

## INTRODUCTION

Upon the request of the Scotts Valley Band of Pomo Indians (“Band”) and by letter dated January 17, 2017, the Department of the Interior suspended action on the Band’s pending request for an Indian Lands Opinion (“ILO”) for a parcel of land located in the City of Vallejo, Solano County, California.<sup>1</sup> Since that time, the Band’s researchers have conducted additional research and found substantial and compelling evidence of the Band’s historic tie to the area in very close proximity to the parcel.<sup>2</sup> The purpose of submission is to present that evidence to the Department and to request that the Department promptly resume its consideration of the Band’s ILO request.

As the Band’s trust application for the Vallejo parcel demonstrates, the Band’s members are a widely dispersed and impoverished people. The membership resides today in the adjoining counties of Contra Costa, Lake, Mendocino, Santa Clara, Solano and Sonoma, California.<sup>3</sup> *See* Location Map, Exhibit 2. Out of 165 adult tribal members, 71 (or approximately 43%) are unemployed. Declaration of Secretary Gabriel Ray, ¶ 5, Dec. 2017

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<sup>1</sup> The Band wrote on January 10 and January 13, 2017, requesting that action be suspended so that it could develop and present additional historical material in support of the request for an ILO regarding the parcel.

<sup>2</sup> The 128-acre parcel is designated as APN 0182-010-010 by Solano County. *See* August 11, 2016 trust application, attached as Exhibit 1.

<sup>3</sup> Approximately 70% of the members reside in the counties of Contra Costa, Lake, Mendocino, and Sonoma, which have been designated by the Bureau of Indian Affairs (“BIA”) as the Band’s near-reservation area for the delivery of BIA services. Exhibit 1; 65 Fed. Reg. 31, 188 (May 16, 2000). An additional 18% of the tribal members reside within thirty-five miles of the Vallejo site, located in Solano County. Master Plan, attached as Exhibit 3.

Supplement to Trust Application, attached as Exhibit 3. Out of 161 tribal households, 60 (or approximately 38.5%) experience homelessness or overcrowding. *Id.* Unsurprisingly, then, roughly half of the tribal households have indicated their intention to relocate to the Band's homeland as soon as the parcel is developed, where jobs and homes will be available.

Declaration of Chairman Shawn Davis, ¶ 4, Exhibit 3. Once the tribal homeland is developed, the Band can also consolidate its government functions and services that are now provided in two, rented tribal offices, a northern office in Lakeport and a southern office in Concord, California, to service the Band's dispersed membership. Declaration of Secretary Gabriel Ray, ¶ 8, Exhibit 3.

The trust acquisition and gaming eligibility of the Vallejo parcel will allow the Band to establish this much needed homeland. Indeed, most of the 128-acre parcel (73 acres or approximately 57%) will be dedicated to homeland purposes. The homeland construction plans call for a 20,000 square foot tribal government center; estimated construction cost of the tribal government center is \$5 million. Declaration of Chairman Shawn Davis, ¶ 5, Exhibit 3.<sup>4</sup> The plans also call for a 14,000 square foot community center, with the second floor to be used as a senior center, at an estimated cost of \$7 million. *Id.* Finally, the construction plans call for 100-125 tribal homes of approximately 2,000 square feet each, at a total estimated cost of \$33.06 million. *Id.*<sup>5</sup> The construction cost alone for the homeland, excluding site work and

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<sup>4</sup> The commercial development cost estimate is based upon a \$250 per square foot cost. *See* [www.rsmeans.com](http://www.rsmeans.com).

<sup>5</sup> The average residential construction cost in Solano County is \$253 per square foot. *See* [www.zillow.com/solano-county-ca/home-values/](http://www.zillow.com/solano-county-ca/home-values/). But the Band calculates its cost will be approximately \$145 per square foot, since the land costs and the need to match the market can be backed out of

contingencies, totals \$45.06 million.

The remaining 55 acres (or 43%) of the Vallejo parcel will be dedicated to the integrated resort, the funding engine for the Band's homeland development. As the Master Plan shows, the parcel is well suited to these multiple uses. Exhibit 4. The homeland development will take place at the northern end of the parcel and at a higher elevation than the integrated resort development at the southern end of the parcel. Thus, there is a natural demarcation between the two uses - homeland and resort development - based on elevation.

The Band and its development partner will seek financing for the development of the Vallejo parcel in advance of the pre-development and first construction phases. The pre-development of the parcel will include tribal homeland and the integrated resort elements, specifically, site work for the whole parcel, design development, preparation of construction documents, and engineering surveys and studies. The first construction phase will include the tribal government and community centers, the first sub-division of tribal housing (24 units), and the integrated resort project with gaming, hotel, retail, and restaurants. Exhibit 4. Tribal revenues from the integrated resort development will fund the remaining tribal housing subdivisions. Affidavit of Chairman Shawn Davis, ¶ 7, Exhibit 3.

In short, the physical reconstitution of the Band's community is at stake with this trust application and the gaming eligibility of the parcel. Without both, the Band cannot bring its people together again in one place, with homes and jobs for them. The Department has already determined that the Band is a restored tribe, one that is landless. Now, the Band asks that the

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the Band's costs.

Department conclude its ILO analysis and find that the Vallejo parcel is gaming eligible as restored land under the regulations and as demonstrated by the existing administrative record and this supplement.

This supplement to the Band's request for an ILO makes three arguments. First, the Band establishes that the location of the Vallejo parcel alone should be given great weight, as it has been given in other opinions by the Solicitor's Office and the Nation Indian Gaming Commission ("NIGC"). Second, a summary of the historic evidence, including new data presented by the Band's researchers, demonstrates actual use and occupation of the area in very close proximity to the Vallejo parcel. Third, the Band summarizes data and reports that refute arguments made by the Band's opponents against the requested ILO. Finally, a supplemental historical report by Drs. Hurtado and Theodoratus ("Hurtado, Theodoratus Report"), dated April 30, 2018, is attached as Exhibit 5. Together, these arguments and data make a persuasive case that the Department should find the Vallejo parcel to be restored land, once taken into trust.

I. The location of the Vallejo parcel within the territory ceded by the Band to the United States should be given substantial weight by the Department in its analysis.

The governing regulations require that a tribe demonstrate a modern, temporal and historic connection to a parcel of land to meet the definition of restored land. 25 CFR § 292.12. There is no question that the Band has established a modern<sup>6</sup> and temporal<sup>7</sup> connection to the

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<sup>6</sup> As demonstrated in the Band's original request for the ILO, the Vallejo parcel is located in proximity to tribal members and the Band's southern office, which the Band has maintained since 2012, is less than 20 miles from the Vallejo parcel. These facts demonstrate a modern connection. See 25 CFR § 292.12(a); Tribal Office Map, Exhibit 6.

<sup>7</sup> On the temporal connection, the regulations require that the application be the tribe's first trust acquisition and that the application be made within twenty-five years of the tribe's

Vallejo parcel. There is also no question that the Vallejo parcel is located within the boundaries of the territory ceded by the Band and others to the United States in the unratified August 20, 1851 treaty. C. Royce, *Indian Land Cessions in the United States* (GPO 1899), Part 2, at 784, California 1, Area 296.<sup>8</sup> See Vallejo Parcel Map, Exhibit 7. This fact alone is entitled to considerable weight on the inquiry regarding the Band's historic connection to the Vallejo parcel.

Courts and the Department have consistently given weight to the location of the proposed trust acquisition in relation to boundaries set in treaties, including the unratified California treaties. In *Grand Traverse Band of Ottawa and Chippewa Indians v. US Atty.*, 198 F. Supp. 2d 920 (W.D. Mich.), *aff'd* 369 F.3d 960 (6<sup>th</sup> Cir. 2004), the court considered whether the Grand Traverse Band had demonstrated historic ties to the Turtle Creek site (previously cited in the Band's Jan. 29, 2016, ILO request). The court concluded that the tribe had demonstrated such ties, relying upon a federal treaty with Grand Traverse and opinions by the Solicitor's Office in other cases indicating that location of a site in territory previously ceded by the tribe demonstrated an historic tie. *Id.*, at 935. Specifically, the court cited an 1836 treaty by which the Grand Traverse Band ceded territory to the United States that included Turtle Creek. *Id.*, at 936; *see also* 2006 ILO for Ione Band (parcel located in boundaries of what would have been a

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restoration. 25 CFR § 292.129(c). The Band is currently landless and the trust application was submitted in August 2016, less than twenty-five after the Band's restoration on September 6, 1991. See Notice of Reinstatement to Former Status, 57 Fed. Reg. 5214 (Feb. 12, 1992).

<sup>8</sup> Similarly, there is no question that the Band descends from at least three of the eight tribal signatories to the August 1851 treaty. See Band's January 28, 2016, Request for an ILO, at 12-15.

reservation under the unratified treaty of 1851), upheld in *County of Amador v. US DOI*, No. 15-17253 (9<sup>th</sup> Cir. Oct. 6, 2017). The Department of the Interior has since relied upon the *Grand Traverse* decision for the proposition that location of a parcel within the boundaries of land ceded, or reserved, is entitled to probative weight in an ILO determination. See 2014 Mechoopda ILO (parcel in boundaries of what would have been reservation under treaty of Aug. 1, 1851); 2012 Karuk ILO (parcel located in ceded territory under treaty of Nov. 4, 1851); 2007 Pomo of Upper Lake ILO (parcel located in ceded territory under treaty of Aug. 20, 1851); 2002 Bear River ILO (parcel located in ceded territory under 1851 treaty.)<sup>9</sup>

Neither did any of these opinions depend upon a treaty that had a single tribal signatory. To the contrary, in each instance, there were multiple tribal signatories and yet territories ceded by those treaties were deemed evidence of historic tie to a single tribe. The *Grand Traverse* case is the best illustration of this point. There, the tribe was one of six separately identifiable tribal signatories (some represented by multiple leaders) which executed the March 28, 1836, treaty with the United States. 7 Stat. 491. In the first article of the treaty, the signatory tribes jointly ceded a ten-county area to the United States. *Id.* Later provisions in the treaty reserved reservations out of the ceded territory for specified, individual tribes. Without inquiring into which portion of the ceded territory was associated with each ceding tribe, the court nonetheless relied upon the location of the parcel in question within the ceded territory as evidence connecting the parcel historically to the Grand Traverse Band. The opinions of the Solicitor's Office for the Pokagon Band of Potawatomi and Little Traverse Band of Odawa, relied upon by

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<sup>9</sup> These opinions are accessible at [www.nigc.gov/general-counsel/indian-lands-opinions](http://www.nigc.gov/general-counsel/indian-lands-opinions).

the court in *Grand Traverse*, also involved large cessions by multiple tribal signatories as evidence of an historic connection to a single, signatory tribe. 198 F. Supp.2 at 935. The Band's historic connection to the Vallejo parcel based upon the 1851 treaty, then, is not distinguishable from this precedent based upon the presence of multiple tribal signatories.

The only actual analysis of this precise issue was made by the Department in the Karuk request for an ILO. In 2004, the NIGC initially decided that the parcel in question did not qualify as restored land, even though it was located within territory ceded by Karuk and other tribes in the unratified treaty of November 4, 1851. The NIGC noted that, while the court in *Grand Traverse* relied upon the location of the parcel in question within the ceded territory of the tribe, the court had also found substantial evidence that the parcel had been historically important to the tribe in support of its favorable conclusion. 2004 Karuk ILO, above. But in 2012, the NIGC reversed its 2004 conclusion, based upon additional evidence submitted by the tribe. The NIGC noted that payments had been made by the BIA to local schools in the area for attendance of Karuk children, the long-standing presence of the tribe in the area, and tribal oral tradition. 2012 Karuk ILO, above. With this corroborating evidence, the NIGC concluded that the parcel was restored land.

Taken together, this precedent clearly indicates that the location of the Vallejo parcel in the territory ceded by the Band and others in the 1851 treaty is probative evidence of an historic tie. Whether that alone is sufficient to qualify the Vallejo parcel as restored land is less certain. In the case of the Band, though, there is corroborating historical evidence of a tie to the very close proximity of the Vallejo parcel, just as there was for the Karuk and other tribes. Indeed, the long-standing presence of the Clear Lake Indians in the vicinity of the parcel was known to

the federal negotiator of the 1851 treaty, Redick McKee. Even though territory to be ceded in the treaty included the vicinity of the Vallejo site, McKee reassured the Indians that they could nonetheless continue to hire themselves out to work on the various ranches “if they are well-behaved, and the agent gives them permission.” Quoted in Report by Albert L. Hurtado, Ph.D., Historian, Jan. 29 2016, at 82.<sup>10</sup>

Now, the Band has historical, census, and other data specifically demonstrating its historic ties to the close vicinity of the Vallejo site. This evidence is summarized below and strongly corroborates the Band’s tie to the parcel based upon the 1851 cession. Taken together, as was done in the other cases, the cession of the area in the 1851 treaty with the Band and the direct evidence of the Band’s tie to the area demonstrate a significant historic tie.

