UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YOCHA DEHE WINTUN NATION,

18960 Puhkum Road
Brooks, CA 95606,

and

KLETSEL DEHE WINTUN NATION OF THE CORTINA RANCHERIA,

570 Sixth Street
Williams, CA 95987,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR;

BUREAU OF INDIAN AFFAIRS;

BRYAN MERCIER, in his official capacity as Acting Assistant Secretary-Indian Affairs;

SCOTT DAVIS, in his official capacity as Principal Deputy Assistant Secretary-Indian Affairs; and

PHILIP BRISTOL, in his official capacity as Acting Director of the Office of Indian Gaming, Department of the Interior,

1849 C Street, N.W.
Washington, D.C. 20240,

Defendants.

Civil Action No.:

COMPLAINT

INTRODUCTION

1. Plaintiffs the Yocha Dehe Wintun Nation ("Yocha Dehe") and the Kletsel Dehe Wintun Nation of the Cortina Rancheria ("Kletsel Dehe") are federally recognized tribal governments whose Patwin people have, since time immemorial, used, occupied, and maintained a cultural and spiritual connection to the region of the northeastern San Francisco Bay Area now known as Solano County, California. They file this action to challenge arbitrary, capricious, and illegal decisions by Defendants the United States Department of the Interior ("DOI"), Bureau of Indian Affairs ("BIA"), and Bryan Mercier, Scott Davis, and Phil Bristol (each in his official capacity) purporting to "restore" these Patwin ancestral lands to the Scotts Valley Band of Pomo Indians ("Scotts Valley" or "Band"), an unrelated Pomo tribe, from another part of California, which lacks any ancestral connection to the area.

2. On January 10, 2025, DOI and BIA issued a final decision ("January 10 Decision") to acquire 160 acres of land in the Solano County city of Vallejo (the "Project Site") in trust for Scotts Valley and to authorize the Band to build there a Pomo government headquarters, a 600,000 square-foot casino, an office building, and 24 houses (the "Project"). The January 10 Decision violated five of the bedrock federal laws that protect tribal governments, their lands, and their people from illegal and improper agency actions: the Administrative Procedure Act ("APA"), the Indian Gaming Regulatory Act ("IGRA"), the Indian Reorganization Act ("IRA"), the National Historic Preservation Act ("NHPA"), and the National Environmental Policy Act ("NEPA").

3. In approving the Project, DOI and BIA also broke their own promises – promises relied on by Plaintiffs, other federally recognized tribal governments, and the federal courts. Defendants successfully opposed Yocha Dehe's intervention in prior litigation by promising

Yocha Dehe would have a meaningful opportunity to participate in any remand proceedings. During the remand proceedings at issue here, Yocha Dehe, Kletsel Dehe and other federally recognized tribal governments submitted evidence squarely rebutting Scotts Valley's application for Project approval. But Defendants' January 10 Decision states that none of this evidence was, in fact, considered. In their headlong rush to approve the Project, Defendants simply ignored the facts, the law, and the tribes indigenous to the area.

JURISDICTION AND VENUE

4. This action arises under the APA, IGRA, NHPA, NEPA, IRA, and the regulations and orders implementing those statutes. Plaintiffs seek judicial review pursuant to the APA, 5 U.S.C. §§ 555, 701-706.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as a Defendant), 28 U.S.C. § 1362 (civil actions brought by federally recognized Indian tribes), and the APA.

6. This Court may grant declaratory, injunctive, and other relief, including setting aside arbitrary and capricious agency actions, pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-706.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to this action took place in Washington, D.C., and because Defendants reside within this district for venue purposes.

8. There is an actual, present, and justiciable controversy between Plaintiffs and Defendants. Approval of the Project has caused and will continue to cause actual injury to Plaintiffs, including, without limitation, cultural, environmental, governmental, and economic

injuries. These injuries are concrete, particularized, and traceable to the Project, and each is redressable by this Court.

PARTIES

9. Plaintiff YOCHA DEHE is a federally recognized tribal government whose Patwin people once used and occupied the area of California now known as Solano County and Napa County, in the northeast San Francisco Bay Area. Yocha Dehe's people speak the same Patwin dialect that was spoken in the 1800s in and around what is now known as the City of Vallejo.

10. Plaintiff KLETSEL DEHE is a federally recognized tribal government. The ancestral territory of its Patwin people includes areas of California now known as Solano County and southern Napa County, among other lands. Kletsel Dehe ancestors include the chief known as Mem, one of the leaders of the Patwin people who in the 1800s used and occupied the area of southern Napa County today known as the town of Napa.

11. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is responsible for oversight, administration, and implementation of IGRA and the IRA. Its decision-making under IGRA and the IRA is also subject to the requirements of the APA, the NHPA, and NEPA, as well as the procedures in its own Departmental Manual. DOI is also responsible for maintaining government-to-government relations with federally recognized Indian tribes, including Plaintiffs, consistent with the United States' trust responsibilities to tribal governments.

12. Defendant BUREAU OF INDIAN AFFAIRS is a bureau within DOI. Among other things, it is responsible for reviewing, processing, and complying with legal requirements relating to proposed fee-to-trust acquisitions. It is also responsible for overseeing and complying

with the United States' trust responsibilities to tribal governments. BIA served as the Project's "lead agency" for NEPA and NHPA purposes.

13. Plaintiffs are informed and believe, and on that basis allege, that BRYAN MERCIER serves as the acting Assistant Secretary-Indian Affairs. He is sued in his official capacity. Among other things, the Assistant Secretary-Indian Affairs discharges the duties of the Secretary of the Interior with respect to IGRA Indian Lands Opinions ("ILOs") and other relevant matters arising under IGRA, NEPA, and the NHPA.

14. Plaintiffs are informed and believe, and on that basis allege, that SCOTT DAVIS serves as the Principal Deputy Assistant Secretary-Indian Affairs. He is sued in his official capacity. Plaintiffs are further informed and believe, and on that basis allege, that Mr. Davis, in his official capacity, exercises authority of the Assistant Secretary-Indian Affairs for certain purposes. From 2021 until January 2025, the office of Principal Deputy Assistant Secretary-Indian Affairs was held by Wizipan Garriott. Mr. Garriott signed the January 10 Decision approving the Project, in purported exercise of the delegated authority of the Assistant Secretary-Indian Affairs. Plaintiffs are informed and believe, and on that basis allege, that Mr. Garriott based his claim of delegated authority on DOI's Departmental Manual. Plaintiffs are further informed and believe, and on that basis allege, that immediately after signing the January 10 Decision, Mr. Garriott left his position at DOI.

15. Plaintiffs are informed and believe, and on that basis allege, that PHILIP BRISTOL serves as the Acting Director of the Office of Indian Gaming. He is sued in his official capacity. The Office of Indian Gaming claims to act as the primary advisor within DOI regarding the requirements of IGRA. It claims that its duties and responsibilities include administrative review and analysis of the statutory and regulatory requirements of IGRA and

related statutes, policy development, and "technical assistance" to tribal and state stakeholders. Further, the Office of Indian Gaming claims to implement the Secretary of the Interior's responsibilities under IGRA. From 2010 until January 2025, the Director of the Office of Indian Gaming was Paula Hart. Plaintiffs are informed and believe, and on that basis allege, that Ms. Hart played a material role in drafting a 2025 ILO (published as part of the January 10 Decision) concluding that the Project Site met the requirements of IGRA's restored lands exception. Plaintiffs are further informed and believe, and on that basis allege, that Ms. Hart left her position at DOI shortly after the January 10 Decision.

LEGAL FRAMEWORK

A. Administrative Procedure Act

16. The APA provides that any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof." 5 U.S.C. § 702.

17. The APA also establishes certain minimum standards for federal agency proceedings. As relevant here, the statute requires that "[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding" and that "[e]xcept in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial." 5 U.S.C. § 555(e).

18. The APA further provides that a reviewing court "shall" set aside agency actions, findings, or conclusions that are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or adopted without observance of procedure required by law. 5 U.S.C. § 706(2).

B. Indian Gaming Regulatory Act

19. IGRA provides a statutory basis for the regulation of gaming on Indian lands. Enacted in response to *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which held the State of California lacked inherent authority to regulate such gaming, IGRA was intended to balance tribal, state, and federal interests in gaming regulation.

20. IGRA generally prohibits gaming on Indian lands taken into trust after the statute's October 17, 1988, effective date, subject to a limited number of specific exceptions. Two exceptions to the general prohibition are relevant here: the "two-part process" and the "restored lands exception."

Two-Part Process

21. The two-part process allows gaming on lands taken into trust for a tribe after 1988 if the Secretary of the Interior determines that the gaming would be in the best interest of the applicant tribe and not detrimental to the surrounding community (including other Indian tribes), and the governor of the relevant state concurs. 25 U.S.C. § 2719(b)(1)(A).

22. DOI has promulgated regulations memorializing its interpretation of the two-part process, which are codified at 25 C.F.R. Part 292 (the "Part 292 Regulations"). The Part 292 Regulations provide that DOI will consider favorably, as part of the two-part process, any significant historical connection the applicant tribe may have to the land proposed for gaming eligibility. *See* 25 C.F.R. § 292.17(i). But the Part 292 Regulations do not *require* the applicant tribe to demonstrate a significant historical connection – they allow gaming on lands where no such connection exists, as long as other requirements are met (including no detriment to the surrounding community) and the governor concurs. *Id*. §§ 292.13, 292.16-292.23.

23. Scotts Valley could have pursued a two-part process for the Project Site (or any other site) but chose not to.

Restored Lands Exception

24. Instead, Scotts Valley chose to pursue the restored lands exception, which allows gaming on lands taken into trust after 1988 "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).

25. DOI's interpretation of the restored lands exception is set forth in the Part 292 Regulations. 25 C.F.R. §§ 292.7-292.12. Where, as here, the applicant tribe was restored to federal recognition pursuant to a court-ordered settlement agreement, the Part 292 Regulations *require* the applicant tribe to demonstrate a significant historical connection to the specific property that is proposed to be "restored." *Id.* §§ 292.11-292.12. Other requirements include demonstrating a temporal connection between the applicant tribe's restoration to federal recognition and its request for restored lands. *Id*. But no gubernatorial concurrence is required. *Id*. These regulatory requirements (among others) were enacted to "effectuate[] IGRA's balancing of the gaming interests of newly acknowledged and/or restored tribes with the interests of nearby tribes and the surrounding community." *Redding Rancheria v. Jewell*, 776 F.3d 706, 712 (9th Cir. 2015). They strike "a balance between allowing restored tribes to game on newly acquired lands, while at the same time protecting the interests of established tribes." *Id*. Otherwise, restored tribes would have "an unfair advantage over established tribes who generally cannot game on any lands acquired after IGRA was passed." *Id*.

