizes" these commitments in a way that Scotts Valley supposedly "cannot afford." *Id.* at ¶¶ 21-22.

These vague and unexplained assertions of harm are inadequate. Scotts Valley comes nowhere close to "permit[ting] the court to evaluate the nature and extent of the alleged irreparable injury," as required for preliminary injunctive relief. *Cal. Ass'n of Priv. Postsecondary Schs.*, 344 F. Supp. 3d at 171. The evidentiary record provides no basis to find that Scotts Valley entered into any contracts in reliance on the January 10 ILO, that payments would be lost during and *as a result of* DOI's reconsideration process, that such payments would be unrecoverable, and that such an unrecoverable loss amounts to immediate and irreparable harm. *Wisc. Gas*, 758 F.2d at 674 ("[I]njuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay are not enough."). Davis's "broad conclusory statements" do nothing to resolve these defects. *See Nat'l Ass'n of Mortg. Brokers v. Bd. of Governors of the Fed. Res. Syst.*, 773 F. Supp. 2d 151, 181 (D.D.C. 2011) (no irreparable harm where plaintiff's supporting affidavit "does not provide specific details regarding the extent to which his business will suffer"); *ITServe All., Inc. v. Cuccinelli*, 2020 WL 12895760, at *2 (D.D.C. 2020) (same where plaintiffs "baldly proclaim" hardship from a monetary loss).

Further, it is telling that Scotts Valley has failed to include any of the contracts on which it relies. Failing to include such language is contrary to the rules of evidence. *See* Fed. R. Evid. 1002. And for good reason—it leaves an insurmountable gap in the record. Without the contract language, it is impossible to connect the March 27 Letter to any actual expenditure and to any irreparable harm. For example, Scotts Valley refers obliquely to a $1.8 million "authoriz[ation]" of "project-related invoices." ECF 3-2 ¶ 13. But that purported harm is impossible to verify. It is unclear, from Scotts Valley's carefully worded declaration, whether those sums were paid, where (if at all) they fit into Scotts Valley's $1.4 ***billion*** dollar development, whether they followed from the January 10 ILO, or how the March 27 Letter affected them. Likewise, it is unclear what it means that Scotts Valley "entered and authorized . . . contracts with third parties," *id.* at ¶ 12, what those contracts are, and why it even matters.

There is also good reason to be skeptical of the gaps in Scotts Valley's evidentiary record, as Scotts Valley has omitted evidence that undermines its claim. For example, Scotts Valley represents that it "presented the City of Vallejo with a signed agreement to reimburse the City for its review and planning costs" and that it entered this agreement "with the understanding that [DOI's] decision was final." ECF 3-1 at 39. But this assertion is false. Scotts Valley committed to reimburse the City in a written agreement executed in ***November 2024***—months ***before*** the January 10 ILO. *See* Adams Decl. ¶ 3, Ex. 1. Scotts Valley could not have entered the referenced agreement in reliance on the January 10 ILO.

Given the weakness of its initial submission, Scotts Valley asked to supplement its motion with an email exchange between the Band and the Office of Governor Newsom, in which the Governor suggested hitting pause on gaming compact negotiations. *See* ECF 40. But this exchange is no help to Scotts Valley's position. The email exchange does not reveal irreparable

harm, or even the suspension of negotiations. On the contrary, the Governor suggested that it would be prudent to wait to "assess the situation." *See* ECF 40-2. The Governor then offered Scotts Valley the opportunity to share its "perspective on the impacts (if any) of these developments," *id.*—plainly an ongoing dialogue, and no sign of concrete harm. Scotts Valley has not tendered any evidence of its response to the Governor (if any). And, in the end, the true problem with Scotts Valley's development is the panoply of legal issues infecting the January 10 ILO. There is no reason to believe the March 27 Letter is the ultimate cause.

Courts in this Circuit routinely deny injunctive relief where the alleged harm is so poorly supported. For example, in *Cow Creek Band of Umpqua Tribe of Indians v. United States Department of the Interior*, the court found that the plaintiff tribe had failed to substantiate its claim of irreparable harm under similar circumstances. 2025 WL 548316, at *1 (D.D.C. Feb. 19, 2025). The tribe there did not "describe[] in any detail how potential near-term revenue losses would concretely affect any program or service," did not claim that any "program would have to be shut down or any service discontinued," did not explain "how a particular program or service would be curtailed during the pendency of th[e] litigation," and did not describe "how [the tribe] might have to reallocate resources because of a near-term drop in gaming revenues." *Id.* Scotts Valley's motion likewise falls far short of the "clear showing" required for preliminary injunctive relief. *Winter*, 555 U.S. at 22.

II. SCOTTS VALLEY IS NOT LIKELY TO PREVAIL ON THE MERITS

Scotts Valley's request for injunctive relief should also be denied because Scotts Valley is not likely to prevail on the merits. Before the Court is a routine and permissible agency reconsideration. That reconsideration was timely, adequately explained, and necessary to address DOI's hurried and flawed January 10 ILO. The Court should refuse to grant injunctive relief on the basis of Scotts Valley's unfounded legal assertions to the contrary.

A. DOI has inherent authority to reconsider Indian Lands Opinions.

Basic administrative law principles govern this case. In this Circuit and elsewhere, "administrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions[.]" *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014); *see also Macktal v. Chao*, 286 F.3d 822, 825 (5th Cir. 2002) (collecting cases). After all, "[t]he power to reconsider is inherent in the power to decide." *Albertson v. F.C.C.*, 182 F.2d 397, 399 (D.C. Cir. 1950); *see also Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider."). For this reason, courts have long held that "an agency may, on its own initiative, reconsider its interim or even final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review." *Dun & Bradstreet Corp. Found. v. U.S. Postal Serv.*, 946 F.2d 189, 193 (2d Cir. 1991); *see also Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir. 1977) ("We have many times held that an agency has the inherent power to reconsider and change a decision . . . ."). There should therefore be no question that DOI has the general authority to reconsider the January 10 ILO.

Scotts Valley knows this. In 2019, after receiving an unfavorable ILO, Scotts Valley ***twice asked DOI to reconsider***, alleging "serious missteps in the decision-making process," and that "the substantive law ha[d] been misinterpreted or misapplied." *See* Adams Decl. ¶¶ 7-8, Exs. 5-6. Those claims were without merit, but the Band's stated basis for the request represents an important admission:

> the Department of the Interior has broad discretion to reconsider its prior decisions under the purview of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*; *Macktal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002) ("in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions.").

Id. Given its own prior statements, not to mention overwhelming cross-circuit authority, Scotts Valley cannot reasonably dispute DOI's inherent authority to reconsider ILOs.

B. DOI appropriately exercised its discretion to reconsider the procedurally flawed January 10 ILO.

The March 27 Letter is a straightforward exercise of DOI's inherent reconsideration authority, and there was good reason for the agency to exercise it here. "[T]he general public interest in attaining the correct result in administrative cases" animates the reconsideration doctrine. *Dun & Bradstreet*, 946 F.2d at 194; *see also Macktal*, 286 F.3d at 826 (reconsideration seeks to vindicate "the public's interest in reaching what, ultimately, appears to be the right result"). As *amici* have pointed out in their pending litigation, numerous significant legal deficiencies infected the January 10 ILO, including DOI's failure to consider relevant evidence that *amici* had timely placed before the agency. *See supra* note 1. The March 27 Letter expressly acknowledged that issue, noting the Secretary of the Interior's "concern that the Department did not consider" relevant evidence. ECF 1-2 at 1. DOI's reconsideration of that erroneous decision falls squarely within its "inherent power to correct [its] mistakes." *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984).

To be sure, an agency's inherent authority to reconsider has limits. First, reconsideration is not available where there is a statutory prohibition against reconsideration or where Congress has provided a statutory mechanism of rectifying mistaken actions. *See Macktal*, 286 F.3d at 826; *Ivy Sports Med.*, 767 F.3d at 86. Second, reconsideration must be done "in a timely fashion." *Ivy Sports Med.*, 767 F.3d at 86. And third, reconsideration may not be arbitrary,

capricious, or an abuse of discretion. 5 U.S.C. § 706(2)(A); *see also Macktal*, 265 F.3d at 826. DOI transgressed none of these limits here.[3]

1. Reconsideration was timely.

DOI notified Scotts Valley of its decision to reconsider less than three months after the January 10 ILO. That notice was timely. Every relevant factor laid out in the leading case of *Belville Mining Company v. United States* favors timeliness.[4] 999 F.2d 989, 1001-02 (6th Cir. 1993); *see also Voyageur Outward Bound Sch. v. United States*, 444 F. Supp. 3d 182, 192-97 (D.D.C. 2020) (applying the *Belville* factors), *opinion vacated on other grounds*, 2022 WL 829754 (D.C. Cir. 2022).

a. DOI's justification for reconsideration was not pretextual.