**II. The historic record and other data confirm the Band’s specific use and occupation of the area in very close proximity to the Vallejo site.**

The Band has already submitted substantial arguments and evidence of its connection to the Vallejo parcel. These appear in the following: the January 29, 2016 Legal Analysis in Support of Request for an ILO; the January 29, 2016 Report by Dr. Dorothea Theodoratus; the January 29, 2016 Report by Dr. Albert Hurtado (“Hurtado Report 1”); the January 29, 2016 Consolidated Report by Dr. Heather Howard and Dr. James McClurken (“Consolidated Report”); the January 29, 2016 Declaration of Patricia Franklin, Tribal Secretary; the June 29, 2016, Memorandum of Dr. Hurtado to Maria Wiesman; the November 13, 2016, Comments by

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<sup>10</sup> The record also reflects McKee’s desire to secure the white settlements in the same region, presumably including any claims that might be made by the tribes from their use and occupation of the region. In fact, his reference to the region to be secured included the nascent town of Vallejo. See Dec. 6, 2016, Comments of Dr. Hurtado, at 10.

Dr. Theodoratus; the November 14, 2016, Comments by Dr. Hurtado; and the December 6, 2016, Comments by Dr. Hurtado. The Band continues to rely upon these reports and comments as demonstrating the Band's historical presence in the vicinity of the Vallejo parcel before and after the treaty of 1851. A chronological summary of this evidence is set out below. *See A*, below. The Band also submits additional historical data, appearing in two reports: first, Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians (SVBI), by Dr. Hurtado, April 30, 2018 ("Augustine Biography"); and second, Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region, by Dr. Hurtado and Dr. Theodoratus, April 30, 2018 ("Hurtado, Theodoratus Report"). Both these reports are attached as Exhibit 5. The documents and data set out in these supplemental reports are also summarized here. *See B*.

**A. The record shows the post-contact development of a ranch economy in the San Pablo Bay region, the consequent disruption of native communities and subsistence patterns, the reliance on native labor force (through enslavement and voluntary employment), and the participation of the Band's ancestors in this economy in the region and in the vicinity of the Vallejo parcel.**

- Before Mexico acquired California in 1821, Spain established a Roman Catholic mission in the territory for the purposes of converting and "civilizing" the native population and facilitating non-Indian development and control. Two missions were established in the San Pablo Bay region - San Rafael Arcangel in present day San Rafael (1817) and San Francisco Solano in Sonoma (1823).<sup>11</sup> During this mission period, extensive cattle ranching was

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<sup>11</sup> Sonoma remained the only mission in the San Pablo Bay region until 1867 when a mission was established by Turibius at Big Valley. Up until that time, Sonoma was the only source of Catholic sacraments such as baptism and teaching for the region.

established in the San Pablo Bay region, natives' traditional economy was severely disrupted, and native population declined. When Mexico acquired the territory, the missions were secularized, that is converted to private ownership. Mariano Vallejo was appointed military commander and director of colonization of the northern frontier; he and his brothers became the largest property owners in the region. Hurtado Report 1, pp. 1-26.

- The Vallejos relied largely on Patwin Indians as the labor source for their ranchos.

These ranchos ranged from Clear Lake (Lup-Yomi, established in 1839) to Sonoma and surrounding area (Ranchos Petaluma, Suisun, Suscol, and Tulocay) *See* Rancho Map, Exhibit 9.

They were operated largely as a single economic unit, with livestock numbering in the tens of thousands and requiring the employment of hundreds of native vaqueros. Each rancho had its own annual round-up of livestock in March. Rancho Lup-Yomi's cattle had to be driven to slaughter grounds near landings around San Pablo Bay in order to process the hides for sale and shipment. Mariano Vallejo's livestock was also driven annually from all the other ranchos (with the exception of Suscol, which slaughtered its own livestock) by the vaqueros to Rancho Petaluma for slaughter. Clear Lake Indians routinely worked in these ranch operations. Hurtado Report 1, pp. 43-45.

- In 1837, a small-pox epidemic decimated the Patwin communities. Thousands died, particularly in southern Solano County, which forced the ranchos to turn to other native communities to resupply their labor pool. Hurtado Report 1, p. 39.

- In 1842, Vallejo agents went to Clear Lake where they attempted to force Pomo Indians to go to the southern settlements. The Indians initially resisted and drove the Vallejo force out of Clear Lake country; but Vallejo continued to operate Rancho Lup-Yomi through his

overseers. Hurtado Report 1, p. 32-38. Nonetheless, the record is clear that between 1842 and 1847, Clear Lake Indians became a significant source of labor on all of the ranchos north of San Francisco. Thus, the Clear Lake Indians were either compelled to go to San Pablo Bay ranchos or they went there of their own volition. Hurtado Report 1, pp. 45-58.

- In 1847, a party of unnamed ranchers attacked a Pomo community near Clear Lake and took captives to work on their ranchos in the vicinity of Sonoma. The kidnappers claimed that the Sonoma alcalde (mayor) had authorized the raid. Hurtado Report 1, pp. 52-53. That same year, Salvador Vallejo sold his interests in Rancho Lup-Yomi to a partnership consisting of brothers Andrew and Benjamin Kelsey, Charles Stone, and Edward Shirland. According to an account of Augustine, a Scotts Valley ancestor and tribal chief, the partners continued the employment of Indians but their abuse of Indians was extreme, even by the standards of the day. Hurtado Report 1, pp 57-58.

- Also in 1847, the United States Military Governor of California appointed Mariano Vallejo as a sub-Indian agent for the San Pablo Bay region, including Clear Lake. After a report from the Andrew Kelsey and Charles Stone (Lup-Yomi owners) that Clear Lake Indians were about to rebel, Vallejo negotiated a treaty of friendship with the Clear Lake Indians; it required the Indians to remain at peace and to report abuses by whites to proper authorities. Hurtado Report 1, pp. 53-64. Nonetheless, in 1848 a force of Sonoma residents rode to Clear Lake, apparently to rescue Andrew Kelsey and Charles Stone who were reportedly surrounded by Indians. The force captured all the Indians of Scotts Valley, burned their village, and took the captives including Augustine and other Indians to work in Sonoma. *Id.*

- In 1849, and because of the abuse suffered by the Indian laborers at the hands of the

Lup-Yomi owners, the Indians led by Augustine rebelled and killed Kelsey and Stone. The Indians had no choice but to flee and went into hiding in the south. As a result of the Kelsey and Stone killings, the U.S. Army sent an expedition to Clear Lake to punish the Indians. The force attacked an Indian village on Bloody Island and killed 60-100 Indians, although they appear to have had nothing to do with the murder being avenged. Hurtado Report 1, pp. 64-69; 71-72.

- In 1850, California was admitted to the Union. The State passed a law which provided for the virtual enslavement of Indians not already employed by ranchers or other non-Indians. By this time, the Clear Lake native communities had been severely disrupted by the non-Indian encroachment on their territory and ill-treatment at the hands of the rancho owners. The dispersion of the Band's ancestors was well underway, to the southern ranchos and elsewhere. Hurtado Report, pp. 71-76.

- In 1851, the federal negotiator McKee executed a treaty with the Clear Lake Indians that would have extinguished those tribes' interests to the region south of Clear Lake to the San Pablo Bay region. He did so with full knowledge of the tribes' connection to the ranchos. Hurtado Report 1, pp. 83-88; Hurtado Memo, Dec. 6, 2016. In the fall of that year, the tribal signatories to the treaty took delivery of provisions on a ranch near Vallejo, as agreed in the treaty. McKee indicated that this arrangement was acceptable to the tribes because "it was no uncommon thing for the parties to come over from the lake to work for farmers in Sonoma, Nappa, &c., and sometimes on a visit to the white settlements." Hurtado Report 1, p. 87-88.

- In the four decades following the 1851 treaty, the diaspora of the Band's ancestors continued, with families living and working in Solano County. Hurtado Report 1, pp. 94-98;

Consolidated Report, pp. 23-28; Hurtado, Theodoratus Report, pp. 13-15. Between 1870 and 1880, some of the Band's ancestors began to return to Clear Lake. Theodoratus Report, Jan. 29, 2016, pp. 8-9. By that time, though, the Band's migratory pattern was well established and, as the ranch economy had given way to an agricultural one, tribal members adapted as well and became migratory farm workers. Consolidated Report, pp. 23-28.

- In 1908, ethnographer S. A. Barrett identified a village of the Band's ancestors at Clear Lake consisting only of five houses, totaling fifteen people. Consolidated Report, p. 28.

Despite pressure from the BIA, the Band's ancestors refused to relocate to the Upper Pomo rancheria, and continued to press for their own land base. *Id.*, pp. 34-37. Even so, most of the Band's ancestors remained dispersed and continued to earn wages as migrant farm workers, traveling "a circuit beginning at Clear Lake and traveling south through Napa Valley and Sonoma Valley - the same migration that Redick McKee described in the 1850's." *Id.*, p. 37..

- In 1911, the BIA purchased a five-acre rancheria for the Band and fifty-eight tribal members relocated to the rancheria and vicinity. An analysis of the Band's census taken at that time shows an amalgamation of families from the Clear Lake area as well as other counties, including southern Napa County. Consolidated Report, p. 39. The parcel was too small and its water supply too unreliable to accommodate the return of the majority of the Band's members or to alter the Band's need to continue its migratory pattern for pay wages. *Id.*; Hurtado, Theodoratus, pp. 18-19.

- Because of economic conditions, the Band's community was never able to fully reconstitute itself at the rancheria. For example, between 1915 and 1930, fifteen Band members attended the BIA's Sherman Institute to learn technical skills. These and other Band members

continued to reside away from, or moved away from, Clear Lake, many to the San Francisco area and elsewhere. Consolidated Report, pp. 45-58; Hurtado, Theodoratus, pp. 19-20.

- In 1965, the Band's rancheria was terminated and the land distributed. By 1991 when the Band was restored, there was only a single acre remaining in tribal hands. Consolidated report, p. 69. As a result, those tribal members then at Clear Lake dispersed again, mostly to the San Francisco Bay area. *Id.*, pp. 70-71.

**B. The Band's researchers have located additional data that specifically confirms the Band's presence in the very close vicinity of the Vallejo parcel.**

As indicated above, Drs. Hurtado and Theodoratus have prepared a supplemental historical report and Dr. Hurtado has prepared a biography of Augustine. Exhibit 5. The supplemental reports are based on additional research conducted into United States census records, mission baptismal records, and document collections at the Bancroft Library, California State Library, and county historical societies. Hurtado, Theodoratus Report, p. 2. The supplemental reports include a biography of Augustine, a primary informant and Band leader in the late nineteenth century and a narrative summarizing and placing into overall context the new data.

**1. Augustine biography**

The biography of Augustine is significant because it documents the residence of Augustine over his lifetime in the very close proximity of the Vallejo parcel. The Augustine biography identifies a baptism record for Augustine, showing his baptism on September 24, 1837, at the Mission San Francisco Solano in Sonoma, or approximately 17 miles from the

Vallejo parcel.<sup>12</sup> Augustine Biography, p. 3. Augustine was six years old at the time. The record does not disclose how long Augustine was in residence there; the record next records him as a teenager working as a vaquero for one of the Vallejo brothers at Rancho Lup-Yomi in the 1840's. *Id.*, p. 5.

In the fall of 1847, Stone and Kelsey (Rancho Lup-Yomi owners) forced Augustine's young wife to live in their adobe as a concubine. In the spring of 1848, Stone and Kelsey drove Augustine and 172 other Clear Lake Indians to Sonoma to work on a rancho about sixteen miles from the Vallejo parcel. After a month there, Augustine escaped and returned to Lup-Yomi, where he was punished severely. In 1849, Augustine and his Clear Lake kin killed the abusive Lup-Yomi owners. The Indians involved fled. Augustine Biography, pp. 6-7.

Augustine next appears in the written record in 1870, residing at and employed at Rancho Tulocay. The 1870 federal census shows recorded Augustine living in Napa township, just one household away from the household of the owner, Cayetano Juarez.<sup>13</sup> Augustine Biography, p. 8. This is eleven miles from the Vallejo parcel. Exhibit 8. Augustine was identified in the census as a laborer.

In 1880, Augustine appeared on the Lakeport township, back at Clear Lake, with his wife

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<sup>12</sup> This distance is calculated from the mission church itself. While there are no known boundaries of the full extent of the mission before it was secularized (three years before Augustine was baptized there), the mission encompassed thousands of acres, including that portion of Rancho Suscol where the Vallejo parcel is located. Indeed, when the mission was secularized, Vallejo (some time employer of Augustine) became the mission administrator who managed Rancho Suscol as former mission lands. Augustine Biography, p. 5.

