OFFICE OF THE GOVERNOR

May 30, 2025

Via Electronic Mail

Director, Office of Indian Gaming
U.S. Department of the Interior
1849 C Street NW, MS-3543
Washington, D.C. 20240
IndianGaming@BIA.gov

Re: Gaming Eligibility Determination – Vallejo Site (Scotts Valley Band of Pomo Indians casino project)

Dear Director:

On behalf of Governor Gavin Newsom, I write to urge the U.S. Department of the Interior to rescind the Gaming Eligibility Determination it previously issued in connection with the Scotts Valley Band of Pomo Indians' proposed casino project in Vallejo, California, because that determination erroneously relied on the Indian Gaming Regulatory Act's "restored lands" exception.

Governor Newsom and his Administration remain grateful for the opportunity to share our perspective on this issue. As explained in our prior correspondence (in particular, our correspondence of August 16, 2024, which we incorporate by reference here), our concerns about invocation of the "restored lands" exception here should not be misunderstood as criticism of the Department's broader practice of taking land into trust for tribal governments—including, in appropriate cases, the Department's practice of taking land into trust for gaming. The Governor recognizes the important role that this practice can play in supporting tribes' political sovereignty and economic self-sufficiency.

But, as explained in our prior correspondence, caution is warranted when considering the potential expansion of gaming to land that is not currently eligible for gaming. This is particularly true in California, where the voters who legalized tribal gaming were promised that such gaming would remain geographically limited. This historical context underscores the importance of striking a careful balance between the potential benefits of expanded tribal gaming and its potential impacts on surrounding communities.

And, as explained in our prior correspondence, federal law has long helped the Department strike this delicate balance. As a starting point, federal law generally forbids off-reservation gaming—that is, gaming without a connection to a preexisting reservation. *See* 25 U.S.C. § 2719(a)(1). Although there are exceptions to this rule, most of these are carefully and narrowly limited in their potential scope. And the exception that is *not* inherently limited in its potential scope—the "two-part determination" process—contains important procedural safeguards. The two-part determination process carefully protects local interests (including the interests of local tribes) by allowing gaming only where (as relevant here) the Department has determined that it "would not be detrimental to the surrounding community"—and only where the relevant state's governor concurs in that determination. 25 U.S.C. § 2719(b)(1)(A).

Here, however, the Department's prior Gaming Eligibility Determination for the project (which the Department is now wisely reconsidering) threatens to undermine the two-part determination process and its safeguards, by dramatically expanding the scope of a different exception. That exception—the "restored lands" exception—allows gaming without a two-part determination or the Governor's concurrence where land is taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). To be clear: the Governor recognizes the profound moral value of restoring a tribe's control over its lost homeland. But the "restored lands" exception, like all exceptions, must be kept carefully limited: it must not be construed so broadly as to "give restored tribes an open-ended license to game on newly acquired lands." *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015). On the contrary: "In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations." *Id.*

The Department's Gaming Eligibility Determination threatens to dramatically expand the "restored lands" exception. The proposed project does not fit within the limits of that exception, and the Department's January 10 decision letter is insufficient to show otherwise. The Vallejo project site does not fall within the Scotts Valley Band's ancestral homeland: the Scotts Valley Band's homeland lies on the shores of Clear Lake, some seventy miles away. Indeed, as the Department's letter candidly acknowledges, the Scotts Valley Band "does not assert that the Parcel is in the vicinity of the Band's villages or burial grounds." Decision Letter at 11. Instead, the Department's letter relies heavily on the existence of a single individual—who was living at Clear Lake (not Vallejo) at least as late 1850, who may have been working at a ranch in the North Bay circa 1870, and who had apparently returned to Clear Lake by 1880. *See* Decision Letter at 11–18, 21–22. But this kind of "inconsistent, if not transitory, presence" (Decision Letter at 14) by specific individuals, late in history, cannot be conflated with a tribe's exercise of collective sovereignty over its homeland.

The letter's efforts to pad this thin factual evidence cannot overcome this basic problem. Make no mistake: it is undoubtedly true that California's Native Americans suffered persecution and dislocation during the nineteenth century. *See* Decision Letter at 15–18; *cf.* Executive Order N-15-19 (June 18, 2019). But it is unclear how this renders the project a "restoration" of the Scotts Valley Band's lost homeland. The letter fares no better when it seeks to bolster its thin factual evidence by gesturing towards broad, remedial policy goals (*see* Decision Letter at 18), for such remedial policy goals cannot overcome statutory text. *See, e.g.*, *CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014). Finally, the Department's invocation of the so-called "Indian canon" (*see* Decision Letter at 19) likewise fails, for that canon has no application where—as here—"all tribal interests are not aligned." *Redding Rancheria*, 776 F.3d at 713. Here, other local tribes—tribes who truly have called the relevant lands home since time immemorial—are steadfast in their opposition to the project.

Governor Newsom is deeply concerned by the Department's invocation of the "restored lands" exception to support this casino project. Under this view of the "restored lands" exception, it is far from obvious that the "exception" would retain a clear and durable limiting principle. This prospect is particularly troubling in California, where the voters who approved tribal gaming were promised that such gaming would remain carefully limited—including by federal law and its geographic restrictions on the categories of land open to gaming.

Accordingly, on behalf of the Governor, I applaud the Department's decision to reconsider its prior invocation of the "restored lands" exception here, and I urge the Department to take final action to rescind its Gaming Eligibility Determination for the project site.

Sincerely,

Matthew Lee
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Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom