



June 13, 2025

Tribal Council

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Philip Bristol
Acting Director
Office of Indian Gaming
1849 C Street, NW
MS-3543
Washington, DC 20240

Re: Scotts Valley Band of Pomo Indians Request for Restored Lands
Determination in Vallejo (Solano County), California

Dear Acting Director Bristol:

On behalf of the Yocha Dehe Wintun Nation, I respectfully submit the enclosed materials addressing a request by the Scotts Valley Band of Pomo Indians ("Scotts Valley" or "Band") for a "restored lands" determination for certain property in the San Francisco Bay Area city of Vallejo – more than 90 miles from Scotts Valley's homeland northwest of Clear Lake, but squarely within the ancestral lands of our Patwin people.

This submission responds to a March 27, 2025, letter notifying interested parties that the Department of the Interior ("DOI") is reconsidering a recent Indian Lands Opinion (the "2025 ILO") that concluded four parcels totaling 160 acres of land in Vallejo (the "Vallejo Site") qualify for the Indian Gaming Regulatory Act's ("IGRA's") restored lands exception.

A brief review of relevant background clearly illustrates why reconsideration is warranted.

To obtain a favorable restored lands determination, Scotts Valley must demonstrate, among other things, a "significant historical connection" to the specific parcels proposed to be "restored."¹ This requires historical documentation of tribal villages, burials, occupancy, or subsistence use.² DOI has repeatedly and consistently explained that this requirement can be

¹ 25 C.F.R. §§ 292.11(c), 292.12(b).

² 25 C.F.R. § 292.2.

satisfied with direct evidence of use or occupancy of nearby parcels *only if* that evidence causes a natural inference that the applicant tribe also used or occupied the specific parcels proposed to be “restored.”³

In 2016, Scotts Valley requested a “restored lands” determination for one of the four parcels that make up the Vallejo Site (the “Western Parcel”). The 2016 restored lands request claimed a significant historical connection to the Western Parcel based on: (a) an unratified treaty signed by some of Scotts Valley’s ancestors (among many others) in 1851; and (b) allegations that Scotts Valley ancestors were forced to labor on large ranches owned by the Vallejo family during the Mexican administration of California. DOI provided Yocha Dehe with an opportunity to submit evidence rebutting these claims, and Yocha Dehe did so. After reviewing the submitted material, DOI informed Scotts Valley that the evidence did not support the Band’s restored land claims. Scotts Valley then asked for and was granted an opportunity to search for additional evidentiary material.

In 2018, Scotts Valley renewed its restored lands request with two new categories of “significant historical connection” theories: (a) claims that Scotts Valley ancestors, including an individual known as “Shuk Augustine,” were among a cohort of children baptized at the Sonoma Mission (approximately 20 miles from Vallejo) in 1837; and (b) claims that Shuk Augustine resided in a household of laborers in the town of Napa (approximately 12 miles from Vallejo) in 1870. Yocha Dehe was not provided an opportunity to submit evidence rebutting these claims; instead, DOI issued an ILO explaining why Scotts Valley’s evidence remained insufficient (the “2019 ILO”).

Scotts Valley filed suit challenging the 2019 ILO. Yocha Dehe moved to intervene as a defendant, noting that it could provide unique information and perspective rebutting Scotts Valley’s arguments. During the intervention proceedings, Scotts Valley, the United States, and the United States District Court for the District of Columbia each took the position that Yocha Dehe could not intervene because its interests were not at risk. In support of that position, they each asserted that Yocha Dehe would have an opportunity to submit evidence addressing Scotts Valley’s “significant historical connection” claims in any future proceedings before DOI.⁴ Yocha Dehe’s intervention was denied.

³ See, e.g., Mashpee ILO (2021) at 36; Scotts Valley ILO (2012) at 15; Guidiville ILO (2011) at 17; see also Scotts Valley ILO (2025) at 22 (acknowledging “natural inference” standard).

⁴ For example, in denying Yocha Dehe’s request to intervene as of right, the District Court explained, “What would happen if the Court were to rule in Scotts Valley’s favor? ... Yocha

On remand, Yocha Dehe (and other tribes) repeatedly requested that DOI establish a fair, transparent, fact-based decision-making process in which all tribal parties could submit evidence and participate on equal footing. DOI never responded. Yocha Dehe also made repeated requests to consult with DOI on a government-to-government basis, offering more than 40 dates on which our Tribal Council could come to Washington, DC for an in-person consultation session. DOI never responded to those requests either.