26. The Part 292 Regulations provide that an applicant tribe may demonstrate a significant historical connection by proving "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty" or by showing "by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. § 292.2. Many of DOI's ILOs implementing the Part 292

Regulations also address the meaning of "significant historical connection." Taken together, these two sets of authorities – the Part 292 Regulations and DOI's ILOs – yield a settled body of agency interpretation, including the following principles:

- The historical connection must be truly "significant" – an applicant tribe must prove "something more than 'any' connection." 73 Fed. Reg. 29,354, 29,599 (May 20, 2008); Guidiville ILO at 9-10 (2011).[1]
- A significant historical connection requires "historical documentation"; claims lacking historical documentation do not suffice. 25 C.F.R. § 292.2; 73 Fed. Reg. at 29,599.
- The applicant tribe must demonstrate a significant historical connection to the specific parcels at issue. 25 C.F.R. § 292.12; Scotts Valley ILO at 15 (2012);[2] Guidiville ILO at 13, 17 (2011). This requirement can be satisfied with evidence of the applicant tribe's use or occupancy of other land "in the vicinity," *but only if* that evidence causes a natural inference that the tribe also used or occupied the specific property proposed to be "restored." Scotts Valley ILO at 15 (2012); Guidiville ILO at 13, 17 (2011).
- A significant historical connection requires something more than an "inconsistent" or "transient" presence. 73 Fed. Reg. at 29,366. The applicant tribe must demonstrate "a consistent presence . . . supported by the existence of dwellings, villages, or burial grounds." Guidiville ILO at 14-15 (2011).
- A significant historical connection must be *tribal*. 25 C.F.R. § 292.2. The locations of individual ancestors or citizens of the applicant tribe are "not necessarily indicative of tribal occupation or subsistence use" and "[f]or purposes of Part 292, an applicant tribe's historical references must be specific to the applicant tribe." Guidiville ILO at 16-18 (2011); Scotts Valley ILO at 7 (2012).

27. Consistent with the above, because "the burden is on the applicant tribe to establish its eligibility" for the restored lands exception, a significant historical connection must be based on positive evidence rather than negative inference. 73 Fed. Reg. at 29,372. "Part 292

[1] Prior ILOs are public documents, most of which are available on DOI's website. For convenient reference, a copy of the 2011 Guidiville ILO is attached as Exhibit A.
[2] For convenient reference, a copy of the 2012 Scotts Valley ILO is attached as Exhibit B.

requires reliable historical documentation of use or occupancy; inferences are insufficient to establish a significant historical connection." Scotts Valley ILO (2012) at 9. A significant historical connection cannot be based on absence of evidence. *Id.* at 9-10; Guidiville ILO (2011) at 13 n.64.

C. National Historic Preservation Act

28. In enacting the NHPA, Congress declared a policy that historic and cultural resources should be preserved as "a living part of our community life" and, further, that "the preservation of . . . heritage is in the public interest." Pub. L. No. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended by Pub. L. No. 96-515, 94 Stat. 2987 (Dec. 12, 1980). Accordingly, the purposes of the NHPA include preserving "historical and cultural foundations." *Id*.

29. Section 106 of the NHPA requires federal agencies to take into account the effects of their "undertakings" on historic properties – including properties that may be of religious or cultural importance to Indian tribes. 54 U.S.C. § 306108. This requirement must be completed "prior to" the issuance of any permit or license for the "undertaking." *Id*.

30. Section 106 broadly defines "undertaking" to include any "project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency," including activities "requiring a federal permit, license or approval." 54 U.S.C. § 300320.

31. The NHPA also created the Advisory Council on Historic Preservation ("ACHP"), which is authorized to issue regulations setting out specific requirements for federal agency compliance with Section 106. These regulations are codified at 36 C.F.R. part 800 (the "Section 106 Regulations") and are binding on Defendants.

32. The Section 106 Regulations require the lead federal agency for each undertaking to determine the undertaking's Area of Potential Effect ("APE"); to identify historic properties

within the APE that may be affected; to consider whether effects on historic properties may be adverse; and to resolve any potential for such adverse effects. 36 C.F.R. §§ 800.2-800.6. The Section 106 Regulations specify that each of these steps in the Section 106 compliance process must be taken *in consultation with* Indian tribes that attach religious and cultural significance to the lands relevant to the undertaking. *Id*. They define this consultation process to include "seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process." *Id.* § 800.16(f).

33. The Section 106 Regulations direct federal agencies to "ensure that the section 106 process is initiated early in the undertaking's planning." *Id.* § 800.1(c). They further recognize that timely initiation of the Section 106 process is particularly important where tribal governments may be involved, and they instruct federal agencies to begin Section 106 consultations with Indian tribes "early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties." *Id.* § 800.2(c)(2)(ii)(A).

34. Federal agencies are required to meet their Section 106 consultation obligations in a manner that is consistent with the government-to-government relationship between the United States and Indian tribes. *Id.* § 800.2(c)(2)(ii)(C). Federal agencies must recognize this "unique legal relationship"; must conduct the consultation process in "a sensitive manner respectful of tribal sovereignty"; and must ensure the consultation process is "sensitive to the concerns and needs of the Indian tribe" being consulted. *Id.* § 800.2(c)(2)(ii)(B)-(C).

35. If, after properly consulting with all relevant parties, the lead federal agency determines that its undertaking will not affect any historic properties, it must provide

documentation of such finding to the relevant State Historic Preservation Officer ("SHPO"), with notice to all consulting parties. *Id.* § 800.4(d). The SHPO has 30 days to review an adequately documented finding. *Id*. If the SHPO objects, the lead agency must either conduct additional consultations or request that ACHP review the finding. *Id*. If the lead federal agency requests ACHP review, all consulting parties must be notified of that request so they can provide additional input. *Id*.

36. The Section 106 Regulations, like the NHPA itself, emphasize that the lead federal agency "must complete the Section 106 process" – including all consultations, notices, and review periods – prior to approving the undertaking. *Id.* § 800.1(c). Documentation of any findings must also be "made available for public inspection" prior to approval of the undertaking. *Id.* § 800.4(d).

D. National Environmental Policy Act

37. NEPA is the nation's "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a).[3] Its purposes are to "help public officials make decisions that are based on understanding of environmental consequences and take actions that protect, restore, and enhance the environment" and to "ensure that agencies identify, consider, and disclose to the public relevant environmental information early in the process before decisions are made and before actions are taken." *Id.* § 1500.1(b), (c).

[3] On November 12, 2024, the United States Court of Appeals for the D.C. Circuit suggested that Council on Environmental Quality ("CEQ") regulations implementing NEPA, 40 C.F.R. parts 1500 to 1508, are not independently enforceable. *See Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, 912-15 (D.C. Cir. 2024). The January 10 Decision states that Defendants "nonetheless elected to follow those regulations." Accordingly, this Complaint provides citations to relevant portions of the CEQ regulations.

38. To implement these objectives, NEPA imposes "action-forcing" requirements on all federal agencies. *Id.* § 1500.1(a)(2). Chief among these action-forcing requirements is the mandate to prepare a comprehensive Environmental Impact Statement ("EIS") on any major action significantly affecting the human environment. 42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. Part 1502.

39. If an agency is uncertain as to whether an EIS is required, it may prepare an Environmental Assessment ("EA"). 40 C.F.R. § 1501.5(a). An EA must discuss the purpose and need for the proposed action, the proposed action's potential environmental impacts, and reasonable alternatives to the proposed action, among other things. *Id.* § 1501.5(c)(2).

40. If the EA establishes that the proposed action will not have any significant environmental impacts, the agency can proceed with a Finding of No Significant Impact ("FONSI"). *Id.* § 1501.6(a)(1), (2). If the EA indicates the proposed action will *or may* significantly impact the human environment, an EIS must be prepared. Indian Affairs National Environmental Policy Act Guidebook, 59 IAM 3-H, § 6.5 (Aug. 2012) ("BIA NEPA Guidebook").

41. NEPA broadly defines "environment" to include "the natural and physical environment and the relationship of present and future generations with that environment." 40 C.F.R. § 1508.1(r). Among other things, impacts to the environment include direct, indirect, and cumulative effects and ecological, historic, cultural, economic, social, or health impacts. *Id.* § 1508.1(i). This includes effects on ecological, cultural, and socioeconomic resources of tribal importance. *Id*.

42. In determining the significance of a proposed action's environmental impacts, the lead agency must consider multiple significance criteria, including: the degree to which the

action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, tribal sacred sites, wetlands, or ecologically critical areas; whether the action may conflict with federal, state, tribal or local law or other requirements designed for the protection of the environment; the degree to which the potential effects on the human environment are highly uncertain; the degree to which resources listed in or eligible for listing in the National Register of Historic Places may be adversely affected; the degree to which the action may adversely affect an endangered or threatened species or the habitat of such a species; and the degree to which the action may adversely affect rights of Tribal Nations. *Id.* § 1501.3(d)(2).

43. If the lead agency relies on mitigation measures to conclude that the proposed action's environmental impacts will be less than significant, each mitigation measure must be enforceable and rendered in sufficient detail to demonstrate effectiveness through standards for determining compliance and the consequences of non-compliance. *Id.* §§ 1501.6(d), 1505.3(d)(5).

44. In considering alternatives to the proposed action, the lead federal agency must "include those that are *practical or feasible* from the technical and economic standpoint, rather than simply *desirable* from the standpoint of the applicant" for federal approval. 46 Fed. Reg. 18,026, 18,027 (Mar. 17, 1981) (emphasis original).

45. NEPA provides potentially affected tribal governments with special rights and protections. For example, relevant implementing regulations and procedures require Defendants to incorporate Indigenous Knowledge into their EAs. 40 C.F.R. § 1506.6(b). Indigenous Knowledge is among the forms of high-quality information that must be used in identifying and evaluating a proposed action's environmental impacts. *Id.* §§ 1501.8(a), 1502.15(b), 1506.6(b).

46. Regulations and agency procedures also direct that tribal governments with special expertise should be accorded an enhanced role – known as "cooperating agency" status – in the NEPA process. *See id.* § 1501.8; 43 C.F.R. §§ 46.225, 46.230; BIA NEPA Guidebook § 8.2.3.

47. In addition, when a tribe has special expertise or will be impacted by the proposed action, that tribe must be consulted *in the preparation of* the lead agency's NEPA document. 40 C.F.R. § 1501.9; 43 C.F.R. § 46.230; BIA NEPA Guidebook § 6.4.7; Department of the Interior, Managing the NEPA Process – Bureau of Indian Affairs, 516 DM 10, § 10.3.A(2)(a) (July 2020) ("DOI NEPA Manual").

E. Indian Reorganization Act

48. The IRA permits the Secretary of the Interior to take land into federal trust "for the purpose of providing land for Indians." 25 U.S.C. § 5108.

49. DOI has promulgated regulations governing this trust acquisition process, which are codified at 25 C.F.R. Part 151 (the "Part 151 Regulations").[4] BIA's review of fee-to-trust applications is governed by the Part 151 Regulations, as well as its own "Fee-to-Trust Handbook."

50. The Part 151 Regulations and Fee-to-Trust Handbook require an applicant tribe to identify the purposes for which the proposed trust property would be used. 25 C.F.R. §§ 151.10(c), 151.11(a). They also require BIA to ensure proper, marketable title consistent with the proposed use. *Id.* § 151.13(b).

[4] Substantial revisions to the Part 151 Regulations became effective in January 2024. Apparently, Scotts Valley and DOI elected to proceed under the prior version of the regulations. Therefore, all citations to Part 151 refer to the pre-2024 version.

51. The Part 151 Regulations further require consideration of the distance between the applicant tribe's existing lands and the proposed trust property. As the distance increases, "the [BIA] shall give greater scrutiny to the [applicant] tribe's justification of anticipated benefits from the acquisition" as well as "greater weight" to concerns raised in opposition. *Id.* § 151.11(b).

52. In addition, the Part 151 Regulations require BIA to carefully evaluate and address "jurisdictional problems" and "potential conflicts of land use which may arise." *Id.* §§ 151.10(f), 151.11(a), (d).

F. Tribal Consultation

53. Federal Executive Order 13175 memorializes a policy "to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications." 65 Fed. Reg. 67,249 (Nov. 9, 2000). The term "Policies that have tribal implications" is defined broadly to include any "actions that have substantial direct effects on one or more Indian tribes." *Id*.

54. The United States has also established a set of uniform standards for tribal consultation, applicable government-wide. 87 Fed. Reg. 74,479 (Dec. 5, 2022). Among other things, the uniform standards provide that "[w]hen a Tribal government requests consultation," the agency "shall" respond "within a reasonable time period." *Id*. at 74,480. Among other things, t5he uniform standards also direct that tribal parties be notified and provided with relevant materials well in advance of consultation, and that the heads of federal agencies timely disclose to any affected tribe the outcome of the consultation and the decisions made as a result. *Id*. at 74,480-81.

55. DOI has adopted its own procedures for government-to-government consultation with federally recognized Indian tribes. Those procedures declare a commitment to

> [I]nvite Tribes to consult on a government-to-government basis whenever there is a Departmental Action with Tribal Implications. All Bureaus and Offices shall make good-faith efforts to invite Tribes to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with Tribal implications. It is the policy of the Department to seek consensus with impacted Tribes in accordance with the Consensus-Seeking Model.

Department of the Interior Policy on Consultation with Indian Tribes, 512 DM 4, § 4.4 (2022).

FACTUAL ALLEGATIONS

A. The Patwin Tribes

56. Plaintiffs are federally recognized tribal governments whose Patwin people aboriginally used and occupied a large area of Northern California extending from the Sacramento River in the east to the Napa River in the west, and from Suisun Bay and San Pablo Bay in the south to the plains of what is now Glenn County in the north. The Project Site lies squarely within these ancestral lands, between the historic Patwin villages of *Aguasto* and *Suskol*. The Project Site contains a known Patwin cultural resource, and it is part of and surrounded by a landscape of additional cultural sites.

57. The historical record includes documentation of Native villages, burial grounds, use, and occupancy of the northeast San Francisco Bay Area. That historical documentation shows Patwin people, led by Suisun Patwin Chief Francisco Solano, continued to use and occupy their ancestral lands in and around what is now the City of Vallejo and Solano County even after the arrival of significant numbers of Mexican colonists in the 1830s. In 1837, for example, Francisco Solano applied for and was given a formal Mexican land grant for the area just east of what is now Vallejo – known as Rancho Suisun – where he built hundreds of dwellings for the

Suisun Patwin people. In issuing the grant, the Mexican government expressly recognized Solano as "chief of the tribes of this frontier," noting that the area "belong[ed] to him by natural right and actual possession." The grant was later confirmed by the Mexican Governor of Alta California (1842) and, after California's admission to the United States, by the United States Supreme Court (1855). *See United States v. Ritchie*, 58 U.S. 525, 535 (1855).

58. In 1850, Mariano Vallejo – prominent political leader, namesake of the City of Vallejo, and then-owner of the Project Site – proposed, and the State of California agreed, that the County surrounding the Project Site should be named for Francisco Solano. Solano County's official seal and flag include images of the Patwin leader.

59. Over time, however, Plaintiffs' ancestors were driven from much of their ancestral territory by federal and state policies intended to steal their lands, enslave their people, and erase their culture. Plaintiffs' ancestors suffered for decades at the hands of successive waves of American settlers, their people sickened, enslaved, and even killed by the newcomers, often cruelly and without justice. By the early 1900s, the Patwin population had been reduced from tens of thousands to approximately one hundred.

60. In 1907, the United States forced some of the surviving Patwin, including Yocha Dehe's ancestors, to move to a small, remote reservation in Yolo County (immediately north of Solano County). Stranded on barren, non-arable land – with the nearest water well miles away – the people struggled to survive and maintain their culture. Making matters worse, the United States forced children to leave their families to attend boarding schools, where they were punished for speaking Patwin and practicing Patwin customs. In the mid-twentieth century, Yocha Dehe was targeted by the Federal government's "termination" policy – a misguided effort to "assimilate" Native people by (among other things) ending their sovereignty. Yocha Dehe

nonetheless resisted termination, successfully petitioning the Secretary of the Interior to preserve the Tribe's sovereign status for future generations. But even after fending off federal termination efforts, the Tribe and its members remained poor and isolated for decades, limited to a tiny scrap of reservation land and without secure housing or clean water, much less meaningful economic opportunity. In the 1980s, with the passage of IGRA, Yocha Dehe developed a resort and gaming facility on its Yolo County land. And, believing DOI would continue to fairly and transparently enforce IGRA's limitations on gaming-eligible "Indian lands" (paragraphs 19-27, above), Yocha Dehe continued to reinvest in its rural Yolo County resort. Today, Yocha Dehe uses resort revenues to provide health care, education, and other government services to its citizens; to revitalize Patwin language and culture; and to protect and care for the lands, waters, cultural resources, and people throughout Patwin ancestral territory, including Patwin homelands in what is now Solano County.

61. In 1907, the United States formally established a reservation at Cortina, in southwestern Colusa County (immediately north of Yolo County), for other Patwin survivors – including Kletsel Dehe's ancestors. The Cortina reservation had no secure water supply, and the vast majority of its 640 acres were uninhabitable. Nonetheless, Kletsel Dehe – like Yocha Dehe – successfully resisted termination by the United States and retained its sovereign status. But, from its founding until today, the Cortina reservation has been too remote and too arid for economic development, leaving Kletsel Dehe with extremely limited resources. Kletsel Dehe uses those limited resources to engage in cultural site protection efforts in Solano County, southern Napa County, and other parts of traditional Patwin territory, often relying on California state laws pursuant to which the California Native American Heritage Commission has identified

Kletsel Dehe and Yocha Dehe as the most likely descendants of Native American human remains found in Solano County.

62. Although the United States forced their ancestors onto remote reservations, Plaintiffs and their people remain culturally and spiritually connected to their ancestral lands in the City of Vallejo and surrounding areas of Solano County and southern Napa County. For example, Plaintiffs jointly hold a cultural easement from the City of Vallejo, allowing them to protect and preserve cultural resources and native landscapes along the shores of San Pablo Bay. They actively work to protect additional Patwin cultural sites in and around the City of Vallejo and Solano County, including those known to exist on the Project Site. Their people regularly come to Vallejo and surrounding areas (among others) for both formal and informal cultural purposes, and they appreciate and value the area's importance as Patwin homelands. They recently helped create and preserve the Patwino Worrtla Kodoi Dihi Open Space Park ("Southern Rock Home" in the Patwin Language) in nearby Fairfield, the seat of Solano County. Over the years, they have worked with public agencies and private property owners to protect Patwin cultural resources at hundreds of sites across Solano County and southern Napa County. Yocha Dehe has also helped create and fund a local Mobile Food Pharmacy – an award-winning program that delivers fresh fruits and vegetables to thousands of needy Solano County residents. In addition, Yocha Dehe helped create and fund the Vallejo "First 5" center, providing social services free of charge to local families in crisis. In these ways, among countless others, Plaintiffs and their Patwin people continue to steward their ancestral Solano County lands and to care for the people who live there, Native and non-Native alike.

63. In Patwin culture, the land and the people are interconnected, not separate. For that reason, impacts to Patwin ancestral lands – and the ecological and cultural resources they

contain – are not limited to environmental damage, but also cause a deeper cultural injury. At the same time, working to protect the lands, waters, cultural sites, and people within their ancestral territory is an important part of Patwin culture and identity – and the transmission of that culture and identity to succeeding generations. Thus, giving Patwin ancestral lands to another tribe, from another part of California – as Defendants have done here – adversely impacts Plaintiffs' sovereignty; the government services they provide their citizens; the cultural values, practices, and identity of their Patwin people; their ability to retain traditional ties to the homelands of their ancestors; and the transmission of Patwin culture, practices and identity to future generations. These injuries are traceable to Defendants' actions, and they would be redressed by the relief sought in this Complaint.

B. The Scotts Valley Band of Pomo Indians

64. Scotts Valley is a Pomo tribe from the northwest shore of *Clear Lake*, nearly 100 driving miles from Vallejo. Scotts Valley's ancestral lands are at *Clear Lake*. In 1851, its ancestors signed a treaty with the United States at *Clear Lake*. Had the 1851 treaty been ratified by the United States Senate, it would have created a reservation for Scotts Valley's ancestors at *Clear Lake*. Despite the Senate's failure to ratify the treaty, in 1911 the United States did, in fact, create a reservation for Scotts Valley at *Clear Lake*. In 1965, Scotts Valley citizens voted to terminate that reservation, and in return they received property in fee simple at *Clear Lake*. In 1991, Scotts Valley was restored to federal recognition and established a government headquarters at *Clear Lake*.

65. Today, Scotts Valley owns multiple properties at and around *Clear Lake*, including a parcel the Band describes as its "tribal lands." Scotts Valley hosts tribal events and ceremonies at its *Clear Lake* tribal lands. The Band also owns multiple businesses

headquartered at *Clear Lake*. Scotts Valley has sought and obtained state and federal funding for those businesses to support activities in and around *Clear Lake*.

66. In prior submissions to DOI and in federal court filings, Scotts Valley has admitted the Project Site is not part of its Clear Lake homeland but instead lies within the ancestral lands of the Patwin people. Scotts Valley has conceded that the City of Vallejo "was within traditional Patwin territory." It has acknowledged that "[e]thnographers have long been in agreement that 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." Its own experts concluded that Scotts Valley's traditional territory was instead located "on the western side of Clear Lake" where the Band "continues to maintain a community." In prior legal proceedings, Scotts Valley admitted that its own "villages were located farther north, around Clear Lake . . . with Patwin villages located in the south, near the [Project Site]." And, perhaps most importantly, Scotts Valley has conceded that it has no historical documentation placing its ancestors at Rancho Suscol, the 84,000-acre (130 square-mile) ranch that historically surrounded the Project Site.

67. Scotts Valley has been legally authorized to request gaming-eligible restored lands in its Clear Lake homeland ever since the Band's 1991 restoration to Federal recognition. Other terminated-and-restored Clear Lake Pomo tribes have successfully restored gaming-eligible land bases at Clear Lake during that same time period. Instead, Scotts Valley has sought what it perceives to be a more lucrative casino market by pursuing "restored lands" in the San Francisco Bay Area.

C. Scotts Valley's 2005 Restored Lands Request

68. In 2005, Scotts Valley requested a "restored lands" determination for land in the northeast San Francisco Bay Area city of Richmond, California, roughly 17 miles from Vallejo. In its "restored lands" request, Scotts Valley falsely claimed to be a successor to the Suisun Patwin tribe – a recognition of the overwhelming evidence that the northeast Bay Area was used, occupied, and controlled by Patwin (and not Pomo) people. In fact, Scotts Valley's Richmond "restored lands" request specifically alleged Vallejo and its vicinity was used and occupied by the Suisun Patwin. Importantly, Scotts Valley also asserted that it was "the Suisun Patwin, under the leadership of Chief Solano" who "provided the labor force" for large cattle ranches owned by the Vallejo family in the region. *See* Scotts Valley ILO at 17 (2012).

69. In connection with its Richmond restored lands request, Scotts Valley proposed to develop a 225,000 square-foot casino containing a 79,320 square-foot gaming floor, to be located on a 30-acre site zoned for commercial use. DOI decided that proposal – roughly one-third the size of the Project that Defendants ultimately approved in 2025 – was significant enough to require preparation of a comprehensive EIS addressing environmental impacts.

70. In 2012, DOI issued an ILO denying Scotts Valley's request for "restored lands" in Richmond. DOI properly found there was no evidence to suggest Scotts Valley is the successor to the Suisun Patwin tribe. *Id*. at 10-13, 17. And, more generally, the 2012 ILO found Scotts Valley did not, in fact, have any historic connection to Richmond. *Id.* at 5-18. The Band did not appeal, and the statute of limitations has long since expired.

D. Scotts Valley's 2016 Restored Lands Request

71. In 2016, having apparently abandoned its claims of a significant historical connection to Richmond, Scotts Valley requested that DOI issue a "restored lands"

determination for a 128-acre parcel in Vallejo. The 128-acre parcel is the westernmost of the four parcels that now make up the Project Site (the "Western Property"). The 2016 request did not seek a restored lands determination for any of the other three parcels now within the Project Site.

72. Scotts Valley's 2016 restored lands request claimed a significant historical connection to the Western Property based on (i) an unratified treaty signed by some of the Band's ancestors (among many others) at Clear Lake in 1851 (the "1851 Unratified Treaty"); and (ii) allegations that Scotts Valley ancestors were forced to labor on large ranchos owned by the Vallejo family during the Mexican administration of California.

73. Yocha Dehe requested, and DOI granted, an opportunity to review Scotts Valley's 2016 request and submit relevant rebuttal evidence. On November 8, 2016, and November 22, 2016, Yocha Dehe submitted detailed evidence rebutting Scotts Valley's restored lands claims. Other federally recognized tribal governments did the same, as did Solano County and the City of Vallejo.

74. In December 2016, after reviewing the submissions of all interested parties, DOI informed Scotts Valley that a favorable restored lands determination could not be granted because the Band had not identified specific, positive evidence of a significant historical connection to Vallejo. Scotts Valley asked DOI for an opportunity to search for additional evidence.

75. In 2018, Scotts Valley submitted to DOI additional material purporting to identify evidence of historical connections between Scotts Valley and the Project Site. The 2018 submission claimed that Scotts Valley ancestors were among a cohort of children baptized at the Sonoma Mission in 1837. The submission also included a detailed biography of one Scotts

Valley ancestor in particular – a man called Shuk Augustine – and suggested that the 1870 census showed him living in the town of Napa, California.

76. Yocha Dehe was not offered an opportunity to rebut Scotts Valley's 2018 submission.

77. After carefully reviewing the record a second time, DOI found Scotts Valley's evidence remained insufficient. This conclusion was memorialized in a detailed ILO addressing each and every one of Scotts Valley's contentions (the "2019 ILO"). The 2019 ILO was thorough, well-reasoned, and supported by thousands of pages of evidence submitted by interested parties, including concerned tribal governments.

E. The 2019 ILO Litigation

78. Scotts Valley filed suit, seeking to invalidate both the 2019 ILO and the Part 292 Regulations (the "2019 ILO Litigation").

79. Yocha Dehe moved to intervene as a defendant in the 2019 ILO Litigation. Scotts Valley and the United States successfully opposed Yocha Dehe's intervention, arguing that Yocha Dehe faced no threat of injury – and therefore lacked standing – because the Tribe would be able to effectively participate in any proceedings the court might order on remand. As the United States put it, "if the court were to rule in Scotts Valley's favor and remand the matter back to the agency, that outcome . . . would not impair Yocha Dehe's interest, *because Yocha Dehe could submit information to the agency . . . to ensure that the agency considered all the appropriate arguments to properly assess Scotts Valley's claim*." Fed. Appellees' Final Resp. Br. at 15, *Yocha Dehe Wintun Nation v. U.S. Dep't of Interior,* 3 F.4th 427 (D.C. Cir. 2021) (No. 21-5009) Doc. 1893213 (emphasis added); *see also id*. at 17-20 (promising the United States would fully represent Yocha Dehe's interests).

80. On the merits, the District Court upheld the Part 292 Regulations and found the 2019 ILO was not arbitrary or capricious from an APA perspective. But it remanded the case to DOI for consideration of whether the "Indian law canon of construction" – a principle of statutory interpretation applicable to certain legal issues where all tribal interests are aligned – should be applied in Scotts Valley's favor.

81. Concerned that the District Court decision might interfere with its discretion in future decision-making processes, DOI filed a motion for reconsideration. The District Court denied the reconsideration motion, making clear that it was neither requiring the agency to apply the Indian law canon of construction nor dictating the ultimate resolution of Scotts Valley's restored lands request.

82. With respect to the application of the Indian law canon of construction on remand, the Court clarified: "I didn't rule that the Department of the Interior had to apply the [canon]." *See* Transcript of May 8, 2023, Bench Ruling at 16:23-24, *Scotts Valley Band of Pomo Indians v. U.S. Dep't of Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-cv-1544-ABJ).

83. With respect to the ultimate resolution of Scotts Valley's restored lands request, the District Court expressly recognized that "it is not [the court's] role to . . . substitute its judgment for that of the agency." *Scotts Valley*, 633 F. Supp. 3d at 168.

84. Without consulting Yocha Dehe, the United States elected not to follow through on an appeal to the United States Court of Appeals for the District of Columbia Circuit, effectively remanding the proceedings back to DOI.

F. Proceedings on Remand

Defendants Ignore Requests for Fair, Transparent, Fact-Based Process

85. In other instances involving remand of a DOI decision on IGRA matters, DOI has established a schedule for interested parties to participate in the further proceedings. Without explanation, Defendants departed from that standard procedure here.

86. On November 28, 2023, Yocha Dehe submitted to DOI a letter formally requesting that DOI establish a fair, transparent, fact-based decision-making process in which all interested parties could participate on equal footing. Defendants never responded.

87. On March 19, 2024, Yocha Dehe submitted to DOI a follow-up letter reiterating – and requesting an update on – the status of its request that DOI set up a fair, transparent, fact-based decision-making process. Defendants never responded.

88. Other tribes and concerned stakeholders also requested that DOI establish a fair, transparent, fact-based decision-making process. Kletsel Dehe made such a request on April 1, 2024. The Federated Indians of Graton Rancheria made such a request on December 19, 2023. Defendants never responded to those requests either.

89. In June 2024, Yocha Dehe was informed by one of its elected representatives that DOI, without informing Yocha Dehe or any other concerned tribe – and, in fact, without even responding to their inquiries – had issued a memorandum directing BIA to complete Scotts Valley's fee-to-trust process and related NEPA review. Yocha Dehe asked BIA for more information: in a June 11, 2024 letter, the Tribe inquired as to the status of its requests for a fair, transparent decision-making process in which all interested parties could participate on equal footing and asked for information about upcoming proceedings, if any. BIA never responded.

Defendants' Environmental Assessment

90. Yocha Dehe's June 11 letter also formally requested that the Tribe be consulted in the preparation of any NEPA document that might be under way. Among other things, Yocha Dehe noted that BIA's own procedures specify that "[w]hen BIA determines that Tribal governments could be affected by a proposed action" they must be "consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents." DOI NEPA Manual, § 10.3A(2)(a). The June 11 letter further explained that Yocha Dehe was well-qualified to serve as a cooperating agency and that it had chosen to exercise its "option" to do so. BIA never responded.

91. Instead, on July 5, 2024 – a Friday night in the middle of a four-day holiday weekend – without any prior notice to Yocha Dehe, Kletsel Dehe, or other interested tribes, BIA summarily issued an EA. In the EA, Defendants disclosed for the first time that the Project was not limited to the 128-acre Western Parcel but also involved three other parcels (the "Eastern Parcels"). Defendants did not acknowledge their prior determination that a full EIS was required for Scotts Valley's smaller, less-impactful Richmond proposal. Nor did they explain why the two projects were treated differently for NEPA purposes.

92. The EA was prepared in haste, under cover of secrecy, and without the benefit of Indigenous Knowledge from Plaintiffs. As a result, the document was woefully inadequate. Among other things, it failed to disclose and address important parts of the Project; relied on outdated, unreliable data; ignored significant environmental issues; did not address potential impacts on nearby tribes and their resources; failed to consider in detail alternative sites capable of minimizing environmental damage; and did not set forth detailed construction and mitigation plans.

93. On August 22, 2024, Yocha Dehe submitted detailed comments on the EA, supported by expert technical reports, addressing the above-referenced shortcomings, among others. Yocha Dehe's comment letter also expressed concern that Defendants had impermissibly deferred NHPA compliance, leaving interested parties without essential information.

94. Kletsel Dehe also commented on the EA, noting, among other things, that Defendants had not provided adequate notice of the EA and had unreasonably limited the opportunity for concerned parties to comment on the document. Kletsel Dehe also requested to review the EA's cultural resources appendices, which BIA had withheld from the publicly-available document; BIA never provided them.

95. Other stakeholders likewise commented on the inadequacy of the EA, including the United Auburn Indian Community, the Lytton Band of Pomo Indians, the Federated Indians of Graton Rancheria, the Confederated Villages of Lisjan (an Ohlone Indian group), the Governor of California, the City of Vallejo, Solano County, Yolo County, the California Native Plant Society, and the Solano Land Trust, among many others.

Defendants' Notice of Fee-to-Trust Application

96. On July 11, 2024, during the comment period on the EA, Yocha Dehe received from BIA notice of a separate deadline to review and submit comments on Scotts Valley's fee-to-trust application pursuant to the Part 151 Regulations ("Part 151 Notice"). Kletsel Dehe did not receive a copy of the Part 151 Notice from BIA – Yocha Dehe had to provide it.

97. The Part 151 Notice stated that interested parties could obtain a copy of Scotts Valley's application from the agency's Pacific Regional Office. But when Yocha Dehe requested the application file from that office, the Tribe received no response for several weeks. BIA did not provide Yocha Dehe with confirmation of the scope and contents of Scotts Valley's

application file until August 19, 2024 – just seven days before the comment deadline. Kletsel Dehe likewise requested a copy of the application file; it never received one.

98. Despite being denied a reasonable opportunity to review and comment on Scotts Valley's fee-to-trust application, Yocha Dehe notified BIA of some of the application's most glaring defects. On August 26, 2024, Yocha Dehe submitted to BIA a letter pointing out that the application was incomplete, did not include required information, and was procedurally improper. The August 26 letter also explained that BIA failed to follow mandatory title review processes; that granting the application would cause serious jurisdictional problems and land use conflicts; and that the application did not withstand the "greater scrutiny" applicable to off-reservation trust acquisitions. Yocha Dehe asked to be notified of any further material submitted by Scotts Valley. BIA never responded.