<sup>13</sup> Cayetano was the first manager of the Lup-Yomi Rancho, again corroborating the close connections between Clear Lake and the southern ranchos.

Mary. He is again identified as a laborer. Augustine continued as an important leader until his death in 1903. Augustine Biography, p, 9.

Thus, Augustine's life illustrates the Band's experience - the early association with the vicinity of the Vallejo parcel through the Sonoma Mission and the Catholic Church and life-long association through residence and employment. Significantly (and as discussed below), Augustine was present in the area, living and working, along with other kin. Finally, it is important that Augustine is a founding father of the present Band's community, with a kinship tie to approximately 90% of the Band's current membership. Augustine Biography, p. 1.

## **2. The presence of other Band ancestors**

The record also shows that Augustine was not alone among the Band's ancestors, either in his connection to the Mission as a child in 1837 or living and working at Rancho Tulocay in 1870. Other ancestors and apparent kin appear in both sets of records.

The 1837 baptism record of Augustine shows that, on that same date, two other known ancestors of the Band were also baptized. They were identified in the record as Francisco and Truppi, both of whom have descendants among modern day Band members. They were identified as from the same native village as Augustine and were baptized on the same day (immediately before Augustine), indicating a kinship tie. Hurtado, Theodoratus Report, pp. 7-8.

On that same day, twelve other children were baptized with parents from the same community as Augustine and the other Band ancestors.<sup>14</sup> The state of the records is such that it

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<sup>14</sup> The record does not disclose the precise location of Potrique-Yomi, the named village of the children. But by association with Augustine, known to belong to one of the component bands of the modern-day Band, the children from the same village were all affiliated with the Band.

cannot be determined whether these children had any descendants in the modern-day Band. But it is clear that these fifteen children, all from Augustine's village, were in residence at the Mission.<sup>15</sup> Again, we cannot know how long these children remained in residence but the presence of such a large group of natives from the same village shows a close connection between the Band and the Vallejo parcel at that time. In other words, the presence of the Band in significant numbers is not simply presumed or likely; it is documented. *Id.*, pp. 3-4.

Similarly, the 1870 federal census showing Augustine living and working at Rancho Tulocay shows the presence of others as well. The federal census shows Augustine lived in Family 741 with sixteen other Indians. There were multiple generations in the household, with ages ranging from five to the sixty's. There were men and women. The men were identified as laborers and the women were domestic servants. These numbers and relationships indicate a community of related people who were there on a long term basis. *Augustine Biography*, p. 9.

Other prominent family lines in the Band also show multiple Napa County relationships. The Frese family is the best example, showing births, marriages, and residence in southern Napa County. *Augustine Biography*, p. 15. In addition, other census records show the presence of the Band's ancestors in the vicinity of the Vallejo parcel. For example, the 1850 census shows the presence of a Band ancestor, Jose, in residence as a "herdsman" in the household of John Frisbie; Frisbie was a son-in-law of Mariano Vallejo in Benicia, about six miles from the Vallejo parcel. Jose is a well known Band ancestor, also known by tribal tradition to be associated with

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<sup>15</sup> Only one of these children had a parent identified in the baptism record. Thus, it is likely that these children were captured and removed to the Mission, where they would have been taught the Catholic faith and trained in a useful trade (in Augustine's case, as a vaquero.)

the area as a “Napa County Indian.” *Id.*, p. 16-17.

Significantly, at the same time that Augustine and other Band ancestors appear on federal records in residence in vicinity of the Vallejo parcel after 1850, they do *not* appear on federal records in Clear Lake in significant numbers. The historic pressures summarized above clearly had pushed the Indians south to the San Pablo Bay region. For example, the federal census for Clear Lake in 1860 shows no Indians enumerated. Appendix, Exhibit 5, p. 38. The federal census for Lakeport Township (officially named in 1861) in 1870 showed only a single female Indian in residence. *Id.*, p. 59.<sup>16</sup> By 1880, though, small numbers of Indians (including Augustine) began to reappear in Clear Lake. That census shows twenty-two dwellings in Lakeport Township occupied solely by Indians. *Id.*, p. 71. The presence of Band ancestors in the south, and the absence of Indians in Lakeport at the same time, shows that the Band had been effectively ousted from Clear Lake and Band ancestors came together elsewhere in small settlements, including in the very close vicinity of the Vallejo parcel. Even between 1911 and 1965 (when the United States held the rancheria in trust for the Band), the pattern continued. During this period, for example, one-third of the births of tribal members occurred in San Francisco or in Sonoma and Solano Counties. Hurtado, Theodoratus Report, p. 20. After 1965, almost half of all tribal births occurred in these places. *Id.* Thus, the Band’s historic connection with the San Pablo Bay region continued until the twenty-first century. *Id.*

Finally, it should be noted that the location of the sites discussed in the researchers’

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<sup>16</sup> It can be presumed from this data that Augustine remained in residence in Tulocay during this time.

documents and report, relative to the location of the Vallejo parcel, compares favorably with distances considered and found probative of an historic tie by the Department in other cases. Distances of fifteen miles (Mooretown ILO), ten miles (Mechoopda ILO), and six miles (Bear River ILO) have been determined by the Department as sufficiently close in distance to support an historic tie. The proximity between the demonstrated presence of the Band historically and the Vallejo parcel are obviously in this range. Because the Band's historical presence was close to the Vallejo site and it was long-standing occupation and use of the area, the Band's historic presence meets the regulatory requirement of an historic tie.

### **III. The record contains a refutation of all arguments made by opponents to the Band's requested ILO.**

The Band received the following letters of support from the following officials, organizations and business entities.

#### Legislative Correspondence

- Assemblyman Jim Frazier, Chair Assembly Transportation Committee letters, October 6, 2017 and Nov. 14, 2016.

#### Tribal Government Correspondence

- Big Valley Rancheria, letter, December 19, 2016.
- Sherwood Valley Band of Pomo Indians, letter, December 21, 2016.

#### Organized Labor Correspondence

- Laborers' International Union of North America, Local 324 letter (undated - 2016).
- Napa-Solano Counties Building and Construction Trade Council letter (undated-2016).
- Northern California Carpenters Regional Council letter, December 14, 2016.
- Sprinkler Fitters and Apprentices Local 438 letter, November 21, 2016.
- United Brotherhood of Carpenters and Joiners of America (undated-2016).

### Business Leader Correspondence

- Avison Young of Northern California Realtor, letter October 6, 2016.
- Vallejo Capital, Inc. letter, (undated-2016)

The Band has also been provided or discovered the following letters, reports and legal memoranda authored by interested parties and opponents to the project. At the request of the Bureau of Indian Affairs, the Band has responded to these claims through various correspondence and reports.

### Legislative Correspondence

- U.S. Reps. Thompson, Huffman and Garamendi joint letter, August 29, 2016.
- U.S. Senator Feinstein letter, July 22, 2016.

### Local Government Correspondence

- Napa County letter, September 20, 2016.
- Solano County letters, August 23, 2016 and December 23, 2016 (with Legal Memorandum).
- Vallejo City letters, July 28, 2016 and September 1, 2016.

### Tribal Government Correspondence

- Federated Indians of Graton Rancheria letter, July 8, 2016.
- Yocha Dehe Wintun Nation letters, July 18, 2016, November 8, 2016 (with Legal Memorandum and enclosures: Stephen Dow Beckham, “*Scotts Valley Band of Pomo: Preliminary Report for ‘Indian Lands Determination,’ Vallejo, Solano County, California;*” Andrés Reséndez, “*Comments about the historical basis for the Scotts Valley Band of Pomo Indians’ Request for Indian Lands Determination in the City of Vallejo;*” and Jennifer Whiteman, “*Native American Ethnogeography and Ethnohistory in the Vicinity of Vallejo, California.*”), November 22, 2016 (with Supplemental Legal Memorandum).

The following table provides a general index of the claims by interested parties and opponents and the Band’s response and evidence.

<u>Topic</u>	<u>Opponents' Claims</u>	<u>Band's Response and Evidence</u>
<b>RESTORED TRIBE STATUS</b>		
	No dispute.	<p>The Department has previously determined that the Band has “satisfied the requirements of 25 C.F.R. § 292.7(a)-(c) and thus qualifies as a ‘restored tribe’ . . .,” by virtue of having been restored pursuant to the Stipulation for Entry of Judgment in <i>Scotts Valley Band of Pomo Indians v. United States</i>, No. C-86-3660-WWS (N.D. Cal. Mar. 15, 1991). <i>See</i> Memorandum from Edith Blackwell, Associate Solicitor, to George Skibine, Acting Deputy Assistant Secretary – Policy and Economic Development, at p. 4 (Nov. 18, 2011). <i>See also</i> Notice of Reinstatement to Former Status for . . . the Scotts Valley Band of Pomo Indians ..., 57 Fed. Reg. 5214 (Feb. 12, 1992).</p> <p>This previous determination establishes that the Band was restored by a “Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States” within the meaning of 25 CFR 292.10(c). <i>See</i> Letter to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians, from Donald E. Laverdure, Acting Assistant Secretary – Indian Affairs, at 4-5 (May 25, 2012).</p>
<b>TEMPORAL CONNECTION</b>		
	<p>Scotts Valley cannot prove the requisite “temporal connection,” meaning it has applied to have the proposed restored land taken into trust within 25 years of its restoration. Yocha Dehe Letter to Roberts (July 18, 2016), p. 6. <i>See also</i> Vallejo City Letter to Acting Assistant Secretary Roberts (July 28, 2018). P. 3.</p> <p>Solano County “concedes that the Scotts Valley Band may be able to establish a temporal connection... Despite seemingly complying with the letter of the law, it strains credulity that it took 24 years, 11 months and one week for the Scotts Valley Band to determine that lands... should be taken in trust.” Solano County Letter</p>	<p>In accordance with 25 CFR 292.12(c)(2), the Band submitted its “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.”</p> <p>The Band was restored to Federal recognition “[e]ffective September 6, 1991”. <i>See</i> Notice of Reinstatement to Former Status for . . . the Scotts Valley Band of Pomo Indians . . . , 57 Fed. Reg. 5214 (Feb. 12, 1992).</p>

	<p>to Acting Assistant Secretary Roberts (Aug. 23., 2016). p. 2.</p>	<p>On August 12, 2016, Scotts Valley Band submitted an application to take the land into trust in accordance with Section 292.12(c)(2). See Letter from Amy Dutschke, Regional Director to Gabriel Ray, Chairman (Aug. 30, 2016).</p>
<p><b>MODERN CONNECTION</b></p>		
	<p>“The Band’s Legal Analysis asserts that the lands where the Band’s proposed gaming facility would be located is near where a significant number of the Band’s members reside because the Bureau of Indian Affairs (BIA) in an unrelated matter has designated the counties of Mendocino, Lake, Sonoma and Contra Costa as the Band’s near reservation service area... [t]he City of Vallejo believes the designation... does not mean that the lands are near the location of the Band’s former rancheria or the residences of the Band’s members for purposes of determining whether IGRA’s restored land exception applies.” Vallejo City Letter to Acting Assistant Secretary Roberts (Sept. 1, 2016). p. 5. (internal quotations removed).</p> <p>“The County has been unable to find any modern connection between the Scotts Valley Band and the proposed gaming site in Vallejo or any other location within the borders of Solano County. . . While the Scotts Valley Band does have Tribal TANF offices in both Contra Costa County and Lake County . . . these offices refuse to provide any services to residents of Vallejo or Solano County. The presence of a tribal social services office in a neighboring county that will not provide services to any tribal members living in Solano County cannot satisfy the modern connection requirement, regardless of how close to the Solano County border this particular office is located.” Solano County Letter to Acting Assistant Secretary Roberts (Aug. 23, 2016). p. 2. (internal quotations removed). See also, Vallejo City Letter to Acting Assistant Secretary Roberts (Sept. 1, 2016). p. 4. (internal quotations removed). See also Solano County Legal Memo (Dec. 23, 2016). p. 3.</p> <p>“The Scotts Valley Indians' governmental headquarters is in Lakeport within Lake County, which is over 80 miles away from the City of Vallejo. Lake County is also the site of the tribe's original reservation. Further, there is no sizable membership of Scotts Valley Indians residing in or around Vallejo. Napa County has worked</p>	<p>The Department’s notice of the final rule for 25 CFR 292 states: “[T]he headquarters test is a useful means of determining whether a tribe has a modern connection to the newly acquired land and the 25-mile radius is both useful and consistent. . . . Nonetheless, the concerns raised by these comments are legitimate because the version of the headquarters test in the proposed rule could be construed as being open to manipulation. Therefore, the qualifier was added in the final rule that the tribe’s headquarters or other tribal governmental facilities be in existence at that location for at least two years at the time of the application for land-into-trust. The language of “other tribal governmental facilities” was added to address concerns that tribes often operate out of more than one headquarters or facility.” Gaming on Trust Lands..., 73 Fed. Reg. 29354, 29365 (May 20, 2008). See S. Bloxham to E. Shepard, Associate Solicitor (Sept. 15, 2016) at 7-8.</p> <p>The Vallejo property is “located within the State . . . where the tribe is now located, as evidenced by the tribe’s governmental presence and tribal population...” Section 292.12(a). The Band is and always has been located within what is now the State of California. See Declaration of Patricia Franklin ¶ 4 (Jan. 28, 2016) (“Franklin Declaration”); see generally, D. Theodoratus, “Scotts Valley Report” (Jan. 18, 2016) (“Theodoratus Report”); A. Hurtado, “The Scotts Valley Band of Indians and the San Pablo Bay Region” (Jan. 18, 2016) (“Hurtado Report”).</p> <p>Further, the Band has no reservation, and the land is both “near where a significant number of tribal members reside” and is “within a 25-mile</p>