Concerned by DOI's failures to respond, on November 13, 2024, Yocha Dehe gathered and submitted hundreds of pages of ethnohistorical documentation and expert analysis demonstrating Scotts Valley had no significant historical connection to the Vallejo Site. Among other things, Yocha Dehe's submission debunked the two theories advanced by Scotts Valley in 2018 (on which no comments had previously been submitted).

Rebutting Scotts Valley's 2018 theory that Shuk Augustine and other Scotts Valley ancestors were baptized at Mission Sonoma in 1837, Yocha Dehe identified Mission records showing that the "Augustine" baptized in 1837 was not, in fact, Shuk Augustine – the two individuals had the same first name, but different native names, different fathers, different mothers, and different villages of origin. They were simply not the same person. Nor did the remainder of the 1837 baptismal cohort include Scotts Valley ancestors; instead, it consisted of children from an entirely unrelated tribe near Santa Rosa, more than 50 miles from Scotts Valley's Clear Lake homeland.

Dehe submitted a considerable volume of material about its historical connection to the land when the question about Scotts Valley's association with the parcel was pending before the agency the first time, and it can do so again." See Memorandum Opinion and Order (ECF 33), *Scotts Valley v. Department of Interior* (D.D.C. Case No. 19-1544) at 14. DOI later endorsed that view before the D.C. Circuit, arguing the District Court properly found Yocha Dehe's interests would not be impaired because "if the [2019 ILO] is remanded, Yocha Dehe will have additional opportunities to submit relevant information or views" in further proceedings. See Federal Appellees' Final Response Brief (Doc. 189213) at 9, *Yocha Dehe Wintun Nation v. Department of Interior* (D.C. Cir. No. 21-5009). For its part, Scotts Valley assured the D.C. Circuit that on remand DOI would prepare a Record of Decision containing "a new analysis of the parcel's eligibility for gaming under the Indian Gaming Regulatory Act, addressing the same statutory and Part 292 criteria covered in the [2019 ILO] and responding to comments from interested parties and the public." Final Brief of Appellee Scotts Valley Band of Pomo Indians (Doc. 1893220) at 35-36, *Yocha Dehe Wintun Nation v. Department of Interior* (D.C. Cir. No. 21-5009). These are just a few of the numerous representations in this vein.

Rebutting Scotts Valley's theory that Shuk Augustine established a Scotts Valley tribal presence in Napa in 1870, Yocha Dehe pointed out that (once again) historical documentation identified *an Augustine* in Napa in 1870, but did not demonstrate that individual was Scotts Valley ancestor *Shuk Augustine*. Yocha Dehe also noted that the other members of the Napa household in which "Augustine" lived in 1870 had no relationship to Scotts Valley – in fact, Scotts Valley has admitted as much. And, perhaps most importantly, by 1870 the Project Site was a small family farm owned and worked by non-Indian labor; even if, contrary to the evidence, Shuk Augustine had established a Scotts Valley presence in the town of Napa, 12 miles from Vallejo, he could not have used or occupied the Vallejo Site.

Yocha Dehe's 2024 submission also included additional historical documentation foreclosing Scotts Valley's claim of a significant historical connection to Vallejo. For example: Scotts Valley has claimed that the Patwin people native to Vallejo were decimated by smallpox and "replaced" by Clear Lake Pomo people beginning in 1837; historical documentation submitted by Yocha Dehe demonstrated that Patwin people continued to use, occupy, and exercise authority over the area long after that date. Another example: Scotts Valley has claimed that its ancestors worked on ranches controlled by the Vallejo family during California's Mexican administration and therefore may have labored at Mariano Vallejo's "Rancho Suscol," a massive 130-square-mile property of which the Vallejo Site was a very small part; evidence submitted by Yocha Dehe showed that Rancho Suscol was used for livestock owned by the Mexican Army through the end of the Mexican period or rule and, *according to sworn testimony submitted by the United States* in later legal proceedings, the Rancho was staffed exclusively by the Mexican military, not Indian labor.