Defendants' Refusal to Comply with the National Historic Preservation Act

99. While the comment processes on the EA and the Part 151 Notice were ongoing, Yocha Dehe Chairman Anthony Roberts and Kletsel Dehe Chairman Charlie Wright each received from BIA an email "invitation" to "observe" Scotts Valley's excavation of a known Patwin cultural resource (identified as CA-SOL-275 in relevant agency files) at the Project Site on September 4, 2024. The "invitation" identified BIA Archaeologist Dan Hall as the agency representative to be contacted. The very next day, Yocha Dehe responded to Mr. Hall requesting to discuss the proposed excavation.

100. Yocha Dehe eventually reached Mr. Hall and BIA Environmental Protection Specialist Chad Broussard by videoconference to discuss the proposed excavation. Mr. Hall and Mr. Broussard stated that the excavation was being performed at Scotts Valley's request, pursuant to an excavation plan prepared by one of Scotts Valley's contractors. Mr. Hall and Mr.

Broussard went on to state that BIA had not yet initiated any Section 106 process; they described the Project as being in a "pre-106 phase." In response to Yocha Dehe's follow-up questions, Mr. Hall and Mr. Broussard were not able to identify any statute, regulation, or agency guidance establishing a "pre-106 phase." Mr. Hall and Mr. Broussard also stated there was "no reason" why a Section 106 process could not be initiated. They further stated there were no deadlines or time constraints that would limit BIA's ability to fully comply with Section 106.

101. On August 31, 2024, Yocha Dehe sent Mr. Hall a letter formally objecting to Scotts Valley's proposal to excavate a known Patwin resource outside of any Section 106 process. The August 31 letter explained why BIA was required to initiate Section 106 compliance. It also identified in detail numerous respects in which the proposed excavation plan prepared by Scotts Valley's contractor was contrary to professional best practices, Patwin cultural protocols, and Indigenous Knowledge. The August 31 letter requested that any excavation be deferred until the Section 106 process could be initiated and a proper excavation plan developed, noting that neither Mr. Hall nor Mr. Broussard had identified any reason why the excavation had to go forward on September 4. Mr. Hall summarily rejected the request.

102. Concerned about the prospect of unsupervised excavation of a Patwin cultural site, Yocha Dehe's Tribal Council decided to attend the September 4 event. They met Mr. Hall at the time and place he had identified, accompanied by trained cultural resource specialists from both Yocha Dehe and Kletsel Dehe. In addition to Mr. Hall, three representatives from Scotts Valley and two archaeologists from Natural Investigations Company were present. The Natural Investigations Company archaeologists expressly stated that they "worked for Scotts Valley," not the BIA. Representatives of Yocha Dehe and Kletsel Dehe yet again asked whether and when a Section 106 process would be initiated; neither Mr. Hall nor Natural Investigations Company

would provide an answer. For their part, the Scotts Valley representatives professed to be entirely ignorant of Section 106 and its requirements. The Patwin tribes also asked whether there was any reason why the excavation needed to go forward prior to the initiation of a Section 106 process. Mr. Hall refused to respond, the Natural Investigations Company representative stated that he was unaware of any reason why the excavation had to proceed, and the Scotts Valley representatives said nothing. Mr. Hall then met with the Scotts Valley representatives for a significant period of time, while representatives of the Patwin tribes waited for further information in a separate area. At the conclusion of Mr. Hall's meeting with the Scotts Valley representatives, it was announced that the planned excavation would not go forward that day after all. The Patwin tribes were then directed to leave the site.

103. Plaintiffs are informed and believe, and on that basis allege, that excavation of CA-SOL-275 went forward on September 25, 2024 – this time without any notice to Yocha Dehe or Kletsel Dehe.

104. Not until October 11, 2024, did Defendants belatedly initiate the Section 106 process and invite Yocha Dehe to participate as a "consulting party." Yocha Dehe Chairman Anthony Roberts promptly responded that Yocha Dehe planned to accept the invitation and noted that a formal acceptance from Yocha Dehe's Tribal Historic Preservation Officer ("THPO") would follow shortly. Chairman Roberts' response made clear that Yocha Dehe sought and expected a proper consultation meeting with BIA. The Yocha Dehe THPO's formal acceptance letter and consultation meeting request followed a few days later, as promised. Federal Express delivery receipts show the formal acceptance letter and meeting request were received by BIA on October 28, 2024.

105. Two days later, on October 30, 2024, *without actually consulting Plaintiffs*, BIA submitted to SHPO proposed findings purporting to conclude the agency's role in the Section 106 process. The proposed findings claimed the Project would not adversely affect any historic properties. BIA did not notify Plaintiffs of the proposed findings or their transmission to SHPO.

106. On November 5, 2024, still without notice of BIA's proposed findings, Yocha Dehe inquired as to the status of the Section 106 process and reiterated the Tribe's request to schedule a consultation meeting. BIA did not respond.

107. Plaintiffs are informed and believe, and on that basis allege, that on November 15, 2024, SHPO responded to BIA's proposed findings by requesting continued Section 106 consultation until a meeting between the agencies could be arranged. Plaintiffs are further informed and believe, and on that basis allege, that a meeting between SHPO and BIA took place on December 10, 2024, at which BIA committed to conduct meaningful Section 106 consultations – including meaningful consultations with Plaintiffs – before taking any action on the Project. BIA did not disclose any of these developments to Plaintiffs.

108. On December 11, 2024, BIA finally responded to Yocha Dehe's October requests to schedule a Section 106 consultation meeting. BIA's December 11 response pretended to express interest in setting up a Section 106 consultation meeting. Yocha Dehe then proposed multiple meeting dates. But BIA refused to actually hold a Section 106 consultation meeting with Yocha Dehe until *after the Project had already been approved*. BIA never held a Section 106 consultation meeting with Kletsel Dehe.

Defendants' Refusal to Honor Government-to-Government Consultation Obligations

109. In the meantime, alarmed by Defendants' apparent disregard for its rights and concerns, Yocha Dehe formally requested government-to-government consultation with the United States.

110. In its initial request, dated August 6, 2024, Yocha Dehe proposed 13 days in September when its Tribal Council could travel to Washington, D.C. for an in-person consultation. In correspondence dated August 14, 2024, BIA informed Yocha Dehe that "appropriate consultation will be scheduled" and advised that Yocha Dehe could expect a response "directly from the Assistant Secretary-Indian Affairs." Defendants never sent any such response.

111. On September 11, 2024, having received nothing further from BIA and nothing at all from the Assistant Secretary, Yocha Dehe sent a follow-up letter reiterating its consultation request and identifying another 12 dates in October when its Tribal Council could travel to Washington, D.C. for an in-person consultation. Defendants never responded to Yocha Dehe's September 11 follow-up letter.

112. On October 30, 2024, Yocha Dehe yet again followed up on its consultation request. Yocha Dehe noted that it had offered a total of 25 potential consultation dates over two months but received no response. Yocha Dehe also pointed out that DOI's own consultation policies provide that the agency "must invite Indian Tribes early in the planning process to consult whenever a Departmental plan or action with Tribal Implications arises" and, further, that tribal consultation is mandatory "when Departmental Actions with Tribal Implications affect [a] Tribe's traditional homelands." The October 30 letter then identified 15 more dates in November and December when Yocha Dehe's Tribal Council could travel to Washington, D.C.

for an in-person consultation. Defendants never responded to Yocha Dehe's October 30 letter either.

Plaintiffs Rebut Scotts Valley's "Restored Lands" Claims

113. By early November 2024, Defendants had: (a) ignored Plaintiffs' requests to set a fair, transparent, fact-based process of remand proceedings; (b) excluded Plaintiffs from preparation of the EA and refused to allow Yocha Dehe to serve as a cooperating agency in the NEPA process; (c) refused to timely initiate the NHPA Section 106 process, while allowing Scotts Valley to excavate a known Patwin cultural site; (d) denied Plaintiffs a fair opportunity to review Scotts Valley's fee-to-trust application; and (e) refused to honor their government-to-government consultation obligations. Rather than continuing to wait for Defendants to establish a reasonable IGRA decision-making process, Yocha Dehe gathered and submitted to DOI evidence relevant to Scotts Valley's restored lands request.

114. On November 13, 2024, Yocha Dehe submitted hundreds of pages of ethnohistorical documentation and expert analysis affirmatively demonstrating that Scotts Valley never used or occupied – and therefore lacked any significant historical connection to – the Project Site.

115. Other tribes and concerned stakeholders, including Kletsel Dehe, the United Auburn Indian Community, the Federated Indians of Graton Rancheria, and Solano County, also provided Defendants with substantial evidence and analysis demonstrating that Scotts Valley had not met the requirements of the restored lands exception.

116. Among other things, the evidence submitted by Plaintiffs and other tribes and concerned stakeholders squarely rebuts – indeed, precludes – Scotts Valley's claims of a significant historical connection to the Project Site. For example:

- Scotts Valley claimed Patwin people native to the Vallejo area were decimated by smallpox and "replaced" by Clear Lake Pomo people beginning in 1837; historical documentation submitted by Plaintiffs (and others) demonstrates that Patwin people continued to use, occupy, and exercise authority over the area long after that date.
- Scotts Valley claimed an ancestor named Shuk Augustine and 15 others from his village were baptized as children at the Sonoma Mission in 1837. Historical documentation and expert reports submitted by Yocha Dehe and the Federated Indians of Graton Rancheria demonstrate the 1837 baptismal cohort included neither Shuk Augustine nor any other Scotts Valley ancestor; instead, the cohort consisted of children from an entirely unrelated tribe near Santa Rosa, more than 50 miles away.
- Scotts Valley claimed 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," of which the Project Site was a part. Evidence submitted by Plaintiffs shows that Rancho Suscol was used for livestock owned by the Mexican Army and, *according to sworn testimony submitted in later legal proceedings by the United States itself*, the Rancho was staffed exclusively by the Mexican military, not Indian labor.
- Scotts Valley claimed Shuk Augustine is named in an 1870 census of Rancho Tulucay, roughly 12 miles from the Project Site, suggesting that he may have used the Project Site at that time. Historical documentation submitted by Plaintiffs shows why this could not be true: Although the census refers to *an* "Augustine" (a common name), there is no evidence this was *Shuk* Augustine; nor was there any evidence linking any other member of the household to Scotts Valley; and, most importantly, by 1870 the Project Site had been carved out of Rancho Suscol, sold multiple times, and was a small family farm worked by non-Indian labor.
- Scotts Valley further claimed Shuk Augustine's alleged presence at Rancho Tulucay in 1870 could be attributed to the entire Band, suggesting Tulucay was a Pomo community. Historical documentation submitted by Plaintiffs shows just the opposite. Rancho Tulucay was Patwin, not Pomo: Tulucay was named after a Patwin village; historical documentation shows that it was surrounded by settlements of Uluca and Napa Indians, both Patwin tribes; primary sources report that Uluca and Napa people still lived there into the 1870s; and Rancho Tulucay's owners spoke a Patwin dialect.

The November 27 Videoconference

117. On November 22, 2024, Yocha Dehe Chairman Anthony Roberts and Kletsel Dehe Chairman Charlie Wright received a form letter from the Office of Indian Gaming inviting

them to a 30-minute group videoconference, to be held on the afternoon of November 27 – the day before Thanksgiving. The stated purpose of the meeting was to discuss DOI's application of IGRA and the Part 292 Regulations. The letter did not specify exactly who else had received an invitation. Nor did it identify any way for invitees to discuss sensitive information with appropriate assurances of confidentiality.

