IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS,
2371 N.E. Stephens Suite 100
Roseburg, Oregon 97470

THE KARUK TRIBE
P.O. BOX 1016
Happy Camp, CA 96039

TOLOWA DEE-NI' NATION
12801 Mouth of Smith River Road
Smith River CA 95567,

federally recognized Indian Tribal nations, each on their own behalf and as *parens patriae* for their enrolled citizens,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR

DEB HAALAND, in her official capacity as Secretary of the U.S. Department of the Interior

BUREAU OF INDIAN AFFAIRS

BRYAN NEWLAND, in his official capacity as Assistant Secretary – Indian Affairs

BRYAN MERCIER, in his official capacity as Director

1848 C Street NW, MS 5311
Washington, DC 20240

RUDY PEONE, in his official capacity as Acting Regional Director, Northwest

No. 24-3594-APM

Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

Defendants.

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2202, and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.,* for violations of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*; the Indian Reorganization Act, 25 U.S.C. § 5108; and the National Environmental Protection Act, 42 U.S.C. § 4321 *et seq*.)

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action for injunctive and declaratory relief and personal jurisdiction over the parties pursuant to 28 U.S.C. §§ 1331, 1346(a)(2), and 1362, in that Plaintiffs seek judicial review of Defendants' final administrative actions taken in violation of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et. seq.*, the Indian Reorganization Act ("IRA"), 25 U.S.C. § 5108, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.,* and Plaintiffs will suffer severe irreparable injury for which they lack any remedy at law.

2. This Court has the authority to grant declaratory and injunctive relief with respect to an actual, justiciable controversy between the parties pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*, and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701 *et seq*.

3. The United States has waived sovereign immunity from suit for declaratory and injunctive relief and review of statutory and constitutional violations pursuant to the APA, 5 U.S.C. § 702, and other federal law.

4. Venue is proper in this district under 28 U.S.C. § 1391(e) because Defendants are officers of agencies of the United States sued for actions taken in their official capacities or under color of legal authority.

5. Plaintiffs challenge DOI's final decision, the Record of Decision ("ROD") issued on January 10, 2025, for which there is no other adequate judicial remedy and is thus subject to judicial review under 5 U.S.C. § 704 and other federal law.

II. PARTIES

6. Plaintiff Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek") is a federally recognized Indian Tribe organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) ("IRA"), the provisions of the Cow Creek Recognition Act of December 29, 1982 (Pub. L. No. 97-391, 96 Stat. 1960), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987 (Pub. L. No. 100-139, 101 Stat. 822), and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally supervised constitutional ballot on July 8, 1991. Cow Creek's reservation and gaming facility, Seven Feathers Casino Resort, is located in Douglas County, Oregon, approximately 73 miles from the site of Coquille Indian Tribe ("Coquille")'s proposed Medford casino. Cow Creek brings this lawsuit on its own behalf and as *parens patriae* for Cow Creek's enrolled members.

7. Plaintiff Karuk Tribe ("Karuk") is a federally recognized Indian Tribe organized under a Constitution. Karuk is the beneficial owner of federal trust land in Happy Camp, Siskiyou County, California, on which its headquarters are located, as well as other federal trust land in Siskiyou County, California, approximately 53 miles and less than an hour's drive via Interstate 5 from the site of Coquille's proposed Medford casino, on which are located a tribal housing project and Karuk's Rain Rock Casino and recently constructed hotel. Karuk brings this lawsuit on its own behalf and as *parens patriae* for Karuk's enrolled members.

8. Plaintiff Tolowa Dee-ni' Nation ("Tolowa") is a federally recognized Indian Tribe organized under a Constitution. Tolowa is the beneficial owner of federal trust land in Del Norte

County, California, on which its reservation and Tolowa's Lucky 7 Casino and Fuel Mart are located. Tolowa's Lucky 7 Casino is approximately 118 miles from the site of Coquille's proposed Medford casino. Tolowa brings this lawsuit on its own behalf and as *parens patriae* for Tolowa's enrolled citizens.

9. Defendant U.S. Department of Interior ("DOI") is an Executive Branch Department of the United States. DOI is responsible for the administration of NEPA in its undertakings, government-to-government consultation with federally recognized Tribal nations, and compliance with all other federal laws applicable to agencies within DOI, including the Bureau of Indian Affairs, including but not limited to NEPA, IGRA, and the IRA.