On November 27, 2024, Principal Deputy Assistant Secretary-Indian Affairs Wizipan Garriott (who would later sign the 2025 ILO) explicitly confirmed receipt of Yocha Dehe's submission and promised it would be carefully reviewed and considered as part of decision-making on Scotts Valley's restored lands request. This commitment is further memorialized in a December 3, 2024, follow-up letter from Yocha Dehe to Mr. Garriott, which neither Mr. Garriott nor anyone else at DOI has ever disputed.⁵

⁵ The December 3, 2024, letter is among the materials provided in Tab 4. It is also worth noting that during the same time period – *i.e.*, November 2024 – the (then) Director of the Office of Indian Gaming and the (then) Director of BIA's Pacific Regional Office held a "technical assistance meeting" to disseminate information about DOI's Part 292 processes to interested California tribes. Yocha Dehe was not invited to this meeting, notwithstanding our clearly expressed interest in the subject matter. But we understand from another tribe (who did attend)

Despite all this, the 2025 ILO explicitly says Yocha Dehe's 2024 submission was not, in fact, considered.⁶ Instead, the 2025 ILO unquestioningly adopted Scotts Valley's erroneous 2018 theories – *the very claims squarely rebutted by the excluded evidence*.

In short, by excluding timely, relevant evidence proffered by tribal governments, DOI adopted a factually erroneous, legally deficient, procedurally indefensible ILO.

Thus, the Secretary of the Interior was right to be "concerned that [DOI] did not consider additional evidence submitted after the [2019 ILO litigation]" and to request that interested parties submit (or resubmit) their evidence.⁷ Pursuant to that request, we now provide the following material.

Tab 1 consists of Yocha Dehe's November 13, 2024, submission, including the exhibits originally attached thereto.

Tab 2 provides copies of Yocha Dehe's requests that DOI establish a fair, transparent, fact-based decision-making process, none of which received the courtesy of a response.

Tab 3 provides copies of Yocha Dehe's consultation requests. These were not honored either.

Tab 4 provides materials associated with the November 27, 2024, meeting at which DOI confirmed receipt of Yocha Dehe's evidence and promised to consider it.

Tab 5 provides a document on which Scotts Valley has previously relied (but did not submit for the record). That document is further discussed below.

Scotts Valley has suggested that none of this evidence can be considered because the Part 292 process does not provide for third-party comments. Not so. Although the Part 292 regulations do not mandate a restored-lands-specific comment period, DOI's rulemaking material makes clear that concerned stakeholders "may submit written comments that are specific to a particular [Indian] lands opinion."⁸ For that reason, DOI

that the DOI representative explicitly stated that concerned tribes could submit new comments and evidence on Scotts Valley's restored lands request up until the time of final agency action. *See, e.g., Complaint (ECF 1), Lytton Rancheria of California v. United States Department of the Interior* (D.D.C. Case No. 1:25-cv-01088) at ¶ 82 ("...the Regional Director stated that....[Lytton] and other tribes were permitted to submit new comments and evidence").

⁶ Scotts Valley ILO (2025) at 3-4.

⁷ March 27 letter at 1.

⁸ 73 Fed Reg. 29,354 at 29,361 (May 20, 2008).

has a settled practice of considering comments – particularly comments from concerned tribal governments – before taking action on a restored lands request.⁹ And where DOI has deviated from that practice by ignoring timely-submitted tribal comments, the courts have struck down the resulting restored lands determination.¹⁰

Nor is there any merit to Scotts Valley's contention that post-2019 comments must be disregarded because the administrative record was "closed" at that time. Specifically, the Band claims that sometime in January 2024, it "declined" to reopen the administrative record during the remand process. Neither the law nor the facts support Scotts Valley's position.

As a legal matter, there does not appear to be any defensible basis to find *Scotts Valley* had discretion or authority to determine whether the record should be "open" or "closed" – particularly since (a) the Band and DOI had committed, in court, that Yocha Dehe would have an opportunity to submit evidence as part of any remand proceedings; and (b) DOI specifically promised that Yocha Dehe's November 2024 submission would be reviewed and considered as part of the agency's Part 292 decision-making.

More fundamentally, Scotts Valley's claim does not withstand factual scrutiny. Recall that the Vallejo Site consists of four parcels. Scotts Valley requested a restored lands determination for the Western Parcel in 2016. Not until the summer of 2024 did the Band take any action with respect to the other three parcels (the "Eastern Parcels"). The 2025 ILO then declared all four parcels gaming eligible. Thus, the factual record squarely contradicts Scotts Valley's "closed record" claim. If the record had truly and definitively been "closed" in January 2024, there could have been no basis to add the Eastern Parcels to the proceedings. Or, to put it in slightly different terms, even if Scotts Valley had authority to "close" the record in January 2024 (which it did not), the Band itself re-opened the record by adding the Eastern Parcels several months later.

Before concluding, we briefly note three additional items that may also be relevant to the reconsideration process.