118. Yocha Dehe's government, like many others, was closed on November 27. But Chairman Roberts nonetheless accepted the invitation on Yocha Dehe's behalf. At the same time, he also made it very clear that a short-notice group videoconference would not – and could not – substitute for proper government-to-government consultation and compliance with applicable law. His November 25, 2024, acceptance letter explained:

> What we have repeatedly requested is the meaningful government-to-government consultation to which we are entitled by law, face-to-face, with appropriate notice and relevant documents exchanged in advance; what you have belatedly offered instead is an invitation to a group videoconference, with an unspecified number of other tribes, scheduled for the Wednesday afternoon before Thanksgiving, on just three business days' notice.

Chairman Roberts' November 25 letter yet again requested government-to-government consultation and offered to find dates in December or January for an in-person consultation meeting.

119. Prior to and during the November 27 videoconference, Yocha Dehe and DOI confirmed the videoconference was not a government-to-government consultation.

120. The November 27 videoconference was attended by representatives of at least six federally recognized tribal governments. Attendees included Pomo and Patwin tribes; gaming and non-gaming tribes; and terminated and un-terminated tribes. Each and every one of the attending tribes expressed strong opposition to Scotts Valley's restored lands request and significant concerns about DOI's decision-making process.

121. During the November 27 videoconference, Chairman Wright explained that the Project Site is in an area rich with Patwin cultural resources – in addition to the Patwin cultural resources on the Project Site itself, the property is in close proximity to multiple Patwin village sites and part of a broader cultural landscape. Chairman Wright also explained that additional information about Patwin cultural resources could be conveyed in the setting of a proper consultation, and he objected to the fact that Defendants had not yet consulted with Kletsel Dehe.

122. For their part, members of Yocha Dehe's Tribal Council attempted to convey to Principal Deputy Assistant Secretary Garriott – the highest ranking DOI official in attendance – the harm that granting Scotts Valley's request would cause to the Patwin Tribes. For example, Yocha Dehe Tribal Council member Leland Kinter explained the interconnectedness of land and people in Patwin culture, explaining that a decision to give Patwin ancestral lands to a Pomo tribe from a different part of California would cause significant harm to Patwin people.

123. Mr. Kinter also explained to Mr. Garriott how Yocha Dehe has maintained ties to its Solano County ancestral lands over the years:

> [W]hen our grandparents and aunts and uncles found out about a development project that threatened a village site or a place likely to contain burials, they would take up a collection for gas money so that someone could go down there and try to make sure that our ancestors and resources [were] protected. That work has continued from generation to generation.
>
> We have been doing that cultural monitoring work in Solano County and Vallejo itself for decades and decades. I personally served as a Yocha Dehe THPO for years and I have never seen or heard of a person from Scotts Valley caring for a single cultural site in Solano County, ever. These are not their lands and they never were.

A copy of Mr. Kinter's remarks is attached hereto as Attachment 1 to Exhibit C, for convenient reference.

124. Although the subject matter was serious and heartfelt, Mr. Garriott responded to remarks by Yocha Dehe leaders with laughter. His laughter was so disruptive and so

disrespectful that members of Yocha Dehe's Tribal Council had to pause their remarks to ask what Mr. Garriott found so amusing – and why he felt it appropriate to laugh at the very real concerns expressed by the tribal leaders before him.

125. Yocha Dehe also asked about the status of DOI's "restored lands" analysis. In response, Mr. Garriott confirmed that DOI had received Yocha Dehe's IGRA submission and assured Yocha Dehe that the submission would be reviewed and considered prior to any decision by Defendants.

126. In addition, Yocha Dehe reminded Mr. Garriott that both Section 106 compliance and government-to-government consultation were required. Yocha Dehe representatives asked Mr. Garriott about the Tribe's outstanding consultation requests. Mr. Garriott did not dispute DOI's obligation to consult with Yocha Dehe. Instead, he claimed – falsely – to have previously invited Yocha Dehe to three government-to-government consultation sessions. Yocha Dehe explained that it had no record of three prior consultation invitations and asked Mr. Garriott to provide documentation. Mr. Garriott promised to review his records and provide the documentation "in the next week." He never did.

127. On December 3, 2024, and again on December 17, 2024, Yocha Dehe followed up with Mr. Garriott to inquire about his supposed consultation invitations. He never responded to either inquiry.

128. On December 10, 2024, Yocha Dehe sent an additional follow-up, this time to the Office of the Solicitor of the Interior, asking about the status of Scotts Valley's restored lands request and government-to-government consultations thereon. The Solicitor's Office did not respond either.

The January 10 Decision

129. On January 10, 2025, DOI issued a decision approving the Project. The January 10 Decision is a final agency action for purposes of the APA.

130. The January 10 Decision included an ILO concluding that Scotts Valley's ancestors occupied the vicinity of the Project Site, and that the Band satisfied all other requirements of the restored lands exception. The Decision expressly stated that DOI *did not consider* any of the evidence submitted by Yocha Dehe and other tribes and concerned stakeholders.

131. The January 10 Decision also included a FONSI concluding that the Project's environmental consequences would be insignificant. The FONSI was based on an updated Final EA (released contemporaneously). But the Final EA, like the July EA, failed to disclose and address important parts of the Project, relied on outdated and unreliable data, ignored significant environmental issues, did not address potential impacts on nearby tribes and their resources, failed to consider in detail alternative sites capable of minimizing environmental damage, relied on flawed and incomplete mitigation, and did not provide detailed construction plans.

132. The January 10 Decision also included a six-page section titled "Part 151 Analysis." The Part 151 Analysis did not address Yocha Dehe's comments on the Part 151 Notice. Moreover, the Part 151 Analysis purported to authorize a development significantly more extensive than any of the alternatives disclosed and evaluated in the EA.

133. The January 10 Decision did not address Section 106. Not until January 17, 2025, *a week after approving the Project*, did Defendants for the first time hold a Section 106 "consultation meeting" with Yocha Dehe. Defendants have never held a Section 106 consultation meeting with Kletsel Dehe.

Defendants' Bad Faith

134. Regrettably, Defendants' actions and failures to act in this matter strongly suggest bad faith and improper behavior. *See Esch v. Yeutter*, 876 F.2d 976, 991-93 (D.C. Cir. 1989). Illustrative, non-exclusive examples follow in paragraphs 135 to 139.

135. Between July 2024 and January 2025, Defendants repeatedly and falsely represented – to the SHPO, to ACHP, and in the EA – that they were in ongoing consultations with Yocha Dehe while, at the same time, refusing to actually consult with the Tribe.

136. During the November 27 videoconference, Plaintiffs asked for information about the status of the environmental review process. In response, then-Director of the Office of Indian Gaming Paula Hart falsely stated the process was "beyond" the 1-year regulatory time limit on EAs, such that an imminent decision on Scotts Valley's Project was legally required. The statement was both false and misleading – false because the environmental review process was not "beyond" (or even close) to the 1-year time limit, and misleading because Defendants, by law, had discretion to extend the 1-year limit.

137. During the November 27 videoconference, then-Principal Deputy Assistant Secretary Wizipan Garriott falsely claimed to have invited Yocha Dehe to three prior consultation sessions about the Project. When questioned on that claim, Mr. Garriott promised to forward the consultation invitations within a week. He failed to do so, and he never responded to Yocha Dehe's follow-up inquiries.

138. Plaintiffs are informed and believe, and on that basis allege, that on January 9, 2025, federal elected officials called on then-Secretary of the Interior Deb Haaland and then-Solicitor of the Interior Robert Anderson to express concern about Defendants' unfair treatment of local tribes (including Plaintiffs) and to caution against issuing a politically motivated

decision during the transition between presidential administrations. Plaintiffs are further informed and believe, and on that basis allege, that Secretary Haaland and Solicitor Anderson falsely told the federal elected officials that the 2019 ILO Litigation removed Defendants' discretion and required them to approve Scotts Valley's restored lands request, despite each of them knowing of the District Court's explicit statements to the contrary.

139. In concluding Scotts Valley "occupied" the vicinity of the Project Site, the 2025 ILO cites two dictionaries – *Merriam-Webster's Online Dictionary* and the Nineteenth Edition of *Black's Law Dictionary* – for the proposition that the ordinary meaning of "occupancy" does not involve "ownership" or "control." This is a gross misrepresentation. Both dictionaries emphasize the importance of "ownership" and "control" as elements of "occupancy." The cited provision of *Black's* states "the term [*i.e.,* occupancy] denotes whatever acts are done on the land to manifest *a claim of exclusive control* and to indicate to the public that the actor has appropriated the land" (emphasis added). The cited provision of *Merriam-Webster* says occupancy means "the fact or condition of *holding*, *possessing*, or residing in or on something" and "the act or fact of taking or having possession (as of unowned land) *to acquire ownership*" (emphasis added). No fair-minded decision-maker could have ignored this plain language.

FIRST CAUSE OF ACTION

(VIOLATIONS OF IGRA AND THE APA)

140. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 139, above.

141. Defendants' 2025 ILO arbitrarily and capriciously concluded that Scotts Valley met all applicable requirements of the restored lands exception for the entirety of the Project Site. Defendants arbitrarily and capriciously refused to consider relevant evidence and erred in their

application of the restored lands exception's "significant historical connection" and "temporal connection" requirements.

Refusal to Consider Relevant Evidence

142. On remand, Defendants were charged with considering whether Scotts Valley met the requirements of Part 292, including the "significant historical connection" and "temporal connection" requirements.

143. During the remand process, Plaintiffs and other tribes and concerned stakeholders timely placed before relevant DOI decisionmakers substantial evidence directly relevant to these issues. That evidence, illustrative examples of which are identified in paragraph 116, rebutted Scotts Valley's restored lands claims.

144. The 2025 ILO says Defendants nonetheless ignored the evidence submitted. But the 2025 ILO does not explain *why* Defendants refused to consider the evidence. It says only "We note that, in reconsidering the 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."

145. Defendants' refusal to consider relevant evidence timely placed before DOI by Yocha Dehe, Kletsel Dehe, and other tribes and concerned parties violated the APA in multiple respects.

146. First, "[a]n agency's refusal to consider evidence bearing on the issue before it" is in and of itself arbitrary, capricious, and a violation of the APA. *Butte Cnty. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010); *see also Genuine Parts Co. v. EPA*, 890 F.3d 304, 312 (D.C. Cir. 2018) ("[A]n agency cannot ignore evidence that undercuts its judgment . . . ."). Here, the

evidence ignored by Defendants was directly relevant to Scotts Valley's restored lands claims – indisputably, one of the matters before DOI.

147. Second, Defendants' refusal to consider relevant evidence submitted by Yocha Dehe was particularly unreasonable. The United States successfully opposed Yocha Dehe's intervention in the 2019 ILO Litigation by representing that the Tribe would have a meaningful opportunity to participate in any proceedings on remand. Yocha Dehe repeatedly requested that opportunity. When Defendants failed to respond to those requests, Yocha Dehe placed evidence before the relevant decision-makers. Defendants confirmed the evidence had been received and promised it would be carefully considered. There is no reasonable basis for their failure to do so.