10. Defendant Deb Haaland is the U.S. Secretary of the Interior ("Secretary") and is sued in her official capacity. As Secretary, she is "charged with the supervision of public business relating to . . . Indians," including the implementation of federal statutes, regulations, policies, and Executive Orders relating to Indians and government-to-government consultation with federally recognized Tribal nations. 43 U.S.C. § 1457; Exec. Order No. 13175.

11. Defendant Bureau of Indian Affairs ("BIA"), a bureau within DOI, is charged with overseeing Indian Affairs. The BIA is responsible for evaluating land into trust applications, carrying out government-to-government consultation with federally recognized Tribal nations, conducting environmental review, and effectuating any acquisition into trust relating to Coquille's application for acquisition in trust by the United States of a 2.42-acre land parcel in Medford, Jackson County, Oregon.

12. Defendant Bryan Newland is the Assistant Secretary – Indian Affairs ("AS-IA") of DOI and administers the BIA pursuant to a delegation of authority from defendant Secretary and is sued in his official capacity. As the Assistant Secretary, he discharges the duties of the Secretary

with the authority and direct responsibility to strengthen the government-to-government relationship with Tribal nations, exercises Secretarial discretion and leadership over the BIA, and decides requests for off-reservation fee-to-trust acquisitions for gaming purposes. 109 DOI Departmental Manual ("DM") § 8.1; Indian Affairs Manual ("IAM") Part 52, Chapter 15, § 1.7.

13. Defendant Bryan Mercier is the Director of the BIA and is sued in his official capacity. As Director, he is responsible for overseeing the Bureau's implementation of NEPA, the land into trust requirements, and all other statutes, regulations, and other laws applicable to the Bureau of Indian Affairs, including but not limited to NEPA, IGRA, and the IRA. 230 DM § 1.1.

14. Defendant Rudy Peone is the Acting Regional Director for the BIA's Northwest Region, with offices in Portland, Oregon, and is sued in his official capacity. As the Regional Director of this office, he is responsible for complying with DOI and BIA policy and procedures for fee-to-trust acquisitions, including processing off-reservation land-into-trust applications. IAM Part 52, Chapter 15, §§ 1.5, 1.7.

III. LEGAL FRAMEWORK

15. When the Secretary takes land into trust on behalf of an Indian Tribe, the exercise of such authority is either (1) ministerial, where an act of Congress, such as a restoration act, makes the acquisition mandatory, or (2) discretionary, where the land is taken into trust pursuant to her authority under the IRA, 25 U.S.C. § 5108. Whether that land, once taken into trust, is eligible for gaming activity is determined under IGRA. The Secretary's decision to take land into trust for a Tribe's proposed gaming operation must also comply with the requirements of NEPA.

16. If the Secretary takes land into trust on behalf of an Indian Tribe, or determines that such trust land is eligible for gaming activity, in a manner that exceeds the Secretary's statutory authority or is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with

law, the Court must hold unlawful and set aside the Secretary's final decision(s) pursuant to the APA. The Court must exercise its independent judgment in deciding whether the agency has acted within its statutory authority.

A. The Indian Reorganization Act (25 U.S.C. § 5108; 25 C.F.R. Part 151)

17. In 1934, Congress authorized the Secretary, in his or her "discretion," under Section 5 of the IRA, to acquire land and hold it in trust "for the purpose of providing land for Indians." 25 U.S.C. § 5108.

18. The regulations at 25 C.F.R. Part 151 ("Part 151") set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for Tribes.[1]

19. Under Part 151, the Secretary must consider a number of factors when reviewing an application to acquire land in trust when the land is located outside of and non-contiguous to a tribe's reservation, including, in relevant part, the existence of "statutory authority for the acquisition" and any limitations therein, the land's "distance from the boundaries of the tribe's reservation," the "need of the individual Indian . . . tribe for additional land," and "anticipated economic benefits associated with the [land's] proposed use." 25 C.F.R. § 151.11(a)–(c) (1995) (incorporating 25 C.F.R. § 151.10(a)–(b) (1995)).