First, in prior submissions, Scotts Valley has suggested an 1858 report of the Commissioner of Indian Affairs suggests the Band's ancestors had a significant

⁹ We understand DOI recently issued three other "restored lands" determinations in or around California, all of which involved solicitation and consideration of tribal comments.

¹⁰ See *Butte Cnty. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010).

historical connection to Vallejo by virtue of their agricultural work there.¹¹ We were recently able to find a copy of the report, and we have attached the relevant section for your convenient reference. The passage on which Scotts Valley appears to be relying reads as follows:

Upon the Lupillomi ranch, near Clear Lake, there are some three hundred Indians, the only really prosperous and happy ones I saw in California. These Indians, with the permission, and by the aid of the ranchero, cultivate several fields near the edge of the lake, and with the products of these, and the fish which abound in the lake, subsist themselves comfortably. In spring-time and harvest, the men go down into Napa and Sonoma valleys and hire themselves at good wages to the farmers there, and thus procure the means of clothing themselves and families. The owner of the ranch finds his advantage in thus protecting, encouraging, and aiding these Indians. They make capital vaqueros, and he can obtain the services of almost any number at a moderate price. They are his feudatories, and while he protects them, they serve him. Here again is reciprocity, and a corresponding, probably, consequent success.¹²

This hardly confirms a connection between Scotts Valley and Vallejo. Just the opposite, in fact. It shows Scotts Valley's ancestors were part of a reasonably large, settled tribal community at Clear Lake in 1858. The Band's ancestors occupied those lands as a tribal group and used the resources at Clear Lake for their subsistence. And while some men sought individual wage employment in the Napa and Sonoma Valleys during certain times of year, there is no mention of similar agricultural work in or around Vallejo or Solano County.

¹¹ See, e.g., "Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region" at 14; "Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians" at 7-8. These documents, submitted to DOI by Scotts Valley in 2018, can also be found at pages 5013-5036 and 4566-4579 (respectively) of the administrative record for the 2019 ILO Litigation. Citations to the 1858 report appear on pages AR 5026 and AR 4572-73.

¹² Report of the Commissioner of Indian Affairs (1858) at 304 *available at*: <https://search.library.wisc.edu/digital/AC3DT5SO3LPBBO8P>. The "Lupillomi ranch" in the Commissioner's report appears to be the same as, or perhaps very near to, the Rancho Lup-Yomi where Shuk Augustine and other Scotts Valley ancestors labored for Stone and Kelsey in the late-1840s. Of course, "Lupillomi" is also very similar to (and near to) the "Camp Lu-Pi-Yu-Ma" where Scotts Valley ancestors, among others, met with Reddick McKey and "negotiated" the 1851 unratified treaty.

Second, the 2025 ILO appears to rely on ILOs issued to the Cowlitz Tribe (in 2013) and the Mooretown Rancheria (in 2007) for the proposition that a 14- to 20-miles distance falls “within the bounds of what might be considered the vicinity” of the Vallejo Property for purposes of the restored lands exception.¹³ We respectfully invite you to reconsider that conclusion.

The 2013 Cowlitz decision concerned IGRA’s “initial reservation” exception rather than the restored lands exception here at issue. It does not stand for the proposition that “vicinity” should be defined as a 14- or 20-mile radius; on the contrary, the decision relies heavily on other evidence such as a group of Cowlitz tribal lodges (accommodating approximately 100 people) within 3 miles of the relevant property and a significant battle between the Cowlitz tribe and the Chinook tribe, also within 3 miles.¹⁴ To the extent a 14-mile radius is discussed, it is in the context of the distance between the property and the Cowlitz tribe’s Indian Claims Commission-adjudicated *exclusive use and occupancy* (or “aboriginal title”) area – that is, the area determined, on the basis of contested evidentiary proceedings, to have been the ancestral territory of the Cowlitz tribe and only the Cowlitz tribe.¹⁵ The comparable Scotts Valley territory – *i.e.*, lands northwest of Clear Lake – is more than 90 miles from the Vallejo Property.

The 2007 Mooretown decision does not support Scotts Valley’s claim either. There, the National Indian Gaming Commission (“NIGC”) found the relevant property was approximately 15 miles from Mooretown’s original rancheria. The same area contained 10 village sites occupied by Mooretown ancestors, as well as verified locations of important natural resources used by the tribe. NIGC determined, on the basis of historical documentation, that the historic villages obtained subsistence resources from up to 20 miles away, placing the relevant property well within Mooretown’s aboriginal subsistence use area. There is simply no comparable evidence here. Scotts Valley’s original rancheria and historic village sites are far to the north, at Clear Lake. And there is no evidence whatsoever that Scotts Valley ancestors used any of the natural resources at the Vallejo Property.