The March 27 Letter stated plainly the reason for reconsideration: "The Secretary [was] concerned that the Department did not consider additional evidence submitted after the 2022 Remand." ECF 1-2 at 1. That rationale was far from pretextual. On the contrary, DOI's decision

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[3] Scotts Valley does not dispute, and has previously conceded, that there is no statutory bar to DOI reconsideration of an ILO. *See* Adams Decl. ¶ 8, Ex. 6.

[4] The *Belville* factors include: (1) the complexity of the decision, (2) whether the agency acted in accordance with its general procedures, (3) whether legally cognizable property interests had arisen through the initial decision, (4) whether the plaintiff had acted in reliance on the initial decision, (5) whether the agency's justification for reconsideration was pretextual, and (6) the probable impact of an erroneous agency decision absent reconsideration. *See Belville*, 999 F.2d at 1001. The factors are occasionally described in slightly different but substantively overlapping terms. *See, e.g.*, *Voyageur*, 444 F. Supp. 3d at 195.

For brevity and to avoid duplication, *amici* do not discuss the first three factors listed above, all of which the Federal Defendants are capable of addressing. However, all three factors favor timeliness. The January 10 ILO was complex and involved disputed issues of statutory and regulatory interpretation and a contested record. Scotts Valley improperly focuses on the March 27 Letter, which is not the subject of the complexity analysis. *See Belville*, 999 F.2d at 1001. Reconsideration is well within the agency's authority and general procedures and indeed was previously sought by Scotts Valley itself. And there can be no vested interest in the underlying development where countless conditions and contingencies stand in the way of actually proceeding with it, and the agency retains authority to reconsider and to correct errors. *See supra* sections I.A, II.A.

to reconsider came just days after several tribes filed lawsuits alerting DOI to multiple legal errors, including the agency's failure to consider relevant evidence. The Secretary cited that issue as a basis for reconsideration. *See id.*; *supra* note 1. An agency's "legitimate concern" that a decision has "serious procedural and substantive deficiencies" erases any notion of pretext. *Belville*, 999 F.2d at 998. In *Belville*, for example, a Congressional subcommittee had issued a report criticizing the decisions at issue and concluding that the record was so deficient that "a court challenge would probably result in a finding that the decision was unlawfully arbitrary and capricious." *Id.* Likewise here, where *amici*'s separate, earlier-filed lawsuits laid out the "wholly inadequate process by which [DOI's] determination[] [was] reached" and its "vulnerab[ility] to court challenge." *Id.* at 999.

Scotts Valley declares that the pretext in this case is "self-evident," as the administrative record "was closed" and the decision to reconsider took place after a change in administrations. ECF 3-1 at 30-31. But that argument presumes the correctness of Scotts Valley's view of the administrative record and DOI's choice not to reopen it. And Scotts Valley offers no evidence of a "closed record." In fact, the evidence shows that DOI agreed that concerned tribes (specifically including Yocha Dehe) would have an opportunity to have their evidence considered on remand. *See, e.g.*, *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, No. 21-5009, Doc. No. 1884770, at 12-13. Scotts Valley's argument also ignores the more obvious conclusion that, facing a wave of apparently meritorious litigation brought by multiple injured tribes, an incoming administration took a fresh look at a flawed decision that the outgoing administration had rushed through in its waning hours. As in *Belville*, Scotts Valley has offered no evidence of pretext "beyond the timing of the change in leadership." 999 F.2d at 989. As in *Belville*, this evidence does not suffice. *Id.*

b. The impact of letting an erroneous agency decision stand is considerable.

The erroneous January 10 ILO has a profound impact that Scotts Valley fails to address. As *amici* have stressed already in this litigation, the January 10 ILO opens the door to the construction of a massive casino that poses significant competitive, economic, and cultural threats to *amici*. *See* ECF 15-1 at 12-13; ECF 16-1 at 10. Casino construction would also mean bulldozing Patwin cultural sites and erecting, in their place, a Pomo tribal "headquarters." ECF 16-1 at 10. An erroneous decision in this case threatens harm to *amici*'s economic, cultural, governmental, and social welfare. *See* UAIC Compl. ¶ 96, Patwin Compl. ¶¶ 8, 63.