	<p>hard to maintain its agricultural heritage and stands opposed to what is commonly called casino shopping by Native Americans seeking to site a casino in lands that may be highly sensitive and critical to the population, its economy, and culture.” Napa County to Acting Assistant Secretary Roberts (Sep. 20, 2016). p.1.</p>	<p>radius of the tribe’s headquarters <u>or other tribal governmental facilities</u> that have existed at that location for at least 2 years . . .” Section 292.12(a)(2) &amp; (3).</p> <p>Since 2008 (8 years before the fee-to-trust application was filed), the Band continuously has maintained governmental offices within Contra Costa County. <i>See, e.g.</i>, Franklin Declaration ¶ 16. This office houses numerous tribal departments and is the location for nearly all government-to-government meetings with federal and state agencies and other Indian tribes. <i>See</i> Franklin Declaration ¶ 10. <i>See also</i> Memorandum from Patrick Bergin, Fredericks Peebles &amp; Morgan to Acting Assistant Secretary Roberts, pp. 4-6 (Sept. 15, 2016); Letter from Steven Bloxham, Fredericks Peebles &amp; Morgan to Associate Solicitor Eric Shepard, pp.-7 (Sept. 15, 2016).</p> <p>The vast majority of the Band’s members (approximately 72.7%) live within such designated “near-reservation area,” with a significant number (approximately 12.4%) living within Contra Costa and Sonoma Counties (each of which has boundaries contiguous with Solano County). Approximately 10.0% of Tribal members live within a 25-mile radius of the land, and 18.0% of Tribal members—nearly one-fifth of the entire Band—live within a 36-mile radius of the land. <i>See</i> Franklin Declaration ¶¶ 16 and 17 &amp; Ex. B.</p>
<p><b>SIGNIFICANT HISTORICAL CONNECTION</b></p>		
<p><b>Treaty Issues</b></p>		
<p>Treaty: Land Cessions / 25 CFR Part 292 regulations</p>	<p>The Department’s Part 292 regulations do not speak to whether “land within the ceded area of an unratified treaty can establish a significant historical connection to a parcel of land.”</p> <p>“To adopt Scotts Valley’s premise, the Department would necessarily (and impermissibly) have to deviate from its regulations by considering a factor not listed in</p>	<p>Scotts Valley does not ask the Department to ignore the plain language of its regulation or add criteria.</p> <p>Qualifying certain lands for “restored lands” status by showing that the requesting tribe had ceded the lands in a treaty is an approach developed by the Department and affirmed in judicial opinions before Part 292 was</p>

	<p>the definition of the term significant historical connection in section 292.2.”</p> <p>“The plain regulatory language makes clear that a particular treaty tribe purportedly ceding particular territory is not the same as its occupancy or subsistence use of that territory, and so Scotts Valley cannot use this theory to prove a significant historical connection to the Vallejo Parcel.” Yocha Dehe Legal Memorandum (Nov. 8, 2016). pp. 1, 6-8.</p> <p>“Simply, no significant historical connection exists as defined by the regulations, evidenced by, among other things, the fact that the proposed gaming site in Vallejo is not within the boundaries of any Scotts Valley Band reservation established by treaty.” Solano County Letter to Acting Assistant Secretary Roberts (Aug. 23, 2016). p. 2.</p> <p>“... the Clear Lake Bands were located a substantial distance from the City of Vallejo and thus did not have a significant historical connection to the area where the Band proposes to conduct its gaming facility...” Vallejo City Letter to Acting Assistant Secretary Roberts (Sept. 1, 2016). p. 3.</p>	<p>promulgated. <i>See Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Atty. for Western Dist. of Mich.</i> (“<i>Grand Traverse II</i>”), 198 F.Supp.2d 920 (W.D. Mich. 2002), <i>aff’d</i> 369 F.3d 960 (6th Cir. 2004) (“<i>Grand Traverse III</i>”); <i>See also</i>, Pokagon Band of Potawatomi Indians, Memorandum to Secretary of the Interior from the Solicitor, Dept. of the Interior, M-36991 (Sept. 19, 1997) (“Pokagon Mem.”).</p> <p>Following enactment of the regulations, the Department continued to interpret Part 292 with reference to prior cases, including <i>Grand Traverse II</i> specifically. Pokagon Mem. at 3 &amp; 7-8; <i>see Coos</i>, 116 F.Supp.2d at 161-62; <i>Grand Traverse II</i> at 928, 935.</p> <p>With the requirement for a “significant historical connection,” the regulations reflect the plain meaning of IGRA’s term, “restoration of lands,” as the Department and the courts had already construed the term – the “restoration” of lands to an Indian tribe, in accordance with the “dictionary definition” means the “return” of lands “lost or taken away,” which as a rule includes lands that are part of the area the Band or its predecessors “ceded to the U.S. in earlier treaties.” <i>See Scotts Valley Restored Lands Opinion</i> (May 25, 2012) at 7, fn. 23 (noting that the regulations do not expressly specify every aspect of the restored lands requirements because some requirements are “inherently understood” to be reflected in the analysis).</p>
<p>Treaty: Joint Cession of Lands</p>	<p>The Department should reject the premise of Scotts Valley’s argument, namely, that it may establish a significant historical connection to the Vallejo Parcel merely because its alleged “predecessors-in-interest negotiated to jointly and severally cede the subject land to the United States” by the Treaty of Lupiyuma. Yocha Dehe Legal Memo p. 8.</p>	<p>Cession of land by an Indian tribe in a treaty <i>per se</i> demonstrates significant use and occupancy of ceded land sufficient to find a significant historical connection. Bloxham memo at pp. 6-9 (citing <i>Pokagon</i> decision (1997); and <i>Grand Traverse Band</i> decisions (2002 &amp; 2004).</p> <p>The Treaty of Lupiyuma effected a “joint and several” cession of the treaty area. The federal government treated the Clear Lake Indians as having lands outside their core aboriginal territory, for treaty purposes. Bloxham memo at pp. 19-20.</p> <p>Both in fact and from the federal government’s point of view, the bands exercised <i>joint</i> control</p>

		<p>over these lands; this part of the treaty area was not <i>severally</i> controlled or ceded, as the bands' aboriginal lands were. Bloxham memo at pp. 11-21, &amp; esp. 15-18.</p> <p>This is analogous to the Grand Traverse Band's treaty, which was also a joint treaty involving tribal parties combined for the United States' convenience in acquiring land. The property at issue in the Grand Traverse restored lands litigation "was within the Band's 1836 treaty lands." The joint cession of the treaty area means, as it does for Scotts Valley Band, that when property within that area is reacquired by any one of the joint tribal parties to the treaty, that property is a "restoration of land" to that tribal party. If the party is also a restored tribe, as Scotts Valley is, then the property qualifies for the restored land exception.</p> <p>In the case of the Treaty of Lupiyuma, there is no evidence that the federal government viewed any of the jointly ceded land which lay outside the Clear Lake Bands' core aboriginal territory as belonging to any individual band. In the government's view, evidenced by the treaty, the Bands had the joint authority to cede such lands. <i>See Memorandum of Steven Bloxham, Fredericks Peebles &amp; Morgan to Director Paula Hart (Bloxham memo) (Jan. 29, 2016).</i> pp. 5-7.</p> <p><i>See also, Assemblyman Jim Frazier letter, Oct. 6, 2016; Sherwood Valley letter, Dec. 21, 2016; Big Valley letter, Dec. 19, 2016.</i></p>
Treaty: Occupancy of Lands	<p>The plain regulatory language makes clear that a particular treaty tribe purportedly ceding particular territory is not the same as its "occupancy or subsistence use" of that territory, and so Scotts Valley cannot use this theory to prove a "significant historical connection" to the Vallejo Parcel. Yocha Dehe Legal Memo. p. 8</p> <p><b>But compare:</b> "Yocha Dehe agrees that an area ceded by treaty is evidence of occupancy that the Department would consider under the second prong of the 'significant historical connection' test." Yocha Dehe Supplemental Legal Memo. p. 2.</p>	<p>A tribe requesting a restored lands opinion can "demonstrate by historical documentation ... occupancy ... in the vicinity of the land," in order to show that it has a "significant historical connection" to the land. The regulations do not provide further details, including what type of historical documentation can or cannot be used to demonstrate occupancy. In this case, occupancy is demonstrated by the treaty cession. Bloxham Memo. p 2; 25 C.F.R. §§ 292.2, 292.12(b).</p> <p>Scotts Valley does <i>not</i> claim that the subject property meets the first part of the "significant historical connection" definition, land "located within the boundaries of the Band's last</p>

		<p>reservation under a ratified or unratified treaty.” The property is <i>not</i> within Scotts Valley’s last reservation, but it <i>is</i> within the area ceded by Scotts Valley’s ancestors to the United States under an unratified treaty.</p> <p>By analogy, the Court in Grand Traverse concluded that the Grand Traverse Band’s site, also part of an area ceded by treaty, constituted restored lands under 25 U.S.C. § 2719. <i>Grand Traverse II</i> at 935-36.</p> <p>Thus, one way to show that lands were “historically occupied” by a tribe seeking a restored lands opinion – one way to demonstrate a “historical connection” in the form of “occupancy,” in the language of the regulations – is to demonstrate that the lands are within the area “ceded by the Band to the United States.” Bloxham Memo. p 5</p>
<p>Treaty: Royce Maps</p>	<p>Royce Map Area 296 is not a reasonable proxy for the lands historically occupied and ceded by the Treaty signatories.</p> <p>The map Charles C. Royce prepared for the Treaty of Lupiyuma was “grossly inaccurate,” “embracing a vast tract extending from Clear Lake on the north to San Pablo and San Francisco bays on the south and from the Sacramento River on the east to west of the Napa River to the west.” Yocha Dehe Legal Memo., p. 13. <i>Citing</i> Stephen Beckham Report p. 64.</p>	<p>The Vallejo Parcel is within Royce Area 296, the area authoritatively mapped as representing the lands ceded in the Treaty of Lupiyuma. Bloxham Mem. pp.-8</p> <p>Charles C. Royce’s maps are highly regarded and uniformly relied upon by the Department of the Interior, the Indian Claims Commission, the courts, litigants and legal writers to identify land cessions. The Department regularly relies on the Royce maps, including the Royce maps that identify the land ceded in the unratified California treaties. See Guidiville Restored Lands Opinion (Sept. 1, 2011) at 11.</p> <p>It did so when denying Scotts Valley’s previous restored lands request in 2012, basing its negative decision in part on the conclusion that the Richmond parcel at issue there was outside of Royce Area 296, which extends from San Pablo Bay to Clear Lake. It would be unfair and indefensible to blatantly move the goalposts and now conclude that a parcel that <i>is</i> within Royce Area 296 is still unacceptable because the maps are wrong; if that is so, should the Department not revisit its Richmond decision? See Scotts Valley Restored Lands Opinion (May 25, 2012) at 14.</p>