¹³ Scotts Valley ILO (2025) at 21-22.

¹⁴ See 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 (2013) at 128-19 (lodges within 3 miles), 133 (battle within 3 miles).

¹⁵ Id. at 126 (“The southern boundary of the [Cowlitz] aboriginal title area, as found by the ICC, is approximately 14 miles north of the Cowlitz Parcel.”)

Third, in addition to demonstrating a “significant historical connection” to the Vallejo Site, Scotts Valley must also establish a relevant “temporal connection.” To meet that latter requirement, the Band was required to submit an application to take the Vallejo Site in trust within 25 years after being restored to federal recognition.¹⁶ Again, it is important to remember that the Vallejo Site consists of four different parcels. Scotts Valley requested that one of the four – the Western Parcel – be taken into trust in 2016. But the Band did not submit any fee-to-trust request regarding the remainder of the Vallejo Property – the three Eastern Parcels – until 2024, well after the 25-year deadline had expired.¹⁷ The 2025 ILO nonetheless concluded, without explanation, that the entire Vallejo Site – all four parcels – qualified for the restored lands exception. That conclusion is clearly erroneous, and, like DOI’s “significant historical connection” determination, it should be reconsidered and reversed.

For more than a year, Yocha Dehe has advocated for DOI to establish a fair, transparent, fact-based process in which all interested tribal governments can submit evidence addressing Scotts Valley’s claims and participate on an equal footing. Thank you for hearing our concerns, and please accept our profound thanks for restoring some fairness and transparency to this matter of critical importance to our Patwin people.

We believe that when the evidence is fully and fairly considered there will be no doubt that Scotts Valley lacks the significant historical connection necessary to qualify the Vallejo Property for the restored lands exception.

To be clear, we do not mean to suggest Scotts Valley would be (or should be) precluded from realizing the benefits of IGRA. If Scotts Valley is set on pursuing a gaming project in Vallejo, it can seek a two-part determination. Or, if Scotts Valley wishes to rely on the restored lands exception, it can pursue a gaming project in its Clear Lake homeland. Yocha Dehe would not oppose such a Clear Lake restored lands proposal. In fact, we have never opposed a tribal government seeking to pursue economic development in its own homeland – and we previously offered to help Scotts Valley do just that.

After all, we recognize that one of IGRA’s fundamental goals is to promote tribal economic development. But that goal applies equally to all tribes. It does not privilege

¹⁶ 25 C.F.R. § 292.12(c).

¹⁷ Notably, the 2024 request referred to the Eastern Parcels as “necessary” for Scotts Valley’s gaming project.

the economies of restored tribes over those of tribes that were never terminated, gaming (like Yocha Dehe) or not (like Kletsel Dehe).

And, more fundamentally, IGRA recognizes that economic development is a means, not an end. The ultimate objective is to provide for strong tribal governments capable of protecting sovereignty and culture and passing them down so that future generations might have better lives in their homelands. That is one of the reasons why it is so important not to breeze past regulatory provisions like the "significant historical connection" requirement. Tribes across Indian Country rely on DOI to fairly review facts, faithfully apply the law, and maintain settled regulatory expectations so that they can plan for their people and avoid unnecessary inter-tribal conflict.

We understand Scotts Valley suffered harm during the termination era. Our tribe, like theirs, was targeted for termination by the United States. And it was only with the greatest of effort – a last-minute petition asking the United States to preserve our sovereignty for future generations – that we were able to fight off federal termination efforts. Truly, we are not unsympathetic. But neither should we be penalized for having fought so hard to maintain our sovereignty during that awful time. There is no just basis for the United States to address Scotts Valley's termination by erroneously assigning them a significant connection to our Patwin ancestral lands. Two wrongs will never make a right.

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Anthony Roberts
Tribal Chairman

Enclosures:

- Tab 1: Yocha Dehe November 13, 2024, submission, including exhibits A-K.
- Tab 2: Yocha Dehe written requests for fair, transparent, fact-based review process.
- Tab 3: Yocha Dehe consultation requests.
- Tab 4: Materials associated with November 27, 2024, meeting.
- Tab 5: Report of the Commissioner of Indian affairs (1858) (excerpt).