Further, letting the January 10 ILO stand would set a dangerous precedent for gaming policy. The January 10 ILO upends the accepted system of Indian gaming regulation under IGRA by greenlighting a major urban gaming operation by a tribe lacking any significant historical connection to the land in question. The January 10 ILO would disenfranchise tribal governments that have relied on the accepted regulatory framework when making investments in their own gaming resources (for example, United Auburn Indian Community and Yocha Dehe) as well as those whose future economic prospects are now limited by interlopers within their ancestral territory (for example, Kletsel Dehe).

Scotts Valley does not address, let alone rebut, these considerable impacts. Instead, the Band emphasizes that the March 27 Letter does not alter the land's trust status, which is beside the point. ECF 3-1 at 33. Scotts Valley also suggests that reconsideration will cause Scotts Valley harm because "proceeding with reconsideration . . . deprives [Scotts Valley] of the ordinary standard of review it would ordinarily . . . enjoy." ECF 3-1 at 33-34. But here Scotts Valley misapprehends the *Belville* analysis. This *Belville* factor concerns the effect of the

underlying erroneous decision subject to reconsideration. *Belville*, 999 F.2d at 999. The effects of the reconsideration process itself are not at issue. Again, this factor favors timeliness.

c. Scotts Valley's claims of reliance on the January 10 ILO are overstated, unsupported by evidence, and unreasonable.

Scotts Valley has worked hard to leave the impression that it relied heavily on the January 10 ILO. ECF 3-1 at 16, 28-29, 39. But a close look at its arguments—and the extremely limited evidence on which they rely—shows the Band's reliance claims are overstated, under-documented, and unreasonable. In fact, much of Scotts Valley's alleged "reliance" on the January 10 ILO appears traceable to other actions, taken at other times, at the Band's own risk:

- Negotiating and Entering Contracts. Scotts Valley alleges that it relied on the January 10 ILO by "negotiating and entering contracts." ECF 3-1 at 16, 28-29, 39; ECF 3-2 at ¶ 12. No such contracts have been submitted as evidence, or even described with specificity. ECF 3-1 at 16, 28-29, 39; ECF 3-2 at ¶¶ 1-23.

- Reimbursement Agreement. Scotts Valley claims it relied on the January 10 ILO to enter an "agreement to reimburse the City [of Vallejo] for its review and planning costs." ECF 3-1 at 16, 39. In truth, the Band committed to the reimbursement agreement on November 22, 2024—well before the January 10 ILO—as part of a separate "cooperative agreement." Adams Decl. ¶ 3, Ex. 1 at 4 ("[Scotts Valley] agrees to enter into a Reimbursement Agreement to reimburse the City for all costs and expenses incurred by the City in connection with the technical expert analysis . . . ."). The November 22 commitment was not preliminary or tentative; it even included a waiver of sovereign immunity to ensure enforceability. *Id.* ¶¶ 3-6, Ex. 1 at 9, Ex. 2-4.

- Pre-Development Loan. Scotts Valley claims to have incurred reliance interests by "borrowing millions of dollars under a pre-development loan." ECF 3-1 at 16. No loan has been submitted as evidence. *See* ECF 3-2 at ¶¶ 1-23. And the only loan described with any specificity is a November 2, 2024, agreement between Scotts Valley and GTL Properties, entered by the Band more than two months before the January 10 ILO.

- Regulatory Planning. Scotts Valley vaguely suggests that it relied on the January 10 ILO to "initiat[e] regulatory planning" over the Vallejo Site. ECF 3-1 at 16. There is no evidence supporting this assertion, nor does the Band identify or explain which "regulatory planning" processes are allegedly involved. *Id*.

- Authorization of Invoices. Scotts Valley's Chairman asserts that "[s]ince January 10, 2025, [the Band] has authorized the payment of $1,889,688 in Project-related invoices." ECF 3-2 at ¶ 13. Again, the Band provided no invoices. *Id*. Moreover, a close reading of the Chairman's declaration reveals this figure is not specific to contracts entered in reliance on the January 10 ILO; it includes unquantified sums "authorized" in unspecified "other agreements." *Compare* ECF 3-2 at ¶ 12 (referring to contracts entered since January 10) *with id*. at ¶ 13 (authorized sum includes "these [post-January 10] contracts and other agreements").