148. Third, when, in the course of an informal adjudication, a federal agency denies an interested party's request, the APA requires "a brief statement of the grounds for denial." 5 U.S.C. § 555(e). The statement must be one of "reasoning"; it cannot be "just a conclusion" and it "must articulate a satisfactory explanation." *Butte Cnty.*, 613 F.3d at 194. Plaintiffs and other tribes and concerned stakeholders timely submitted relevant evidence for Defendants' consideration. Defendants refused to consider it without providing any reasoning – much less a "satisfactory explanation" – for the denial.

Arbitrary and Capricious Significant Historical Connection Determination

149. The significant historical connection requirement provides that an applicant tribe must (a) establish that the land proposed to be "restored" is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty; or (b) demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the proposed "restored" land. 25 C.F.R. §§ 292.2, 292.12.

150. Scotts Valley's last reservation under a ratified or unratified treaty was at Clear Lake. The Project Site is not located within the boundaries of that reservation. To qualify the Project Site for the restored lands exception, Scotts Valley was therefore required to demonstrate, by historical documentation, the existence of the Band's villages, burial grounds, occupancy or subsistence use in the vicinity of the Project Site. *Id.*

Tribal Occupancy

151. The 2025 ILO concluded that Scotts Valley demonstrated the tribal "occupancy" necessary for a significant historical connection. That finding was based on evidence of two discrete events, focusing on one individual, separated by 33 years: (a) an expert report purportedly showing that Scotts Valley ancestor Shuk Augustine was among a group of children baptized at the Sonoma Mission in 1837; and (b) a census record purportedly showing that Shuk Augustine lived in a house of migrant workers near the town of Napa in 1870.

152. In finding that Scotts Valley "occupied" the vicinity of the Project Site, Defendants arbitrarily and capriciously departed from settled precedent and their own prior interpretations of the restored lands exception. Defendants previously interpreted "occupancy" as requiring something more than a "transient" presence. 73 Fed. Reg. at 29,360, 29,366; Guidiville ILO at 14-15 (2011). In a prior ILO, DOI explicitly found "occupancy" must involve "a consistent presence . . . supported by the existence of dwellings, villages, or burial grounds." Guidiville ILO at 14-15 (2011). The 2025 ILO does not find Scotts Valley's presence to have been "consistent." To the contrary, it describes Scotts Valley's presence as "inconsistent" and "unsettled." Nevertheless, Defendants found Scotts Valley had demonstrated "occupancy." Thus, the 2025 ILO reinterprets "occupancy" to include an "inconsistent" or "unsettled" presence. This reinterpretation was not properly acknowledged, explained, or justified, in

violation of IGRA and the APA. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016); *FCC v. Fox Television Stations*, *Inc.*, 556 U.S. 502, 515 (2009).

153. In addition, Defendants' new definition of "occupancy" lacks reasonable basis. The 2025 ILO cites two dictionaries for the proposition that "occupancy" does not require any evidence of ownership or control. But the cited dictionaries say just the opposite – their definitions of "occupancy" expressly include the concepts of "holding," "possessing," and "taking possession." There is no evidence that Scotts Valley ever had any ownership, control, or possession of land in the vicinity of the Project Site in 1837, in 1870, or at any other time.

154. Moreover, Defendants' application of their new definition of "occupancy" was arbitrary and capricious. Evidence submitted by Plaintiffs and other tribes and concerned stakeholders – and ignored by DOI – fatally undermines Scotts Valley's claims of occupancy (paragraph 116, above). But even if it had been defensible to ignore historical documentation submitted by Plaintiffs and others (and it was not), the 2025 ILO's findings would be contrary to the evidence. For example:

- Mission records submitted to DOI in 2018 *by Scotts Valley* show the "Agustin" baptized in Sonoma in 1837 was not Shuk Augustine – the two had different native names, their mothers had different names, their fathers had different names, and they were from different villages.
- Scotts Valley's prior submissions admit the Band "cannot document" any connection to the migratory workers in the household where Shuk Augustine is alleged to have been recorded in the 1870 census – even if it could be established that Shuk Augustine was there (which Scotts Valley did not), his individual presence is not *tribal* occupancy. *See* 25 C.F.R. § 292.2 ("tribe" refers to relevant "group" or "community").
- Scotts Valley's own ethnohistorian has admitted there is no evidence placing the Band's ancestors at Rancho Suscol, the 130-square-mile property that surrounded the Project Site during the period of Mexican administration.

The 2025 ILO does not account for – or even mention – these critical facts, each of which renders Defendants' tribal "occupancy" determination arbitrary and capricious.

Vicinity of the Project Site

155. Settled precedent establishes that the term "vicinity" means "the particular location and circumstances of available direct evidence . . . cause a natural inference that the [applicant] tribe historically used or occupied" the specific property proposed to be "restored." *See* Scotts Valley ILO at 15 (2012). As Defendants themselves have explained, "vicinity" does not "expand 'restored land' beyond land that was historically used or occupied by a tribe." *Id*. Instead, the applicant tribe must demonstrate that its use and occupancy of nearby parcels shows "that the tribe also made use of the parcel in question." *Confederated Tribes of the Grand Ronde Cmty. v. Jewell*, 830 F.3d 552, 566 (D.C. Cir. 2016).

156. The 2025 ILO found Scotts Valley's alleged "occupancy" in 1837 (at the Sonoma Mission) and 1870 (near the town of Napa) was in the "vicinity" of the Project Site. The purported bases for that finding are (a) the 1851 Unratified Treaty; and (b) assumptions about the Vallejo family's 1840s cattle business. Neither asserted basis provides the required "natural inference" that Scotts Valley must also have used or occupied the Project Site.

157. Defendants erred in relying on the 1851 Unratified Treaty as evidence that Scotts Valley's alleged "occupancy" must have included the Project Site. The 2025 ILO assumes the 1851 Unratified Treaty was a cession of the Project Site by Scotts Valley's ancestors to the United States. The plain language of the Treaty says no such thing. Nor did Scotts Valley own, occupy, or have any rights to the Project Site that could have been ceded; rather, their lands were at Clear Lake, where the treaty was signed. Scotts Valley has admitted that it held no aboriginal title to the Project Site or lands in the vicinity.

158. Defendants likewise erred in assuming that the Vallejo family employed Scotts Valley's ancestors at Rancho Suscol during the 1840s. Defendants arbitrarily and capriciously

conflated evidence regarding Rancho Petaluma (not located in the vicinity of the Project Site) and Rancho Suscol (surrounding the Project Site). Defendants also ignored Scotts Valley's own prior assertions that labor at Rancho Suscol was provided by Patwin people, not Pomo. And, perhaps most egregiously, Defendants failed to account for sworn testimony, submitted by the United States in prior legal proceedings, stating that labor on Rancho Suscol – unlike Rancho Petaluma – was provided exclusively by the Mexican military. The United States Supreme Court explicitly referenced and relied on that testimony in *United States v. Vallejo*, 66 U.S. 283 (1862). Having successfully argued to the Supreme Court that Rancho Suscol was a Mexican military facility staffed exclusively by Mexican soldiers, the United States could not reasonably conclude in these proceedings that Scotts Valley provided Rancho Suscol's workforce.

159. More fundamentally, Defendants erred because the timing of the stated bases for their "vicinity" finding do not match the timing of the stated bases for their "occupancy" finding. Defendants purported to find two instances of "occupancy": one in 1837 and the other in 1870. There is no reasonable basis to conclude that the 1851 Unratified Treaty established "vicinity" for discrete episodes of "occupancy" alleged to have occurred 14 years earlier and 19 years later. Similarly, there is no reasonable basis to conclude the Vallejo family's 1840s cattle business could have established "vicinity" for purposes of "occupancy" alleged to have occurred in 1837 or 1870.

Arbitrary and Capricious Temporal Connection Determination

160. The temporal connection requirement provides that an applicant tribe must show (a) the land proposed to be "restored" is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or (b) the tribe submitted an application

to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands. 25 C.F.R. § 292.12.

161. In the early 2000s, Scotts Valley submitted a request for newly acquired lands in Richmond, California. Thus, the Band's request for newly acquired lands in Vallejo was not its first since being restored to Federal recognition. To qualify the Project Site for the restored lands exception, Scotts Valley was therefore required to demonstrate that within 25 years after being restored to Federal recognition the Band applied to have the Project Site taken into trust.

162. The 2025 ILO states that Scotts Valley was "restored to federal recognition pursuant to a stipulation for entry of judgment" dated March 15, 1991, in *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States* (N.D. Cal. Case No. C-86-3660-WWS). The 2025 ILO also refers to a separate public notice of the stipulated restoration, which was published in the Federal Register on February 12, 1992.

163. The Project Site consists of four parcels. Scotts Valley requested one of the four parcels – the Western Parcel – be taken into trust for the Band in August of 2016. Scotts Valley did not submit any request with respect to the remainder of the Project Site until 2024, when it separately requested that the three additional parcels – the Eastern Parcels – be taken into trust for the Band. The 2024 request referred to the three additional Eastern Parcels as "necessary" for the Project.

164. Thus, Scotts Valley did not file a fee-to-trust application for any of the four parcels making up the Project Site within 25 years of the March 15, 1991, stipulation for the Band's restoration. At most, Scotts Valley filed a fee-to-trust application for only one of the four Project Site parcels – *i.e.,* the Western Parcel – within 25 years of the February 12, 1992, Federal Register notice. And Scotts Valley did not file fee-to-trust applications for the other three

"necessary" Project Site parcels – *i.e.,* the Eastern Parcels – until 2024, well outside the 25-year limitations period.

165. The 2025 ILO nonetheless found the entire Project Site – all four parcels – satisfies the temporal connection requirement. That finding was arbitrary, capricious, an abuse of discretion, and contrary to law.

SECOND CAUSE OF ACTION

(VIOLATIONS OF THE NHPA AND THE APA)

166. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 165, above.

167. The Project requires Federal permits and approvals. It is therefore an "undertaking" within the meaning of Section 106. *See* 54 U.S.C. § 300320. Defendant BIA has admitted the Project is an "undertaking" for purposes of Section 106.

168. The Section 106 Regulations direct federal agencies to "ensure that the section 106 process is initiated early in the undertaking's planning" and allow tribal consulting parties a full opportunity to "identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties." 36 C.F.R. §§ 800.1(c), 800.2(c)(2)(ii)(A). Plaintiffs repeatedly requested that the Section 106 process be initiated early in Project planning so that they could have meaningful opportunities to consult. Defendants refused to initiate the Section 106 process until October 11, 2024, several months *after* their Project planning and their publication of the July EA, but just a few days before they submitted proposed findings to the SHPO, arbitrarily, capriciously, and illegally depriving Plaintiffs of a meaningful opportunity to exercise their consultation rights.

169. In identifying an undertaking's APE and determining whether historic properties within the APE may be affected by the undertaking, federal agencies must consult with Indian tribes that attach religious and cultural significance to such properties. *Id.* §§ 800.2-800.4. Plaintiffs are Patwin tribes who attach religious and cultural significance to the Project Site, to the Patwin cultural site known as CA-SOL-275, and to other nearby cultural resources that may be affected by the Project. Defendant BIA has admitted Plaintiff Yocha Dehe is an Indian tribe that must be consulted as part of the Section 106 process. But Defendants did not, in fact, consult with Plaintiffs when determining the undertaking's APE or when issuing findings purporting to conclude that the undertaking would not affect any historic properties.