20. When the Secretary receives an application from a Tribe to take land into trust pursuant to the IRA, she must notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. 25 C.F.R. § 151.10 (1995). The state and local governments receiving notice have thirty days to provide written comment as

[1] Part 151 was most recently amended, effective January 11, 2024, but the 2024 amendments do not apply to Coquille's application because the Tribe's application was pending when the new regulations became effective, and Coquille did not request to proceed under the 2024 regulations. *See* 25 C.F.R § 151.17(a) (2024). Because earlier versions of Part 151 applied to the Coquille's application to transfer its Medford parcel into trust, all citations to Part 151 are referenced by year.

to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. "[A]s the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" and "shall give greater weight to the concerns raised" by state and local governments. 25 C.F.R. § 151.11(b) (1995).

21. Congress amended the IRA in 1994 to add Section 16, a clause regarding the privileges and immunities of Tribes, to prohibit disparate treatment between similarly situated Tribal nations:

> Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the [IRA] as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

25 U.S.C. § 5123(f).

22. The privileges and immunities clause applies to DOI's decisions under both the IRA and IGRA.

B. Indian Gaming Regulatory Act (25 U.S.C. § 2719; 25 C.F.R. Part 292)

23. IGRA prohibits gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless an enumerated statutory exception applies. 25 U.S.C. § 2719(a). The statutory exceptions applicable to this litigation are colloquially known as the "restored lands" exception under § 2719(b)(1)(B)(iii), and the "two-part determination" exception under § 2719(b)(1)(A).

24. The regulations at 25 C.F.R. Part 292 ("Part 292") incorporate IGRA's several exceptions under which gaming may occur on lands acquired by the United States in trust for an Indian Tribe after October 17, 1988, and contain procedures that DOI will use to determine whether these exceptions apply.

25. Under Part 292, a tribe restored to federal recognition by an Act of Congress can meet the restored lands exception by showing either (1) the legislation "requires or authorizes" the Secretary to take land into trust for the benefit of that tribe within a specific geographic area under 25 C.F.R. § 292.11(a)(1); or (2) if the land is outside the specific geographic area, the tribe must meet the requirements of § 292.12. § 292.12 requires the applicant Tribe, in relevant part, to demonstrate (1) "modern connections to the land," (2) "significant historical connection to the land," and (3) "a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration" (*e.g.*, the tribe submitted an application to take the land into trust within 25 years after it was restored to federal recognition and, if it already has lands in trust, is not already gaming on that other land).[2]

26. The restored lands exception is not intended to give restored tribes an open-ended license to game on newly acquired lands. Rather, its purpose is to promote parity between tribes that already had gaming-eligible trust land holdings at the time of IGRA's passage, and restored tribes that did not. The term "restoration" should be read to place belatedly restored tribes in a comparable position to earlier recognized tribes without harming the later recognized tribes, while simultaneously limiting gaming on after-acquired property. Thus, if a Tribe is already gaming on Indian lands under the restored lands exception, it is contrary to IGRA to permit the same Tribe to use the restored lands exception in order to game on other recently acquired land that is not contiguous to its existing reservation.

27. As part of the fee-to-trust application process, if the applicant Tribe intends to game on the newly acquired lands under the restored lands exception, it must request an opinion on such

[2] For clarity, these two exceptions are referred to hereinafter as the "statute-based restored lands" exception (under § 292.11(a)(1)) and the "connections-based restored lands" exception (under § 292.12).

eligibility from the Office of Indian Gaming ("OIG"), an office within the Office of the AS-IA tasked with advising the AS-IA on Indian gaming and issues related to IGRA.

28. If the AS-IA determines a tribe cannot meet the "restored lands" requirements of § 292.11(a)(1) or § 292.12, the land may still be used for gaming purposes, but only if the Secretary completes the "two-part determination" process set forth under IGRA, whereby the Secretary,

> after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination . . .

25 U.S.C. § 2719(b)(1)(A).

29. Pursuant to DOI's Indian Affairs Manual, the AS-IA has delegated authority to decide requests for off-reservation fee-to-trust acquisitions that are gaming-related and processes such applications in coordination with the OIG.