		<p>Professor Hurtado observes that Royce Map 296 “is a fair approximation of the region that [United State Military Governor, Stephen] Kearny assigned to sub-Indian agent [Mariano] Vallejo in 1847. Hurtado Report (Jan. 29, 2016), p. 14; Hurtado Comments (Nov. 14, 2016), p. 13.</p>
<p>Treaty: Commissioners</p>	<p>The Treaty Commissioners never met with representatives of some of the Bands who lived in the area that the treaty would be deemed to have ceded — not the Wappo, Coast Miwok, or Southern Patwin. Three weeks after the Treaty with the Clear Lake Indians, another Commission negotiated a treaty at Camp Colus and three of the signatories were Patwin. Yocha Dehe Legal Memo., p. 14-15, Beckham Rep. p. 64</p> <p>Redick McKee was completely ignorant about California Indian affairs when he was appointed as Indian treaty commissioner.</p>	<p>The fact that the United States did not meet with representatives of those Bands is evidence that, in that area and at that time, those Bands were not identified as political entities with the capacity to make treaties (though individual members of those Bands still may have been present).</p> <p>The historical evidence submitted by Scotts Valley amply supports the conclusion that the United States dealt with the Clear Lake Bands to obtain the desired cession of the Vallejo area because by 1851, no independent villages, bands or tribes remained there. Bloxham Memo. p. 8</p> <p>There is no doubt that McKee was not well informed when he was appointed but his letters show that he made an effort to learn as much as he could about the California Indian situation while he was <i>en route</i> to California. See for example, McKee to Luke Lee, December 6, 1850, Ser. 688, 33<sup>rd</sup> Cong, spec. sess., 1853, Sen. Ex. Doc. 4, <i>Report of the Secretary of the Interior Communicating . . . Correspondence Between the Department of the Interior and the Indian Agents and Commissioners in California</i>, 52-53.</p> <p>Once McKee arrived in California he had access to knowledgeable people in the military, longtime residents, and newspapers. McKee stayed for several days in Sonoma where Vallejo resided before going on to Clear Lake and the Russian River. Moreover, Vallejo’s business associate and cattle contractor James Estell, as well as Major Wessells, accompanied McKee. He met several experienced residents while on his journey, including some who were associated with Rancho Lup-Yomi. Hurtado Comments (Nov. 14, 2016), p. 13.</p> <p>For a favorable assessment of McKee’s operations in California see Ray Raphael, <i>Little</i></p>

		<i>White Father: Redick McKee on the California Frontier</i> (Eureka, Calif.: Humboldt County Historical Society, 1993).
Treaty: Political Succession	Scotts Valley rewrites history to suggest the Clear Lake Indian tribes succeeded the Patwin Indian tribes when negotiating with the United States. The Patwin were not absent from their traditional territory at the time of treaty-making.	<p>Such claims misstate or misunderstand Scotts Valley’s position that it was a successor to the former aboriginal inhabitants of the Vallejo area. Scotts Valley and the other Clear Lake Bands succeeded to that role because the United States placed them in it, which it did by identifying the Bands as the parties capable of entering into a treaty to cede the land in that area. Bloxham Memo. pp. 8-9.</p> <p>There is evidence to the contrary about the number of Patwin in the area. Professor Hurtado determined that in 1837, a smallpox epidemic decimated the Patwins who lived in southern Solano County, especially the Suscol rancheria (around Vallejo). Albert Hurtado Report, dated November 14, 2016. p. 7.</p> <p>The United States did treat with other Patwin villages in a different area, leading to the Colusa Treaty. The historical evidence submitted by Scotts Valley amply supports the conclusion that the United States dealt with the Clear Lake Bands to obtain the desired cession of the Vallejo area because by 1851, no other independent villages, bands or tribes remained there. Bloxham Memo. pp. 8-9.</p>
Treaty: Provisions	<p>The Treaty Tribes’ single trip to Vallejo to pick up provisions promised to Clear Lake Indians under the Treaty hardly demonstrates a significant historical connection – a sustained occupancy or subsistence use – to the Vallejo area, let alone, to the Vallejo parcel. Yocha Dehe Legal Memo., pp.18-20</p> <p>The record shows Vallejo was selected out of convenience to the military, not because it bore some significance to the California Indians, or because the Bands were already occupying the area. There are no “Reserved Rights” to the ceded area in the Treaty. Reséndez Report, p. 3.</p>	<p>The treaty promises and the Bands’ actions pursuant to the promise are significant because they demonstrate Scotts Valley’s occupancy and its subsistence use in the vicinity of the subject property. Bloxham Memo. pp. 9-10.</p> <p>These facts themselves are the evidence; they are not merely suggestive of an inference that, separately from obtaining provisions in Vallejo, Scotts Valley made use of the lands in the vicinity (although they do lead to that inference as well). The United States promised to furnish provisions “at or near Vallejo, or elsewhere, as may be most convenient[.]”</p> <p>Undoubtedly the U.S. government’s convenience was a factor, but this does not mean the location was not also known to, and convenient to, the Bands. Agent McKee insisted it was “no uncommon thing” for Indians</p>

		<p>to come down from Clear Lake to the “white settlements” like Vallejo. See R. McKee, U.S. Indian Agent, N. Calif., to E.A. Hitchcock, Bvt. Brig. Gen., Mar. 26, 1852, Sen. Exec. Doc. No. 4 at 305.</p> <p>In addition to establishing a significant historical connection to the land through the fact that the land is within the area ceded by treaty, its other connections are at least as substantial as those found to satisfy the test in prior Department decisions regarding the North Fork Rancheria and the Cowlitz Indian Tribe. <i>See</i> S. Bloxham to E. Shepard, Associate Solicitor (Sept. 15, 2016) at 5-6, discussing the North Fork Rancheria Secretarial Determination (Sept. 1, 2011) and the Cowlitz Indian Tribe Revised Initial Reservation Opinion (Oct. 1, 2012).</p>
<p>Treaty: Provisions - Why Vallejo?</p>	<p>The Band’s legal analysis does not, however, indicate why the United States agreed to furnish certain goods to the Clear Lake bands “at or near Vallejo, or elsewhere.” Vallejo City Letter to Acting Assistant Secretary Roberts (Sept. 1, 2016). p. 3 and Solano county Letter to Acting Assistant Secretary Roberts (Dec. 23, 2016). p. 8.</p> <p>“Scotts Valley tries to draw significance from the fact that the Clear Lake Indians were directed to Vallejo to pick up provisions, including beef, under Treaty O. The argument is that Vallejo must have been historically significant to the allegedly predecessor Pomo tribes because that place was selected for the delivery of the promised provisions. ...In fact, other tribal groups also were directed to pick up provisions at Vallejo. For example, signatories to Treaty P, whose tribal groups were even farther from Vallejo than the Clear Lake Indians... had to make the long trip there to pick up the goods the United States government promised.” Yocha Dehe Legal Memo. p. 18.</p>	<p>The Treaty called for the tribal parties to come to Vallejo for provisions for three years – 1851, 1852 and 1853. This established for the tribal parties a reserved right in the ceded area: the right to make use of the ceded lands to take delivery of subsistence provisions furnished by the United States, and the corresponding right of access. Bloxham Memo. p. 10</p> <p>The significant historical connection to Vallejo is established within the Treaty itself. The Band’s ancestors were told to travel to Vallejo and in fact they did travel there. Such travel was not intended to be an isolated event, but rather a frequent occurrence. During one visit in late 1851, the Band’s ancestors were encamped at General Estelle’s ranch at Vallejo, approximately 2.4 miles from the Vallejo Property. Bloxham memo at pp. 21-25; Hurtado report (Jan. 29, 2016). pp. 77-85 &amp; 102-105.</p> <p>In fact, Band’s ancestors were expressly advised to seek assistance from General Estelle “should any disturbances or difficulties arise among [the other Clear Lake bands] or with the whites...” Hurtado Comments (Dec. 6, 2016) at p. 6.</p> <p>Of all the treaties entered into between the United States and Indian tribes, it remains extraordinary to require the treating tribe to travel away from a proposed reservation for provisions. Although both the Russian River</p>

		<p>treaty (“Treaty P”) and Scotts Valley’s treaty (“Treaty O”) mention Vallejo, both treaties were for the same reservation. As a group the Indians on that one reservation would travel to Vallejo. Treaty O was the first treaty and that those signers consented to the addition of other bands from Treaty P into the reservation. The reservation was to be the Clear Lake tribes’ reservation and that those tribes consented to the Russian River tribes coming into it.</p>
Ancestry of the Band		
	<p>Band’s expert anthropologist report “does not resolve this core issue of which tribelet(s) were the ancestors of the modern Scotts Valley band; instead, it raises more questions. Is the present Scotts Valley Band descended from one or three Clear Lake Pomo tribelets?” Solano County Legal Memo (Dec. 23, 2016). p. 5.</p>	<p>Scotts Valley Band, first and foremost, is and always has been the “Indians of Scotts Valley.” The extensive and undisputed historical documentation proves that the “Indians of Scotts Valley” are the Moalkai/Yimabak, <u>which was a party to the 1851 treaty</u>. See Letter from Steven Bloxham to Assistant Secretary Roberts (Nov. 14, 2016). pp 10-11; Preliminary Report of Stephen Dow Beckham (Nov. 7, 2016). p. 67.</p> <p>Scotts Valley Band is also a successor to two other treaty bands located on the west shores of Clear Lake — the Kulanapo [a/k/a Ca-la-na-po] and Habenapo. Bloxham memo at pp. 12-15; Dorothea Theodoratus report (Jan. 29, 2016). pp. 2, 3, 4-8 &amp; esp. 5 (map), 9-12. See also, Dorothea Theodoratus Comments (Nov. 13, 2016). pp. 2-3.</p> <p>At the time of the distribution of Scotts Valley Rancheria lots in 1958 approximately 90% of SVBPI members traced their lineage back to Augustine, which is a common surname among the SVBPI. Hurtado Augustine Report (May 3, 2018), p.1.</p>
Ancestral Language Differences	<p>Friendly exchange among Pomo and Patwin groups occurred although occasional unfriendly circumstances did occur. Jennifer Whiteman Report, pp 15-16.</p> <p>The Pomo weren’t known for distance travel because they could not “effectively communicate” because of linguistic differences is curious. Language would be a deterrent to intertribal communication making travel to</p>	<p>Records for Central California groups indicate that some people often spoke and had some knowledge of several languages. This would be more evident for men than women, although some women are also reported to have been multilingual, especially if they married into a tribe from another group. Communication occurred regularly for trade, ceremony and</p>

	<p>other tribal areas unreasonable. Stephen Beckham Report p. 64.; See also Yocha Dehe Legal Memorandum. p. 16.</p>	<p>community functions which required participants in these ventures to be multilingual. Theodoratus Report, p. 3.</p>
<p>Ancestral Social Organization</p>	<p>Understanding and recognizing the implications of a tribe's social organization is crucial to comprehending the structure of intra- and inter-tribal relations. Yocha Dehe Legal Memorandum, pp. 22-23.</p>	<p>“Kin groups were both ambilateral and ambilocal, which allowed for movement of members among the various tribelets, meaning they could recombine socially and politically in various ways.” Theodoratus Report, p. 3.</p> <p>These political units could, and sometimes did, confederate... Theodoratus Report, p. 4.</p> <p>Trade alliances were held among Pomo groups and with non-Pomo groups Theodoratus Report, p. 5.</p> <p>Pomo culture in general, and particularly the Clear Lake area was one of “fluctuating diversity.” In addition to tribal re-combinations, this comes through contact with other tribes who, through alliances, came to Clear Lake seasonally to participate in an abundant fishing season (see also Whiteman Report, pp. 15-16, who notes some Patwin came to the Lake to fish). Theodoratus Comments, p. 2.</p> <p>Understanding this openness to diversity does not eliminate the possibility of altercation among Pomo and non-Pomo groups. However, the importance of Lake food resources and intertribal agreements to cross tribal lands may have mitigated the extent of such situations. Theodoratus Comments, p. 2.</p> <p>Patwin trade with Clear Lake peoples and that inter-marriages “solidified positive relationships with neighboring tribes” which enhanced trade and “reciprocal hunting and gathering rights” Whiteman Report, pp. 15-16; Theodoratus Comments, p. 2.</p> <p>The tribes also cooperated in ceremony. The early historical period did not curtail traffic in and out of Clear Lake, provided where agreements had been developed. “Intertribal communication was and remained a part of Indian life.” Theodoratus Comments, p. 2.</p>