170. Federal agencies must notify tribal consulting parties when providing findings to SHPO and when requesting ACHP review of such findings. Defendants were required to provide such notice to Plaintiffs but failed to do so. As a result, Plaintiffs were deprived of a reasonable opportunity to provide SHPO and ACHP with their views.

171. Federal agencies must "complete the [S]ection 106 process," including all consultations and notices, prior to approving an undertaking. *Id.* § 800.1(c); *see also* 54 U.S.C. § 306108. In addition, any Section 106 documentation purporting to find no historic properties affected must be made available to the public prior to approval of the undertaking. 36 C.F.R. § 800.4(d). Defendants approved the Project on January 10, 2025, without completing the Section 106 process.

172. Defendants (a) refused to timely initiate the Section 106 process; (b) did not consult with tribes that attach religious and cultural significance to the relevant properties when determining the undertaking's APE and identifying historic properties; (c) did not notify Plaintiffs when providing findings to SHPO or requesting ACHP review; (d) approved the

undertaking without ever consulting Plaintiffs, notwithstanding promises to SHPO and ACHP that Patwin tribes would be consulted; and (e) did not make documentation available for public review. Each of these actions was arbitrary, capricious, an abuse of discretion, and contrary to Section 106 and the Section 106 Regulations.

173. Defendants' violations of Section 106 prevented Plaintiffs from meaningfully participating in the Section 106 process. That, in turn, led Defendants to adopt an inaccurate APE and make an erroneous finding that the Project will affect no historic resources.

174. Plaintiffs are informed and believe, and on that basis allege, that Defendants violated Section 106 and the Section 106 Regulations knowingly, intentionally, and in bad faith for the purpose of minimizing Plaintiffs' participation and accommodating Scotts Valley's preferred timeline for approval of the Project.

THIRD CAUSE OF ACTION

(VIOLATIONS OF NEPA AND THE APA)

175. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 174, above.

176. NEPA requires federal agencies to identify, evaluate, disclose, and consider reasonable alternatives to the environmental impacts of their proposed actions. For any proposed action that will or may have significant impacts, a comprehensive EIS must be prepared. If an agency relies on mitigation measures to avoid preparing an EIS, each measure must be clear, specific, effective, and enforceable. NEPA reviews must incorporate Indigenous Knowledge, and potentially affected tribal governments must be consulted in the preparation of any NEPA document. In their haste to approve the Project, Defendants arbitrarily and capriciously violated each and every one of these fundamental requirements. Defendants' approval of the Project was

arbitrary, capricious, an abuse of discretion, and contrary to NEPA and applicable NEPA regulations and procedures.

Inadequate EA and Failure to Prepare EIS

177. Federal agencies are required to take a hard look at all reasonably foreseeable environmental impacts of their proposed actions. Defendants' own NEPA procedures provide that a comprehensive EIS must be prepared whenever an EA reveals that a proposed action will *or may* significantly impact the human environment. BIA NEPA Guidebook § 6.5.

178. In evaluating the significance of a proposed action's environmental impacts, federal agencies must consider multiple significance criteria. These criteria include, but are not limited to, the following: adverse impacts on historic or cultural resources, tribal sacred sites, wetlands, or ecologically critical areas; inconsistency with state, tribal, or local environmental requirements; adverse effects on threatened or endangered species or their habitats; potential impacts on the rights of tribal nations; and the extent to which potential impacts may be uncertain or unknown. 40 C.F.R. § 1501.3(d)(2).

179. These significance criteria, individually and collectively, required Defendants to prepare an EIS for the Project. Among other things, the EA shows the Project would:

- Result in the "take" (*i.e.*, killing) of multiple endangered and threatened species and destruction of significant areas of their habitat;
- Destroy a known Patwin cultural site, to which Plaintiffs attach significant cultural importance;
- Eliminate Plaintiffs' legal rights with respect to cultural resources at the Project Site;
- Authorize construction of a massive casino on land previously set aside as "open space," contrary to relevant zoning and land use plans;
- Require nearly 1.5 million cubic yards of soil excavation and fill, on steep slopes containing multiple active landslides;

- Severely impact Yocha Dehe's tribal programs and services, including tribal programs focused on conservation of environmental and cultural resources;
- Add significant vehicular traffic to one of the nation's most congested freeways; and
- Include components that are unknown or uncertain as to scope and location, rendering environmental consequences unclear.

These are just a few of the Project's significant environmental impacts. Notwithstanding these significant effects (among others), Defendants arbitrarily and capriciously refused to prepare an EIS.

180. Defendants also erred by failing to consider all reasonably foreseeable effects of the Project. For example, the EA:

- Fails to provide detailed plans showing that all necessary Project components can be accommodated on the Project Site;
- Assumes major municipal water and wastewater infrastructure will be re-located to accommodate the Project, but fails to explain where replacement infrastructure will be built or what impacts might result;
- Fails to address the Project's impacts on plant and animal species protected by the State of California, despite the undisputed presence of such species at the Project site;
- Ignores a majority of the vehicular traffic that will be generated by the Project, as well as resulting air emissions; and
- Fails to address or mitigate the Project's significant impacts on Plaintiffs' governmental programs and services.

Each of these errors was arbitrary, capricious, and an abuse of discretion.

Arbitrary and Capricious Alternatives Analysis

181. NEPA requires federal agencies to "study, develop, and describe appropriate alternatives" to "any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(H).

182. The Project involves unresolved conflicts concerning alternative uses of the Project Site and its surroundings. Although the Project Site is extremely sensitive from an environmental and cultural perspective, Defendants refused to evaluate in detail any alternative locations. This refusal was arbitrary and capricious in and of itself.

183. Faced with Defendants' inability or unwillingness to meaningfully consider alternative sites, Plaintiffs identified numerous facially reasonable options, including the Valley Oaks Site, the North State Street Interchange Site, the Cinemas and Lakeshore Boulevard Sites, and the Alexander Valley Resort & Residences Site. Each was available for sale. Each was compatible with the Project's stated purpose. Each would minimize or avoid some or all of the Project's environmental impacts. Each was timely identified and described for Defendants. Nonetheless, Defendants arbitrarily and capriciously refused to consider any of them in detail in the EA.

Refusal to Consult, Cooperate, and Include Indigenous Knowledge

184. Defendants' own NEPA procedures specify that "[w]hen BIA determines that Tribal governments could be affected by a proposed action, *Tribal governments are to be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents*." DOI NEPA Manual § 10.3.A(2)(a) (emphasis added).

185. The July EA and the Final EA each admitted that Plaintiffs would be affected by the Project. Defendants nonetheless refused to consult with Plaintiffs in the preparation of the EA or to allow them to serve as cooperating agencies.

186. Plaintiffs reminded Defendants of their obligation to ensure NEPA documents properly reflect the Indigenous Knowledge of the Project Site's indigenous Patwin people.

Defendants did not substantively respond. Nor did they otherwise revise the EA to incorporate Patwin Indigenous Knowledge.

187. As a result of Defendants' refusal to consult, cooperate, and account for Indigenous Knowledge, the EA presents erroneous information about the Project and its impacts. For example, Yocha Dehe's comments on the July EA explained that connection to ancestral lands is an important part of Patwin spirituality and identity – and, as a result, giving Patwin ancestral lands to a Pomo tribe like Scotts Valley would cause significant cultural injury. The Final EA failed to address the comment and ignored this significant impact.

FOURTH CAUSE OF ACTION

(VIOLATIONS OF THE IRA AND THE APA)

188. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 187, above.

189. Proposed acquisitions of tribal trust land are subject to the requirements of the IRA and the Part 151 Regulations.

190. The Part 151 Regulations require BIA to ensure the applicant tribe has identified the purposes for which the proposed trust property would be used. 25 C.F.R. §§ 151.10(c), 151.11(a). The Part 151 Regulations further mandate that BIA ensure proper, marketable title consistent with the proposed use. *Id.* § 151.13(b). Defendants arbitrarily and capriciously violated these requirements in multiple respects. Scotts Valley's fee-to-trust application failed to disclose proposed uses for three of the four parcels within the Project Site. Neither Scotts Valley's fee-to-trust application nor Defendants' decision to grant that application was consistent with the proposed action evaluated in the EA. And the approved Project conflicts with easements and rights-of-way legally limiting permissible uses of the Project Site.

191. The Part 151 Regulations also require consideration of the distance between the applicant tribe's existing lands and the proposed trust property, with "greater scrutiny" applicable as that distance increases. *See id.* § 151.11(b). Defendants admitted the Project Site is distant from Scotts Valley's lands, but nonetheless failed to apply the "greater scrutiny" standard.

192. The Part 151 Regulations further require BIA to carefully evaluate "jurisdictional problems" and "potential conflicts of land use which may arise." *Id.* §§ 151.10(f), 151.11(a), (d). Scotts Valley's proposed use of the Project Site would place a 600,000 square-foot casino on an ecologically sensitive property that is part of an area set aside as open space under land-use plans and zoning codes. Placing the land in trust for Scotts Valley also threatens to strip Plaintiffs of their rights under California laws governing appropriate treatment of tribal cultural resources. In fee status, the Project Site is subject to state laws giving culturally affiliated Patwin tribes a primary role in determining cultural resource treatment. *See* Cal. Public Resources Code §§ 5097.9-5097.98; Cal. Health & Safety Code § 7050.5. In trust status, on the other hand, the Project Site is subject to federal laws giving Scotts Valley, a Pomo tribe lacking cultural affiliation, authority over Patwin cultural resources. *See* 43 C.F.R. § 10.7. BIA's decision to acquire the Project Site in trust for Scotts Valley fails to address these issues.

193. For each of these reasons above, Defendants' decision to approve the Project was arbitrary, capricious, an abuse of discretion, and contrary to the IRA and the Part 151 Regulations.

FIFTH CAUSE OF ACTION

(VIOLATION OF THE APA)

194. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 193, above.

195. When, in the course of an informal adjudication, a federal agency denies an interested party's request, the APA requires "a brief statement of the grounds for denial." 5 U.S.C. § 555(e).

196. During the administrative proceedings for the Project, Plaintiffs repeatedly requested government-to-government consultation with Defendants. Yocha Dehe made six written requests for government-to-government consultation, identifying 40 different dates when its Tribal Council could travel to Washington, D.C. for an in-person consultation meeting with Defendants.

197. BIA initially informed Yocha Dehe that an "appropriate consultation [would] be scheduled" and advised Yocha Dehe to expect a response "directly from the Assistant Secretary-Indian Affairs." No response ever came, and no consultation ever occurred. Defendants never provided a statement of the grounds for their denial of Yocha Dehe's consultation requests, thereby violating the APA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court

1. Declare that Defendants' January 10 Decision to approve the Project violates the APA, IGRA, NHPA, IRA, and NEPA;

2. Vacate and set aside DOI's January 10 Decision, including the EA, FONSI, ILO, and other Project approvals;

3. Enjoin Defendants and their officers, administrators, agents, employees, and those in active concert or participation with them, from authorizing Project construction or operation until full compliance with the APA, IGRA, NHPA, IRA, and NEPA has been completed;

4. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412 and 54 U.S.C. § 307105; and

5. Grant Plaintiffs such other and further temporary, preliminary, and permanent relief as the Court may deem just and proper.

Respectfully submitted on March 24, 2025.

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