Nor could Scotts Valley have had a reasonable expectation that the January 10 ILO would stand, unchallenged, as the last word. *Cf*. ECF 3-1 at 39 (claiming an "understanding" of finality); ECF 3-2 ¶ 17 (same). For nearly a decade, Scotts Valley's Project has been vigorously disputed and heavily litigated. In fact, there would have been no January 10 ILO had Scotts Valley not sued to overturn DOI's 2019 decision. For their part, *amici* have expressed their concerns at every stage of the administrative and litigation proceedings, and they have clearly stated their willingness to file suit if those concerns were not addressed. *See, e.g.,* Adams Decl. ¶ 13, Ex.10 ("on this record, no reasonable decision-maker could find Scotts Valley had a significant historical connection to the Vallejo Property"), *id.* ¶ 12, Ex. 9 (DOI "will not have a legally adequate basis for reaching a decision"), *id.* ¶ 11, Ex. 8 (DOI analysis "will not survive judicial review"). Scotts Valley could not have expected the January 2021 ILO would remain unchallenged.

Scotts Valley's claims regarding tribal-state gaming compact negotiations illustrate the point. *See* ECF 3-1 39-40. The Band notes that it initiated negotiations with the State of California in reliance on the January 10 ILO. *Id*. Maybe so. But the first compact negotiation session did not take place until March 27—several days ***after*** *amici* filed suit to vacate the January 10 ILO. At that point, Scotts Valley knew for certain that the January 10 ILO was potentially subject to vacatur, but it elected to proceed with the negotiations regardless. To be sure, the Band was not prohibited from negotiating. But it did so at its own risk. *See, e.g.*,

Voyageur, 444 F. Supp. 3d at 196 (under *Belville,* plaintiffs "unreasonably relied on a decision actively being challenged . . . in court").

2. Reconsideration was not arbitrary or capricious.

The final limitation on DOI's inherent reconsideration authority—the APA's prohibition of arbitrary and capricious agency action—also poses no barrier. *See* 5 U.S.C. § 706(2)(A). The March 27 Letter satisfies this standard, and Scotts Valley advances no meaningful argument to the contrary.

The court's decision in *California Department of Health Services v. Babbitt* is instructive. There, as in the instant case, an incoming administration reversed the eleventh-hour decision of an outgoing one. 46 F. Supp. 2d 13, 22-23 (D.D.C. 1999), *vacated in part on other grounds sub nom. US Ecology, Inc. v. U.S. Dep't of Interior*, 231 F.3d 20 (D.C. Cir. 2000). There, the outgoing Interior Secretary approved the direct sale of federal land under NEPA. A month later, the new Secretary "rescinded" that decision and stated that the agency would conduct additional review. *Id.* at 19. The court rejected plaintiffs' contention that the recission was arbitrary, capricious, and based on improper political considerations because the Secretary had stated "a discernable and reasonable basis for his decision": the Secretary was aware of, and referenced, procedural irregularities in his predecessor's decision. *Id.* at 19-25.

The same is true here. The March 27 Letter explains that the Secretary reviewed the procedural history of this case—including the 2019 ILO, the 2022 remand, and the January 10 ILO—and was "concerned that the Department did not consider additional evidence submitted after the 2022 Remand." ECF 1-2 at 1. In other words, the Secretary identified "a discernable

and reasonable basis for his decision"—a failure to consider relevant evidence affecting the January 10 ILO. No more was required.[5]

C. DOI has authority to provide for "temporary rescission" in connection with reconsideration.

Finally, the fact that DOI paired reconsideration with "temporary rescission" of the affected decision is unobjectionable. Although Scotts Valley makes much of DOI's use of the word "rescind" in the March 27 Letter, no case law supports Scotts Valley's assertion that a "rescission" merits more exacting review. A reconsideration, which DOI unquestionably has inherent authority to pursue, *Ivy Sports Med.*, 767 F.3d at 86, entails the issuance of a new decision and the possibility of a different outcome. Referring to a "temporary rescission," lasting until such time as the new decision is issued, is a matter of prudence and common sense. It is for that reason that courts treat "temporary rescission" not as an agency action of heightened concern, but simply as a natural component of the authority to reconsider. *See, e.g.*, *Dun & Bradstreet*, 946 F.2d at 192-94 (describing the Postal Service's authority to "rescind its decisions," "revers[e] [an] earlier decision," and "reconsider its interim or even its final decisions"); *Lannett Co. v. U.S. Food and Drug Admin.*, 300 F. Supp. 3d 34, 38, 43-45 (D.D.C. 2017) (approving rescission of a drug application and change to "pending status" based on inherent agency authority to correct errors in decisionmaking); *Cal. Dep't of Health Servs.*, 46 F. Supp. 2d at 19 (describing the Secretary as "rescind[ing]" its prior decision). The key questions