<p>Origin of the Modern Scotts Valley Band</p>	<p>The Band’s anthropologist report provides “a general overview of the Pomo Indians who lived around Clear Lake... By contrast, the Indians who lived immediately north of San Francisco and San Pablo Bay (the location of Vallejo) spoke dialects of different language families: Patwin, Wappo or Coast Miwok.” Solano County Legal Memo (Dec. 23, 2016). p. 4.</p> <p>“Pomo is not a cultural or political description. Pomo is not a “tribe” or “nation” and the Indians who spoke these related Pomo dialects did not recognize an overarching political, cultural or social relationship amongst the groups (called village-communities and/or “tribelets” by scholars) whose members spoke closely related dialects.” Solano County Legal Memo (Dec. 23, 2016). p. 4.</p> <p>Each tribelet was autonomous, often having at least one permanent village and perhaps a few seasonal camps within a given valley. The Pomo speakers around upper and western Clear Lake spoke Eastern Pomo which in turn had dialectal variations among the tribelets living around the Lake. Solano County Legal Memo (Dec. 23, 2016) p. 5.</p> <p>The three tribes that make up the Scotts Valley Pomo “militates in favor of heightened skepticism” is unfounded at best. Yocha Dehe Legal Memo., p. 22.</p>	<p>Pomo is a linguistic division (family) of the Hokan linguistic stock that resided in a large area north of San Francisco Bay. It is agreed that the Lake Miwok (Utian family, Penutian stock) are immediately to the south of the Lake, the Patwin (Wintuan family, Penutian stock) are east and southeast, and the Wappo (Wappo, Yukian family) southwest of the Lake Miwok. Neither the Wappo nor the Lake Miwok extend south as far as San Pablo Bay. It is known that tribes were aware, traded, and intermarried each other; many individuals were multilingual enough to conduct cross-tribal communication. Theodoratus Report (Jan. 29, 2016). pp. 3-5.</p> <p>The Band’s experts do not use the term Pomo as a cultural or political description. However, as noted in the Band’s expert anthropologist report, each tribal linguistic grouping is divided by scholars into smaller groups or tribelets, a tribelet being a “basic, autonomous, self-governing, and independent socio-political group” (citing Heizer 1978:5). Theodoratus Report (Jan. 29, 2016). p. 3.</p> <p>Each tribelet (also called a village community) consisted of residents who lived in two or more settlements and who acknowledged a leader or “chief” who resided in the largest of the villages. <i>See</i> Theodoratus Report (Jan. 29, 2016). p. 3.</p> <p>The combination or incorporation of tribes is absolutely feasible in Pomo social organization where kinship designation is a matter of choice within the constructs of the social system, therefore is multi-linear. The Scotts Valley groups intermarried with the Habenapo and Kulanapo and ceased to exist separate groups as a result of this intermarriage. Theodoratus Comments, p. 3.</p>
<p>How Scotts Valley’s Ancestors Relate to the Modern Band</p>	<p>The Band’s expert states that Scotts Valley “are descendants of one tribelet (variously termed Yemabak/Yima/Boilkai/Moal-kai) which occupied land northwest of the town of Lakeport on the western side of Clear Lake.” Some sources state that “a Northern Pomo group (Komli) immigrated to Clear Lake from the Ukiah Valley (to the north and west of Clear Lake) just before non-Indian contact. The Komli were allowed to reside with the Yemabak and at first retained a separate</p>	<p>The Yemabak tribelet (Yimaba), on the west side of Clear Lake, clearly demonstrates the flexible aspects of this complex Pomo social system. The tribelet was composed of two distinct groups: The Komli who spoke a northern Pomo dialect and the Boalke, who spoke an eastern dialect came together a few years prior to non-Indian contact...The Komli came to Clear Lake from the Ukiah valley</p>

	<p>captain. Over time, the two groups amalgamated into a single tribelet at Scotts Valley. The Band's expert presents no information as to when the two groups no longer had separate captains and no longer spoke variations of Pomo. Solano County Legal Memo (Dec. 23, 2016). p. 5.</p> <p>By contrast, the Scotts Valley Tribal Chairman submitted a statement that his Band is descended from three Eastern Pomo tribelets that occupied territories on the west side of Clear Lake: Yimabak/Moalkai, Kulanapo and Habenapo. These tribelets were among several that were party to the August 20, 1851 Treaty that was negotiated by Agent Redick McKee. In turn, the Howard and McClurken Report claims that the modern Scotts Valley Band has ancestors from diverse Pomo villages (not just from the Eastern Pomo ones around Clear Lake) as well as from some non-Pomo villages. Solano County Legal Memo (Dec. 23, 2016). p. 5.</p>	<p>where they had been driven away by a Central Pomo group. The Boalke provided them territory for a village in the Clear Lake vicinity and eventually the two groups united into one village, replacing two separate villages. Theodoratus Report (Jan. 29, 2016), pp. 6-7.</p> <p>As to the issue of "when the two groups no longer had separate captains and no longer spoke variations of Pomo," the Komli came to the Clear Lake area previous to non-Indian contact and maintained their political structure at the Lake. After being there "a while" they were incorporated into a single village with two captains, one from each group. This demonstrates the flexibility of the Pomo socio-political system.</p> <p>There is no evidence of whether the Komli spoke variations of Pomo after remaining at Clear Lake. This is an odd assumption that the Komli would no longer speak their dialects. That said, we do know that the descendants form a very large contingent of the Scotts Valley tribe intermarried people from other areas. Theodoratus Report (Jan. 29, 2016). p. 11.</p> <p>It is true that Kulanapo and Habenapo are groups to the south also speaking Eastern Pomo dialects that participated in the 1851 treaty negotiations. These groups intermarried prior to contact. Theodoratus Report (Jan. 29, 2016). p. 11.</p> <p>The political and social system was greatly disrupted in post contact times and eventually many (60 – 100) tribal people came together at Mission Turibius near Kelsey Creek in Big Valley (1867-1893) located in the Kulanapo/Habenapo Eastern Pomo territory. This area had a great influx of persons from other tribelets during the 1870 Ghost Dance movement. Clear Lake was an important area where people came to learn the new religion brought to them by the Patwin. Theodoratus Report (Jan. 29, 2016). pp. 8-9.</p> <p>Howard and McClurken make note of the many people who came and stayed in the Clear Lake area, settling there and marrying local tribal</p>
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		persons. Howard and McClurken Report (January 29, 2016), <i>passim</i> .
Establishment of Scotts Valley Rancheria	According to the Howard and McClurken Report the Indians who were accorded a reservation in 1911 known as the Scotts Valley or Sugar Bowl Rancheria not only descended from Clear Lake Pomo, but also from non-Eastern Pomo and even non-Pomo Indians who were born outside of the Clear Lake area. The reason for this stems from the way in which the Rancheria was established.	<p>The Bureau of Indian Affairs subsequently charged Special Agent Charles E. Kelsey with purchasing lands for landless Pomo people. In 1909, Kelsey negotiated with landowners for the purchase of a parcel located north of Clear Lake, land that became Upper Lake Rancheria. The agent intended to move all Pomo living in the vicinity to Upper Lake, but the Scotts Valley Band resisted... Agent Kelsey optioned a second location for the Scotts Valley Pomo in 1911. Howard and McClurken Report, pp. 35-36.</p> <p>The Scotts Valley Rancheria was meant to provide a secure home for the SVBPI ancestors who lived there. However, the Rancheria was not capable of supporting the people who lived there so they and other SVBPI ancestors continued to live in the San Pablo Bay Region in the twentieth century. Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region, by Dr. Hurtado and Dr. Theodoratus. (May 3, 2018)</p>
Ancestors at the Scotts Valley Rancheria	The Howard and McClurken report states that those at the 1911 reservation came from many different tribelets, something that is not addressed by Theodoratus. Solano County Legal Memo (Dec. 23, 2016). p. 5, f.3.	<p>Charles E. Kelsey prepared a list of the Indians in Scott Valley that were slated to receive land for a Rancheria. This list was contained in a letter, dated May 26, 1911, to Commissioners of Indian Affairs, Washington, D. C. ("Kelsey Letter"). The Kelsey Letter lists 16 households, which include a total of 58 individuals. Only the head of each household was named. See, the 1910 United States Federal Census, Indian Population, Township 4 Scotts Valley precinct, and Township 4 Big Valley precinct included all 58 people. Theodoratus Appendix (February 2018). p. 9.</p> <p>The 58 people were counted in 15 households more or less correspond to those counted by Kelsey as the original households of the Scotts Valley Rancheria. Howard and McClurken Report, p. 28.</p> <p>In the Theodoratus Appendix, these 58 individuals are traced back to the 1880 census to</p>

		<p>show the connection of Scotts Valley to the earlier population, thus providing the continuity through time of the Eastern Pomo population and the inclusion of some Patwin ancestry.</p>
<p>Augustine</p>	<p>[A] large number of contemporary Scotts Valley tribal members descend from Clear Lake Pomo Captain Augustine (1830-1919) who purportedly was a prominent figure historically. However, his brother and the latter's descendants are not members of the Scotts Valley Band. Are they members of other Clear Lake Pomo bands? How did Captain Augustine's sole son become the ancestor of a large number of contemporary Scotts Valley Band members? Who else was a member of the Band contemporaneously with Captain Augustine in the nineteenth century? Solano County Legal Memo (Dec. 23, 2016), p. 5.</p>	<p>This topic is addressed at length in the Hurtado Augustine Report (May 3, 2018).</p> <p>Augustine, also known as Shuk or Cuk, is significant for three reasons. First, Augustine was a chief of the Kulanapo that is a major subdivision of the SVBPI. At the time of the distribution of Scotts Valley Rancheria lots in 1958 approximately 90% of SVBPI members traced their lineage back to Augustine, which is a common surname among the SVBPI. Augustine selected his brother as his successor sometime before his death in 1903. From Augustine's time forward, the Augustine name has been associated with SVBPI leadership.</p> <p>Second, Augustine's testimony published in 1880 is one of the most important sources of historical knowledge about the period c. 1840-1851. Indeed, his testimony is the only first-hand SVBPI ancestral account of that era at Clear Lake and the San Pablo Bay Region (SAN PABLO BAY REGION). He was a key figure in the well-known Kelsey-Stone killings, an event that led to the infamous Bloody Island massacre in 1850.</p> <p>Third, Augustine began to work for Salvador Vallejo in southern Napa County in the 1840s. He does not appear in censuses of the Clear Lake region in 1850, 1852, or 1860 (or in Napa County for that matter). However, many Indians who worked on ranches were not enumerated in this time period. Augustine was no doubt one of many SVBPI ancestors who worked for ranchers in Napa County in the 1850s and 1860s, but who went unnoticed in the official record. However, Augustine is identified in the 1870 census in southern Napa County. Thus, Augustine is an exemplar of the SVBPI labor connection with the Napa Valley. Augustine's life illustrates the relationship between Clear Lake Indians and the Mexican rancheros around San Pablo Bay and in the vicinity of Vallejo. Augustine was a source for my first report on Clear Lake Indians in the San</p>

		Pablo Bay region, but now we can document his presence and residence in close proximity to the Vallejo site as a child and an adult. As set out in this brief biography, Augustine’s relationship with this area was long-lasting and extended well into the American period.
Ancestral Connections to Vallejo	The Band’s expert anthropologist provides no information in her report that connects the Scotts Valley Band historically to land in or near Vallejo.	The Band has submitted substantial arguments and evidence of its connection to the Vallejo parcel. These appear in the following: the January 29, 2016 Legal Analysis in Support of Request for an ILO; the January 29, 2016 Report by Dr. Dorothea Theodoratus; the January 29, 2016 Report by Dr. Albert Hurtado (“Hurtado Report 1”); the January 29, 2016 Consolidated Report by Dr. Heather Howard and Dr. James McClurken (“Consolidated Report”); the January 29, 2016 Declaration of Patricia Franklin, Tribal Secretary; the June 29, 2016, Memorandum of Dr. Hurtado to Maria Wiesman; the November 13, 2016, Comments by Dr. Theodoratus; the November 14, 2016, Comments by Dr. Hurtado; the December 6, 2016, Comments by Dr. Hurtado; and the May 3, 2018) Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region, by Dr. Hurtado and Dr. Theodoratus.
Presence in San Pablo Bay Region		
	“No evidence of any kind has been found linking the Band to Vallejo, to Solano County, or to the north shore of San Pablo and San Francisco Bays” Stephen Beckham Report, pp. x-xi.	The Band has submitted substantial arguments and evidence of its connection to the Vallejo parcel. These appear in the following: the January 29, 2016 Legal Analysis in Support of Request for an ILO; the January 29, 2016 Report by Dr. Dorothea Theodoratus; the January 29, 2016 Report by Dr. Albert Hurtado (“Hurtado Report 1”); the January 29, 2016 Consolidated Report by Dr. Heather Howard and Dr. James McClurken (“Consolidated Report”); the January 29, 2016 Declaration of Patricia Franklin, Tribal Secretary; the June 29, 2016, Memorandum of Dr. Hurtado to Maria Wiesman; the November 13, 2016, Comments by Dr. Theodoratus; the November 14, 2016, Comments by Dr. Hurtado; the December 6, 2016, Comments by Dr. Hurtado; and the May __, 2018) Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San