C. The National Environmental Policy Act and *ultra vires* Council on Environmental Quality Regulations (42 U.S.C. § 4321 *et seq.*; 40 C.F.R. Part 1500)

30. Congress passed NEPA for the purpose of declaring a national policy that, *inter alia*, will encourage productive and enjoyable harmony between humans and their environment, promote efforts that will prevent or eliminate damage to the environment, stimulate human health and welfare, and enrich the understanding of the ecological systems and natural resources. 42 U.S.C. § 4321. NEPA likewise declares the federal government's policy to fulfill the social, economic, and other requirements of present and future generations, including preserving important historic, cultural, and natural aspects of our national heritage. *Id*. §§ 4331(a), 4331(b)(4).

31. NEPA requires each federal agency to issue a "detailed statement" addressing the environmental impact of any proposed "major Federal action[] significantly affecting the quality

of the human environment." *Id*. § 4332(C). All federal agencies must develop and adhere to procedures implementing NEPA. *Id.* ¶ 4332(2)(B).

32. NEPA also created a Council on Environmental Quality ("CEQ") within the Executive Office of the President, run by three Commissioners appointed by the President and confirmed by the Senate. *Id.* § 4342. CEQ's role is to "review and appraise" agencies' compliance with NEPA; to "make recommendations to the President with respect thereto" and to "develop and recommend to the President national policies to foster and promote the improvement of environmental quality." *Id.* § 4344.

33. In 1970, President Nixon issued an Executive Order instructing CEQ to "[i]ssue guidelines to Federal agencies for the preparation of" the "detailed statements" NEPA requires. Exec. Order No. 11514, § 3(h), 35 Fed. Reg. 4247, 4248 (Mar. 7, 1970). In response, CEQ published a "memorandum" containing "guidelines" for federal agencies drafting environmental impact statements. 36 Fed. Reg. 7724, 7724 (Apr. 23, 1971). At the time, several courts concluded that CEQ's role was merely advisory because it lacked authority to prescribe regulations governing compliance with NEPA.

34. In 1977, President Carter took office and issued Executive Order 11991, 42 Fed. Reg. 26,967 (May 25, 1977). Executive Order 11991 was meant to empower CEQ to issue "regulations," rather than "guidelines," "to Federal agencies for the implementation of the procedural provisions of [NEPA]." *Id*. His Executive Order required all federal agencies to "comply with the regulations issued by [CEQ]" unless doing so would violate federal law. *Id*. at 26,968. The President imposed these duties "[b]y virtue of" his authority as President and "in furtherance of the purpose and policy" of NEPA and several other environmental laws. *Id*. at 26,967.

35. Neither NEPA nor any other statute provides broad regulatory authority to CEQ. Instead, pursuant to Executive Order 11991, CEQ issued a comprehensive body of law purportedly "binding on all Federal agencies," the federal courts, and non-federal litigants in NEPA cases and setting forth "uniform standards applicable throughout the Federal government." 43 Fed. Reg. 55,978–79 (Nov. 29, 1978). CEQ initially issued 92 mandatory regulations.

36. CEQ's initial regulations erected a framework that remains in effect to this day, found at 40 C.F.R. Part 1500 ("CEQ regulations"), and set forth what federal agencies must and should do to comply with the procedures and achieve the goals of NEPA. 40 C.F.R. § 1500.1(a)(2) (2020).[3]

37. The CEQ regulations, among other things, require that agencies prepare a more concise document called an environmental assessment ("EA") in which the agency must either (1) determine that the action will have significant environmental impacts of a kind requiring an environmental impact statement ("EIS") or (2) make a finding of no significant impact, in which case no EIS is needed. 40 C.F.R. § 1501.5 (2020).

38. For the CEQ's regulations to be legally binding on agencies, courts, and the public, there must be an established nexus between the regulations and some delegation of the requisite legislative authority by Congress to issue particular regulations. A separation of powers issue arises when, as here, an executive or independent agency lacks statutory authority from Congress to issue those regulations.

39. NEPA's provisions provide no support for CEQ's authority to issue binding

[3] The CEQ regulations were most recently amended in 2024, but the 2024 amendments do not apply to Coquille's FEIS because Coquille's application was pending when the amendments became effective, and Coquille did not request to proceed under the 2024 amendments. 40 C.F.R. § 1506.12. Because earlier versions of the CEQ regulations apply, all citations to these regulations are referenced by year.

regulations. No statutory language states or suggests that Congress empowered CEQ to issue rules binding on other agencies—i.e., to act as a regulatory agency rather than as an advisory agency.