[5] The remainder of Scotts Valley's brief advances a debunked due process theory. Scotts Valley contends that DOI violated due process by taking away a supposed property interest in gaming on trust land. But as the Second Circuit explained in *Dun & Bradstreet*, the problem with that position is that it is premised on the flawed assumption that upon issuing an ILO, DOI "relinquished all discretion to then [reconsider and] rescind its decision." 946 F.2d at 193. As explained above, DOI retains authority to reconsider. *Ivy Sports Med.*, 767 F.3d at 86. And as explained above, DOI properly exercised that authority here.

are the same—whether the agency had discretion to reconsider, and whether it exercised that discretion appropriately. Here, in both cases, it did.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST DO NOT FAVOR INJUNCTIVE RELIEF

The balance of equities and public interest elements of the *Winter* standard likewise weigh against injunctive relief. Where the United States is a defendant, these two factors are often considered together. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). But whether the factors are considered together or separately, Scotts Valley has not come close to meeting its burden.

1. The balance of the equities weighs against injunctive relief.

As an initial matter, Scotts Valley fails on the balance of equities because it has not shown imminent, irreparable harm in the absence of injunctive relief. *See supra* section I. Even if it had made the requisite showing, however, Scotts Valley cannot carry the equities because the vast majority of its alleged harm is not tied to reliance on the January 10 ILO. Instead, its harms arise from obligations assumed, at the Band's own risk, well before January 10. And harm arising from voluntarily assumed risk cannot justify the extraordinary remedy of preliminary injunctive relief. *Padgett v. Vilsack*, 2024 WL 5283897, at *4 (D.D.C. 2024); *see also Barton v. District of Columbia*, 131 F. Supp. 2d 236, 247-48 (D.D.C. 2001) (harm arising from risk assumed in real estate dealings did not justify preliminary injunction); *Lee v. Christian Coal. of Am.*, 160 F. Supp. 2d 14, 33 (D.D.C. 2001) (preliminary injunction not warranted "when the alleged harm is self-inflicted").

Also relevant to the equitable balance is Scotts Valley's apparent failure to take any steps to mitigate its alleged harms. *See, e.g.*, *Mott Thoroughbred Stables, Inc. v. Rodriguez*, 87 F. Supp. 3d 237, 246-48 (D.D.C. 2015); *Safari Club*, 852 F. Supp. 2d 102, 122-26 (D.D.C. 2012). For example, Scotts Valley claims that its prior "authorization" of $1.8 million in Project-related

invoices and contracts will give rise to serious harm. ECF 3-1 at 41 ("millions of dollars in investment"); ECF 3-2 at ¶ 13 ("authorization" of payments). But Scotts Valley does not claim—much less demonstrate, with evidence—that these invoices and contracts require significant upcoming work that cannot be paused or rescheduled during the reconsideration process. *Id*.

Scotts Valley's reliance on an alleged $1.8 million "authorization" rings hollow for another reason, too. The Project is a massive undertaking with an equally massive price tag. Scotts Valley's own consultants estimate the Project would involve $773 million in "construction costs" and another $665 million in "development costs." Adams Decl. ¶ 10, Ex. 7 at 50. All of this was well known to Scotts Valley: it chose the Project, it chose the site, and its own consultant estimated the costs. *Id*. Having voluntarily chosen to pursue a $1.4 billion project, Scotts Valley's vague, unsubstantiated complaints about $1.8 million in "authorizations" simply do not move the equitable needle.

Nor is there any evidence supporting Scotts Valley's equally vague (and equally unsubstantiated) balancing claims regarding "funding sources, regulatory partners, and municipal partners." *See* ECF 3-1 at 41 (citing no evidentiary support); ECF 3-2 at ¶¶ 12-17 (no evidence of withdrawn funding or termination of partnerships). And *Mashpee Wampanoag Tribe v. Bernhardt*—the sole authority cited in Scotts Valley's equitable balancing argument (ECF 3-1 at 40-42)—is miles from this case. There, Judge Friedman concluded that taking the Mashpee Wampanoag Tribe's Massachusetts land ***out of trust*** would cause irreparable harm to tribal sovereignty. 2020 WL 3034854, at *3. Here, the March 27 Letter expressly provides that Scotts Valley's property will remain in trust. ECF 1-2.