		Pablo Bay Region, by Dr. Hurtado and Dr. Theodoratus.
Band as Seasonal and Permanent Labor Force		
Decimation of Suisun Patwins		<p>Before contact with the people and institutions of Spain (after 1769) the San Pablo Bay region was the ancestral homeland of Patwin, Miwok, and Wappo people. In particular, the land where the Mexican land grant claim to Rancho Soscol, Solano County, and the City of Vallejo and now stands was Patwin territory Hurtado Report (Jan. 29, 2016). p. 9.</p> <p>The Patwin population substantially declined due to the ravages of the 1837 smallpox epidemic. Early twentieth century reported that the Patwins were reduced from 60,000 to a mere 200. Hurtado Comments (Nov. 14, 2016). pp. 12-13.</p>
Shared historical connection with Patwin	<p>“Vallejo is widely and consistently documented as Patwin territory...” Yocha Dehe Supplemental Legal Memo. p. 1.</p> <p>“It is, in fact, undisputed that the northeastern area of San Francisco/San Pablo Bay was the homeland of Patwin (or Wintu speaking) groups, and all of the area encompassing Vallejo, indeed all of Solano County, is well recognized as Patwin (or Wintu territory).” Yocha Dehe letter to Acting Assistant Secretary Roberts (July 18, 2016). p. 2.</p>	<p>The Band does not argue that its historical connections to San Pablo Bay region somehow negates Patwin history. Rather, the Band has an independent historical connection to the region based on their work and other activities there. It is not unusual for more than one group to have a historical connection to one place. Hurtado Comments (Nov. 14, 2016). p. 12.</p>
Seasonal, Voluntary labor in the vicinity of the Project Site	<p>While it was common for the neophytes to become laborers at Mexican ranchos after secularization, Hurtado provides no evidence that the Indians who worked at Mariano Vallejo's rancho in Sonoma County were from Clear Lake and specifically from the tribelets that are allegedly ancestral to the contemporary Scotts Valley Band. If the neophytes at the missions were not Clear Lake Indians to begin with, then there is no evidence that Clear Lake Indians generally and Scotts Valley ancestors in particular were forced to work at ranchos in Patwin territory and far from their indigenous villages. Solano County Legal Memo, pp. 7-8.</p>	<p>Patwin population losses made it impossible for the Vallejos, Juarez and other local rancheros. to rely solely on local Indians for the labor that they required. Hurtado Comments (Nov. 14, 2016). p. 12.</p> <p>Fortunately for San Pablo Bay rancheros Salvador Vallejo had located an abundant source of Indian labor at Clear Lake. Augustine, SVBPI ancestors, and other Clear Lake Pomo eventually worked and resided on the ranchos of the Vallejos, Juarez, and other local rancheros. Hurtado and Theodoratus Supplemental Report (May 3, 2018), p. 7.</p> <p>Contemporary observers noted that it was quite common for the Band's ancestors to come down</p>

		<p>from Clear Lake to work for the farmers in the area of the Vallejo Property during the period of contact - especially in the adjacent Napa area. Hurtado Comments (Dec. 6, 2016). pp. 9-11</p> <p>SVBPI ancestors began living in the San Pablo Bay Region in 1837 when at least three children (including Chief Augustine) were baptized at the mission in Sonoma, approximately 15 miles from the SVBPI project site in Vallejo. Hurtado and Theodoratus Supplemental Report (May 3, 2018). p. 2.</p> <p>The hiring of Indians from Clear Lake was a matter of common knowledge that was widely reported, although specific origins were not always given. Frank Leach, a newspaperman, moved to Napa as a boy in 1857 and recalled that in the summer and during harvest “hundreds of Indians from the north would come to Napa and camp <i>with their families</i> about the town.” By this time wheat farming had replaced livestock ranching as the primary agricultural pursuit in Napa Valley. In 1862 a Napa newspaper reported that “Harvest time has brought our valley a large number of Clear Lake Indians, many of whom, we are told, are exceedingly useful in the field, and bind [wheat] equal to, or better than many white men.” The same newspaper reported that after the harvest, the Indians were “flush with money,” and were able to afford stage fare for their travels. Hurtado and Theodoratus Supplemental Report (May 3, 2018), pp. 13-14.</p> <p>Thus, by the 1860s there was a well-established pattern: Indians from Clear Lake lived part of the time on ranches around the lake and part of the time they took their families to Napa and other places in the south to do agricultural labor for wages. Their labor was essential for Napa County farmers, and the wages were an integral part of the economic and social life of the Indians. Hurtado and Theodoratus Supplemental Report (May 3, 2018). pp. 13-14.</p> <p>Writing specifically about the SVBPI ancestors at Rancho Lup-Yomi, special agent Bailey emphasized the integration of wage labor in Napa Valley and subsistence farming at Clear Lake. With the permission of the owner, the</p>
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		<p>Indians (SVBPI ancestors) on Rancho Lup-Yomi cultivated fields near the lake and fished in order to “subsist themselves comfortably. In the Spring time and harvest, the men go down into Napa and Sonoma Valleys, and hire themselves, at good wages to the farmers there, and thus procure the means of clothing themselves and families.” Thus, SVBPI ancestors and their families occupied private ranchos at Clear Lake <i>and</i> the Napa Valley. SVBPI ancestors had to do this in order to survive as viable communities. Hurtado and Theodoratus Supplemental Report (May 3, 2018). pp. 13-14. <i>See also</i>, Sherwood Valley letter, Dec. 21, 2016.</p>
<p>Occupancy and subsistence in the vicinity of the Project Site</p>		<p>The historical record shows that there was a significant historical connection between SVBPI ancestors and the San Pablo Bay region. SVBPI ancestors were taken to the mission at Sonoma as early as 1837. Like Augustine, they eventually worked for Mexican rancheros such as Salvador Vallejo and Cayetano Juarez whose property was near the SVBPI project area. During the American period (c. 1846-1880) SVBPI ancestors continued to work as agricultural and domestic laborers. Federal Indian agents reported that SVBPI ancestors worked in Napa and Sonoma counties. During that period SVBPI ancestors subsisted for part of the year on hunting, fishing, and some crops grown on land with the farmer’s permission. For the other part of the year they and their families worked for money on ranches in Sonoma and Napa counties near the SVBPI project area. These two activities were mutually reinforcing: SVBPI ancestors needed to work in the San Pablo Bay Region in order to supply their families with cash to buy market goods. Thus, the SVBPI ancestors’ economic territory necessarily included the San Pablo Bay Region because they needed both areas in order to survive a time when they were dispossessed and exploited. The significant historical connection between the SVBPI and the San Pablo Bay Region continued through the twentieth century and to the present day. Hurtado and Theodoratus Supplemental Report (May 3, 2018). pp. 20-21.</p>

<p>Kidnapped and Enslaved Indians; Forced Labor</p>	<p>Hurtado notes for example that Indians were kidnapped for labor in the second half of the nineteenth century and that there were Indian children with no listed last name in households not headed by an Indian adult in the 1852 and 1860 Solano County censuses. While these individuals may in fact have been kidnapped at some point in their life, Hurtado provides no evidence that those children were Scotts Valley ancestors or even from Clear Lake. They could have been kidnapped from myriad tribes in California. Without specific evidence that these individuals were in fact from Clear Lake and from the tribelets that were allegedly ancestral to the Scotts Valley Band, the data is of no significance with respect to the Band's historic connection to land at Vallejo. Solano County Legal Memo, p. 9.</p>	<p>Although some Clear Lake Indians and SVBPI ancestors worked voluntarily for whites, the enslavement of some Indians continued through the end of the Mexican period and was adopted by Americans who settled in the region after the United States conquered California. Hurtado and Theodoratus Supplemental Report (May 3, 2018). p. 11.</p> <p>In the 1940s, Henry Mauldin, a farmer in Big Valley, began to interview Lake County residents about the history of the region. He interviewed the descendants of white settlers and Indians who repeated stories that they heard from their parents and other old-timers. The dates of events were often unstated but may be broadly inferred from internal evidence (e.g., the 1850s). Mauldin had a special interest in Indians and took extensive notes about them and their history. Some Americans made a business of capturing Clear Lake Indians and selling them to ranchers. One woman who lived in Big Valley (which is an important part of the SVBPI homeland) reported seeing kidnapers with Indian children hanging in bags on pack horses as they were being transported to Sonoma and Napa counties for sale in the 1850s. Hurtado and Theodoratus Supplemental Report (May 3, 2018). pp. 11-12.</p> <p>The killing of adults and kidnapping of children had a devastating effect on the Clear Lake Indian population. In 1859 a Napa newspaper reported that Clear Lake Indians had “dwindled from 10,000 in 1849 to a mere remnant of about 500 in all.” Hurtado and Theodoratus Supplemental Report (May 3, 2018). p. 13.</p>
<p>Mission San Francisco de Solano and Rancho Suscol</p>	<p>After the missions were secularized, Hurtado’s report also leaves unanswered many questions with respect to what happened to the neophytes (Christianized Indians) at the missions. While it was common for the neophytes to become laborers at Mexican ranchos after secularization, Hurtado provides no evidence that the Indians who worked at Mariano Vallejo’s rancho in Sonoma County were from Clear Lake and specifically from the tribelets that are allegedly ancestral to the contemporary Scotts Valley Band. If the neophytes at the missions were not Clear Lake Indians to begin with,</p>	<p>Mission San Francisco de Solano is 17 miles from the project site.</p> <p>In 1837, thirty Pomo children were taken to the mission San Francisco Solano at Sonoma where they were baptized. This group included Augustine. Two other SVBPI ancestors, Francisco, and Truppi can be traced in SVBPI family history. Hurtado and Theodoratus Supplemental Report (May 3, 2018). p. 7. In fact, at least sixteen Indians from Augustine’s</p>

	<p>then there is no evidence that Clear Lake Indians generally and Scotts Valley ancestors in particular were forced to work at ranchos in Patwin territory and far from their indigenous villages. Solano County Legal Memo, pp. 7-8.</p>	<p>community of origin were associated with the Mission San Francisco de Solano. Hurtado and Theodoratus Supplemental Report (May 3, 2018). p. 8.</p> <p>Augustine remained in the mission for an unknown length of time before becoming a vaquero (cowboy) for Salvador Vallejo who had extensive land grants in southern Napa County. Before the mission was secularized in 1834, the establishment included many thousands of acres of pasturelands for the mission’s extensive cattle herds. These cattle grazed on the land that became Rancho Suscol, site of the SVBPI project site. Mission Indians, such as Augustine, herded the mission cattle. Mariano Vallejo was the first administrator of San Francisco Solano, and in 1839 his brother Salvador took over that post. Thus, the Vallejos managed mission holdings until they were disposed of. Management of the Rancho Suscol was part of the Vallejo’s responsibilities as administrators. Eventually Mariano claimed Rancho Suscol, even though it was regarded as government property, and sold the cattle that grazed there. According to a Mexican soldier who served under the Vallejos, after 1845 Mariano “had vaqueros &amp; cattle on the Rancho [Suscol].” These vaqueros could well have included Augustine or any of the other SVBPI ancestors who passed through the mission. Hurtado Augustine Report, p. 5.</p>
<p>Census Records Provide Substantial Evidence of Scotts Valley very near the Project Site from the 1840s to 1880s.</p>	<p>There is much in the Hurtado report that does not address the composition and actions of the historical ancestors of the Scotts Valley Band. And much that he does address is speculative and without documentary support, as discussed above. This simply does not provide the necessary evidence to show that Scotts Valley has a “significant historical connection” to lands in Vallejo. Solano County Legal Memo, p. 10.</p>	<p>Analysis of census data demonstrates that several SVBPI families have historic connections to the San Pablo Bay Region that existed over a long period of time. Hurtado and Theodoratus Supplemental Report (May 3, 2018) addresses this issue at length. The Augustine and Frese families are prime examples. Professors Hurtado and Theodoratus provide several other examples. See also Theodoratus Appendix.</p> <p>In short, SVBPI ancestors began living in the San Pablo Bay Region in 1837 when at least three children (including Chief Augustine) were baptized at the mission San Francisco de Solano. Hurtado and Theodoratus Supplemental Report (May 3, 2018). p. 2. By the 1860s there was a well-established pattern: Indians</p>

		<p>from Clear Lake lived part of the time on ranches around the lake and part of the time they took their families to Napa and other places in the south to do agricultural labor for wages. Hurtado and Theodoratus Supplemental Report (May 3, 2018). pp. 13-14.</p>
<b>General Issues</b>		
<p>Notice to Local Governments</p>	<p>No notice was given to the surrounding tribes with historic ties to the area or to the affected cities and counties, or to the State. Senator Feinstein letter to Secretary Sally Jewell (July 22, 2016). p.1.</p>	<p>The Band, as a restored Indian tribe, is seeking a legal opinion that the property in Vallejo, were it to be accepted into trust status, would be eligible for gaming under the restored lands exception. This opinion is not a final decision of the Bureau of Indian Affairs constituting final agency action. It is just that – a <u>legal opinion</u>.</p> <p>Nothing in IGRA or the implementing regulations require notice to the State, nearby Indian tribes or local governments when the Bureau opines on whether land may qualify for a legal exception to general prohibition contained in IGRA. By contrast, local government “consultation” is integral to the “two-part determination,” which is a separate exception for allowing gaming on land acquired into trust status after 1988. But IGRA does not require such input to be a part of the Secretary’s “restored lands” opinion. It is a rational distinction because a restored lands opinion is fact-based and does not depend on satisfying the State’s public policy or evaluating potential impacts on the local community.</p> <p>In any case, public comment, including input from State and local government, is always a part of the NEPA assessment that will be required before the U.S. takes the land into trust. Furthermore, state and local governments will also be allowed to provide comments on any jurisdictional problems or land use conflicts associated with the fee-to-trust acquisition.</p> <p>Nevertheless, the Band has provided copies of its submission materials to the City of Vallejo and County of Solano, as well as continuing to engage in numerous meeting with various city, county and state government officials and have earned the support of a local state Assemblyman. See Letter from Assemblyman</p>