On the other side of the equitable balance, Scotts Valley's preliminary injunction would cause significant harm to the *amici* tribes. Scotts Valley glosses over this harm, blithely

suggesting that it seeks only to preserve the status quo. ECF 3-1 at 41. Not so. In the preliminary injunction context, the relevant status quo ante is "the last uncontested status which preceded the present controversy." *See United Mine Workers v. Int'l Union, United Mine Workers*, 412 F.2d 165, 168 (D.C. Cir. 1969). Determining this point in time requires a case-specific factual determination for which there is "no mechanical test." 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2947 (3d ed. 2008). Here, the parties' dispute concerns DOI's reconsideration and temporary rescission of its January 10 ILO, in response to the exclusion of *amici*'s evidence form the record. *Amici*'s formally related, earlier-filed litigation likewise challenges the January 10 ILO. The date of the "last uncontested status which preceded the present controversy" is therefore January 9, prior to issuance of the disputed ILO. By locking the disputed ILO in place, Scotts Valley's proposed injunction would alter the "last uncontested status" and open the door to further change, rather than preventing it.

Scotts Valley also ignores that its proposed injunction is wildly overbroad. As drafted, the injunction would prevent DOI from reconsidering the January 10 ILO, even though Scotts Valley never colorably alleges harm from ***reconsideration*** (as distinguished from temporary rescission pending reconsideration). *Compare* ECF 3-4 (proposing to set aside the March 27 letter in its entirety and enjoin DOI from considering post-2019 evidence) *with* ECF 3-1 at 39-40 (failing to allege any harm arising from reconsideration). *Amici* requested the reconsideration process, support the reconsideration process, are participating in the reconsideration process, and have a reasonable opportunity to prevail in the reconsideration process after fair consideration of their evidence. Scotts Valley's overbroad injunction would unquestionably cause *amici* harm.

Moreover, to the extent this Court is inclined to consider Scotts Valley's claims of economic harm to the Project, it should also consider the Project's economic harm to the *amici*.

Scotts Valley is hoping to attract customers who currently patronize businesses owned and operated by United Auburn and Yocha Dehe. Adams Decl. ¶ 10, Ex. 7. And the revenues generated by those customers currently support the governments, programs, and citizens of all three *amici*. UAIC Compl. ¶¶ 96-97, Patwin Compl. ¶¶ 60-3.

The Patwin Tribes would suffer additional harm. Recall that Vallejo is the undisputed ancestral homeland of the Patwin people; even Scotts Valley has admitted as much. Patwin Compl. ¶ 6. And in Patwin culture the land and the people are interconnected, not separate. *Id.* ¶ 63; Adams Decl. ¶ 14, Ex. 11. For that reason, Patwin ancestral lands are not just an important part of Patwin history, but also an integral and continuing part of Patwin cultural identity. Patwin Compl. ¶ 63; Adams Decl. ¶ 14, Ex. 11. This is a matter of critical importance to the Patwin Tribes, whose people and culture were almost completely erased by government policies during the nineteenth and early twentieth centuries. Patwin Compl ¶¶ 59-63.To falsely suggest an unrelated tribal group has a significant historical connection to Patwin lands is to renew that process of erasure, causing a deep cultural injury that transcends the harm normally associated with a non-tribal land dispute. *Id.* ¶ 63; Adams Dec. ¶ 14, Ex. 11. That is one of the reasons the January 10 ILO was so injurious to the Patwin Tribes: it validated the erroneous "historical connection" claims of an unrelated Pomo tribe, from another part of California, to Patwin lands—and it did so without considering the mountain of evidence painstakingly assembled by people who work so hard to keep Patwin culture and identity alive. The March 27 Letter creates a process for correcting that error and redressing that injury. Enjoining the reconsideration process would re-open the wound.[6]

[6] It is worth noting the *absence* of any claim of cultural harm in Scotts Valley's motion. If Scotts Valley had a significant historical connection to the Vallejo Site, surely it would allege cultural

2. The requested injunction is contrary to the public interest.

The Supreme Court has repeatedly emphasized that "courts of equity should pay particular regard for the public consequences" when considering "the extraordinary remedy of injunction." *Winter,* 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). Disregarding that direction, Scotts Valley has failed to meaningfully address the issue. *See* ECF 3-1 at 41-42. Viewed most charitably, its moving papers contain just two statements addressing the public interest. The first, buried in a series of one-sentence arguments addressed to the balance of harms, is a vague suggestion that "no urgent federal interests are at stake." *Id.* at 41-42. The second describes the March 27 Letter as an "administrative end-run" in which "the government" should have no "equitable interest." *Id.* at 42. Nowhere in its moving papers does Scotts Valley cite a specific statute, policy, or judicial decision identifying a public interest that supports its requested relief. *Id*. at 41-42. That failure is fatal, for a plaintiff seeking preliminary injunctive relief bears the burden of establishing, by a clear showing, that "an injunction is in the public interest." *Winter*, 555 U.S. at 20.

Moreover, there is good reason to conclude Scotts Valley's requested relief would be contrary to the public interest. First, there is the "general public interest in attaining the correct result in administrative cases." *Dun & Bradstreet*, 946 F.2d at 194. Scotts Valley's proposed injunction would preclude DOI from correcting its errors.

Second, Scotts Valley's proposed relief would interfere with an agency proceeding. Courts "look[] with disfavor on interlocutory attempts to challenge federal agency action" due to "the disruption such efforts cause to agency proceedings." *Chamber of Commerce v. U.S. Dep't*

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injury. Instead, Scotts Valley's allegations of harm are presented in economic terms.

of Agric., 459 F. Supp. 216, 223 (D.D.C. 1978); *see also Astrazeneca Pharms. LP v. FDA*, 850 F. Supp. 2d 230, 249 (D.D.C. 2012) (recognizing judiciary's interest "in waiting until an administrative decision has been formalized and its effects felt in a concrete way before conducting judicial review"). Consistent with that principle, the public interest favors allowing public agencies to manage their own regulatory proceedings and fully consider relevant arguments and evidence. *See, e.g.*, *Strait Shipbrokers Pte. Ltd. v. Blinken*, 560 F. Supp. 3d 81, 100 (D.D.C. 2021) ("the public interest [is] better served" by "allow[ing] both litigation and administrative reconsideration to proceed along the normal course"); *Chamber of Commerce*, 459 F. Supp. at 223 (refusing to disrupt ongoing agency proceedings in light of "the public interest to allow all possible views to be placed before the agency"); *United Houma Nation v. Babbitt*, 1996 U.S. Dist. LEXIS 16437, at *19 (D.D.C. 1996) (expressing "reluctan[ce] to manage a federal agency's regulatory process"). Scotts Valley's requested relief would undermine these interests by disrupting an administrative process ***the very purpose of which*** is to ensure all relevant views are properly considered.

Third, there is no public interest in maintaining an infirm decision. DOI has not yet decided whether to reverse, amend, or otherwise take final action on the January 10 ILO. But the agency has already determined that reasonable concerns exist, including the possibility that the January 10 ILO was developed without consideration of all relevant information and evidence. ECF 1-2 (noting Secretary of the Interior's concern that post-2022 evidence was not considered). Under these circumstances, there is no public interest in forcing the parties, *amici*, and other affected governments and stakeholders to continue relying on the January 10 ILO. Rather, the public interest lies in prompt and orderly reconsideration to resolve the problem—particularly since Scotts Valley will also be able to provide any evidence it deems relevant or important as

part of the reconsideration process. *Id*. (inviting Scotts Valley's evidence); *see also Strait Shipbrokers*, 560 F. Supp. 3d at 100 (availability of relief in ongoing agency proceedings weighed against injunctive relief); *United Houma Nation*, 1996 U.S. Dist. LEXIS 16437, at *3-6 (same).

Fourth, the unique circumstances of this case present a conflict among (i) the broad scope of Scotts Valley's requested injunction, (ii) Scott Valley's obligation to demonstrate irreparable harm, and (iii) the public interest. DOI's reconsideration process will address evidence for and against Scotts Valley's claim of a significant historical connection to the Project site. ECF 1-2. Scotts Valley seeks to enjoin that process—and, further, to prevent DOI from reviewing (or even accepting) any evidence submitted by *amici*. *See* ECF 3-4. The unstated implication seems to be that considering *amici*'s evidence could be fatal to the January 10 ILO. But if the January 10 ILO cannot withstand relevant evidence, what is the public's interest in maintaining it? Scotts Valley cannot have it both ways.

IV. CONCLUSION

As to both reconsideration and temporary rescission of the January 10 ILO, Scotts Valley has failed to meet the heavy burden to justify extraordinary relief. For the foregoing reasons, the Court should deny Scotts Valley's motion for a preliminary injunction.

Respectfully submitted,

Date: May 9, 2025

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