		<p>Jim Frazier to Assistant Secretary Roberts (Nov. 14, 2016).</p> <p>The Band has met with stakeholders and earned the support of critical labor organizations. See Letter from Napa-Solano Building Trades to Assistant Secretary Roberts (Nov. 2016); Letter from Sprinkler Fitters to Assistant Secretary Roberts (Nov. 21, 2016). Local businesses and other Indian tribes from Clear Lake have also expressed support for our proposal.</p>
<p>Local Government desire to participate in ILO process</p>	<p>An ILO concluding the property qualifies as “restored lands” under IGRA would pave the way for the Interior Department to approve the Band’s construction and operation of a casino in or near the City of Vallejo. City of Vallejo’s letter to Acting Assistant Secretary Roberts (July 28, 2016). p. 1-2.</p> <p>The City requests to be fully apprised and informed concerning the Interior Department’s processing the Band’s request for a restored lands opinion, and that the City be given an opportunity to review submitted documents and to fully participate in the process. Id.</p> <p>“Not only is it essential that stakeholders and interested parties have an opportunity to express their views from the outset, but concurrent consideration can provide DOI with vital information that not otherwise enter the record.” Rep. Mike Thompson, et al to Secretary Sally Jewell (Aug. 29, 2016). p.1.</p> <p>“There are many local issues that necessitate local input.” Napa County letter to Acting Assistant Secretary Roberts (Sep. 20, 2016), p.1.</p>	<p>A favorable ILO would be the first step. The road to opening a casino also requires that the U.S. take the land into trust, which will involve NEPA analysis and associated public participation, including input from the City and other local governments. The process also requires that the State and the Band negotiate a gaming compact, which is likely to include provisions that require the Band to negotiate separate enforceable agreements with local governments, including the City, and to mitigate any adverse impacts to the City.</p> <p>However, Congress did not intend public comment to be part of the restored lands process. Under IGRA, local government “consultation” is integral to a “two-part determination,” which is a separate method for allowing gaming on land taken into trust since 1988. But IGRA does not require such input to be a part of the Interior Secretary’s “restored lands” determination. Compare 25 USC § 2719(b)(1)(A) (two-part) and § 2719(b)(1)(B)(iii) (restored lands).</p> <p>This is expressly recognized in Interior’s notice adopting the relevant regulations. It is a rational distinction because a restored lands determination is fact-based and does not depend on the State’s public policy or evaluating impacts on the local community. That said, if the property is taken into trust and a gaming compact is executed, the City will be able to exercise some regulatory control over the property through its agreement with the Band. Furthermore, State and local government authority over crime at the property would be unchanged.</p>

		<p>In any case, public comment, including input from State and local government, is always a part of the NEPA assessment that will be required before the U.S. takes the land into trust. 73 Fed. Reg. 29354, 29361 (May 20, 2008).</p> <p>Finally, the City and County collect less than \$12,000 per year in property tax for the parcel. Because the property is undeveloped, no sales tax or other tax revenues are generated on the property. The property tax loss would be barely perceptible in comparison to the total collected annually - \$15 million for the City and County and \$487 million for the State. In addition, the loss of tax revenues and potential tax revenues will more than mitigated by direct payments the Band expects to make through local government agreements and its gaming compact, by the economic benefits of the addition of nearly 3,000 jobs, and the purchase of goods and services from local merchants by the Casino, its employees, and its patrons.</p>
<p>Distance from prior reservation</p>	<p>The property is “60 miles from the Band’s reservation,” or is “more than 60 miles from the Band’s original reservation in distant, rural Lake County.” Senator Feinstein letter to Secretary Sally Jewell (July 22, 2016). p.1.</p> <p>“In fact, the Scotts Valley Band has its governmental headquarters in Lakeport within Lake County, which is over 80 miles away from the City of Vallejo. Lake County is also the site of the Band’s original reservation.” Solano County Letter to Acting Assistant Secretary Roberts (Aug. 23, 2016). p. 2.</p>	<p>Scotts Valley Band has absolutely no reservation land, trust land or other land held in restricted status. It is one of the last landless Indian tribes in California. Bloxham Memo p. 5; Fee-To-Trust Application (“FTT App.”) (Aug. 11, 2016). p. 3</p> <p>As a matter of historical fact, the Scotts Valley Band was landless until a very small parcel was acquired for the Band by the United States in 1911. Although inadequate to provide either a home or a living for the members of the Band, even that small parcel was taken from them a half-century later in 1965, when the Band was unlawfully “terminated” under the California Rancheria Act. Although the Band was restored to federal recognition in 1991, the Band’s land base has yet to be restored. The Band is and has remained without an adequate land base since 1851 -- 165 years -- and has been without <i>any</i> land, adequate or not, for the past 51 years. Bloxham Memo p. 11-; Fee-to-Trust Application (August 11, 2016), p. 6.</p> <p>The distance from the property to a prior reservation the Band had 51 years ago is not determinative of whether the Band should be permitted to establish connections to other land</p>

		<p>today. Indeed, more important is the substantial evidence that the Band has significant historical, modern and temporal connections to the property in which it hopes to have acquired in trust status. These are the legal requirements imposed on Indian tribes by the United States for establishing connections to newly acquired land for the purposes of the restored lands exception, as contained in 25 C.F.R. § 292.12.</p> <p>It is true that the Band has a presence in Lake County, but it is certainly no newcomer to the East Bay area. In fact, it has a widely dispersed membership from Lake County to Alameda County that has been acknowledged by the United States for at least 16 years. In order to effectively serve the Band’s dispersed membership, the Band has maintained both northern and southern governmental offices in Lakeport (within Lake County) and in Concord (within Contra Costa County), respectively since 2008. The southern office is a mere 16 miles from the site in Vallejo. Prior to 2008, the Band met for years in various eastern Bay Area locations including at a tavern, in a trailer, in rented rooms and in public parks.</p>
<p>Effects on local communities</p>	<p>“These casinos can also cause conflicts with local communities since the Indian Gaming Regulatory Act does not require tribes or the Department of the Interior to mitigate the effects of casino developments. That is true even if the casino is incompatible with the local communities’ planned land uses for the area, is not welcome by the local government, and creates increased burdens on local resources like police, fire, water, and traffic.” Senator Feinstein letter to Secretary Sally Jewell (July 22, 2016). p. 1-2.</p> <p>“The proposed area already suffers from severe traffic problems and severe water issues. A casino would exacerbate these two problems and many others, not just for Vallejo and Solano County, but for other surrounding areas as well, including Napa County, whose boundary is less than a mile from the proposed casino site.” Napa County to Acting Assistant Secretary Roberts (Sep. 20, 2016). p.1.</p>	<p>First, the intended use of the land as a gaming facility is completely compatible with the local zoning. Here, the property is undeveloped land that is zoned for commercial use. Generally used for grazing, the land is adjacent to Interstate 80 and across from a Six Flags amusement park and the Solano county fairgrounds. Two large commercial retail centers, including Costco and Target stores, are located on its southern border. It is flanked by vacant city-owned land on its other borders.</p> <p>Second, these are concerns that are appropriately addressed in the tribal-state compact process. While gaming compacts differ from one another, it is almost certain that the Band’s compact with the State of California will require mitigation measures, including agreements between the Band and local government to address local concerns. Tribal governments often commit in its compact or in local government agreements to fully fund the cost of additional burdens on police, fire, water, and traffic. These concerns will also be</p>

		addressed during the NEPA review process long before the United States takes the land into trust.
Fairness to other Indian tribes	<p>“Equally problematic are the questions of fundamental fairness to other tribes, some who have ancestral ties to the area. The ‘restored lands’ exception was never intended to give restored tribes an open-ended license to game on newly acquired lands. Its purpose, instead, was to promote parity between established tribes, which had substantial land holdings at the time of IGRA’s passage, and restored tribes, which did not.” Senator Feinstein letter to Secretary Sally Jewell (July 22, 2016). p. 2.</p> <p>“However, this ‘reservation shopping’ by the Scotts Valley Band takes away economic opportunity from tribes that actually have historic ties to the lands encompassed by Solano County.” Solano County Letter to Acting Assistant Secretary Roberts (Aug. 23, 2016). p. 3.</p>	<p>The “restored lands” exception promotes parity by giving Indian tribes like Scotts Valley, which the federal government illegally terminated 60 years ago and disbursed what little land had been provided to it, a chance to enjoy the benefits of the most significant economic engine available to tribal governments, by restoring to the Band the right to exercise its sovereignty within a small portion of the land it formerly occupied.</p> <p>The “restored lands” exception is narrow, not “open-ended.” It requires the Band to satisfy specific factual criteria. It is potentially available only to a small number of Indian tribes, as a means of providing a measure of justice to tribes who are recovering from wrongful termination. Nearly every restored tribe had their federal recognition restored by court order more than 25 years. The regulations set a 25-year deadline for acquiring lands in trust under the restored lands exception. As such, very few Indian tribes other than Scotts Valley Band can now seek to utilize the restored lands exception. See Letter from Chairman Gabriel Ray to Assistant Secretary Roberts (Oct. 5, 2016).</p> <p>The Band was thoughtful and deliberate in the choice of the site with regard to its sister tribes. As a practical matter, there is no place in California where the Band can locate a gaming facility that will not be in competition to some degree with another Indian tribe’s facility. There are already four small casinos in Lake County where our former reservation is located, three of which are in the immediate vicinity of that land. There are several casinos in neighboring counties that are within close driving distance of the land. Seeking to restore a homeland with a gaming component would be severely detrimental to the surrounding Indian tribes.</p>

<p><i>Carcieri v. Salazar</i></p>	<p>The recent United States Supreme Court decision, <i>Carcieri v. Salazar</i>, No. 07-526 (2/24/09) disqualifies the Scotts Valley Indians from acquiring land for casino purposes, since they were not officially recognized by the federal government by 1934. Napa County to Acting Assistant Secretary Roberts (Sep. 20, 2016). p.2.</p>	<p>Recent legal authority confirms that the Secretary has authority to accept the Vallejo Property into trust for the Band in two respects.</p> <p>First, the BIA conducted a so-called accept-or-reject election for the Band on whether to opt-out of the IRA, and the Band consequently appeared on the 1947 Haas list of such tribes. The Department of the Interior has determined that appearance on the Haas list of tribes is conclusive proof of a tribe’s status as “under Federal jurisdiction” within the meaning of the IRA, as construed by the Supreme Court in <i>Carcieri v. Salazar</i>, 555 U.S. 379 (2009). M-37029, March 12, 2014; Scotts Valley Band Fee-to-Trust Application (Aug. 11, 2016), p. 47; Scotts Valley Band Supplement to Fee-to-Trust Application (Dec. 6, 2017) pp. 4-47.</p> <p>The Ninth Circuit and District of Columbia Courts of Appeals have since upheld the Department’s M Opinion in general as a correct explication of the term “under Federal jurisdiction.” <i>County of Amador v. United States Department of the Interior</i>, 872 F.3d 1012, 1025 (9<sup>th</sup> Cir. 2017); <i>Confederated Tribes of Grand Ronde Community v. Jewell</i>, 830 F.3d 552, 563-565 (D.C. Cir. 2016).</p> <p>Courts have also since upheld the Department’s specific determination that appearance on the 1947 Haas list is conclusive proof of a tribe’s status as “under Federal jurisdiction.” <i>Starkey v. Pacific Regional Director, Bureau of Indian Affairs</i>, 63 IBIA 254, 262 (2016); <i>State of Kansas v. Acting Eastern Oklahoma Regional Director</i>, 62 IBIA 225, 235-236 (2016) <i>Village of Hobart, Wisconsin v. Midwest Regional Director, Bureau of Indian Affairs</i>, 57 IBIA 4, 23-25 (2013); <i>Shawano County, Wisconsin v. Acting Midwest Regional Director, Bureau of Indian Affairs</i>, 53 IBIA 62, 71 (2011). Scotts Valley Band Supplement to Fee-to-Trust Application (Dec. 6, 2017). pp. 4-47.</p> <p>Second, this conclusion regarding the Band’s eligibility under the IRA is not affected by the fact that, at the time of the accept-or-reject election, the Band voted to reject the IRA. In 1983, Congress overrode tribes’ opt-out votes under the IRA in the Indian Land Consolidation</p>
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