40. NEPA granted the CEQ Chairperson statutory authority to "assist[]" other federal agencies and limited regulatory authority to "promulgate regulations" related only to financing CEQ's other projects and research studies. 42 U.S.C. §§ 4372, 4375.

41. A Presidential Executive Order cannot, without statutory authority, result in regulations governing the administration of statutes. Accordingly, President Carter's Executive Order 11991 could not and did not legally authorize CEQ's issuance of regulations binding other federal agencies, including DOI.

42. Although U.S. Supreme Court precedent concluded 35 years ago that the CEQ regulations under NEPA were "entitled to substantial deference," *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979), that *Chevron*-like statement did not result from an examination of CEQ's authority to issue judicially enforceable regulations and cannot be credited as such in light of the Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

43. Nevertheless, the CEQ regulations instruct agencies to "confine themselves" to issuing only "implementing procedures" that "comply with [CEQ's] regulations." 40 C.F.R. § 1507.3(a)–(b) (1978). The implementing procedures "shall not paraphrase" CEQ's rules. *Id*. The CEQ regulations thus represent the framework for all agencies' compliance with NEPA, leaving the agencies to fill in certain details specific to their programs. As a result, agencies have obeyed CEQ's command and accepted CEQ's regulations as a stand-alone body of law that they must obey.

44. DOI, for example, implemented regulations that are meant to be used "for compliance with" the CEQ regulations. 43 C.F.R. § 46.10(a)(2); *see id.* § 46.415. DOI's regulations

"supplement, and [are] to be used in conjunction with, the CEQ regulations." *Id*. § 46.20(a). And although the agency once stated that it was "incorporat[ing]" certain CEQ guidance documents, it never stated the same of the regulations. 73 Fed. Reg. 61,292, 61,292 (Oct. 15, 2008).

45. Accordingly, as the U.S. Court of Appeals for the D.C. Circuit recently determined, CEQ had no lawful authority to promulgate the regulations implementing NEPA and, therefore, the CEQ regulations are *ultra vires* and invalid based on separation of powers principles. *Marin Audubon Soc. v. Fed. Aviation Admin*., 121 F.4th 902 (D.C. Cir. 2024).

D. The Coquille Restoration Act, Pub. L. No. 101-42, 103 Stat. 91 (1989)

46. On June 28, 1989, Congress passed the CRA, Pub. L. No. 101-42, 103 Stat. 91 (1989) (codified at 25 U.S.C. § 715 *et seq*. (omitted 2016)).[4] Having been terminated by act of Congress in 1954, the CRA restored Coquille to federal recognition, established a service area "composed of Coos, Curry, Douglas, Jackson and Lane Counties in the State of Oregon," and provided for the establishment of a reservation in their aboriginal homelands, now known as Coos and Curry Counties.

47. The CRA also specified which lands were required to be taken into trust as part of the reservation pursuant to the Secretary's ministerial function and which lands could otherwise be taken into trust for the benefit of the Coquille in the exercise of the Secretary's discretion under the IRA:

> The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the [Coquille] if conveyed or otherwise transferred to the Secretary: Provided, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in [Coquille's] service area pursuant to his

[4] In 2016, 25 U.S.C. § 715, which was not of general application, was omitted from the Code for organizational purposes; but no statutory text was repealed or amended. *See* Office of the Law Revision Counsel United States Code website, *available at*: https://uscode.house.gov/editorialreclassification/t25/index.html.

> authority under the [Indian Reorganization] Act of June 18, 1934 (48 Stat. 984).

Pub. L. No. 101-42, § 5(a).

48. As noted by the House Committee on Interior and Insular Affairs in relation to its proposed amendments to the original bill,

> Subsection (a) provides that the Secretary shall accept in trust for the benefit of the [Coquille], not to exceed 1000 acres of land located in Coos and Curry Counties if such land is conveyed to the Secretary for such purposes. Such land has to be free of adverse legal claim at the time of such conveyance. This section also provides that the Secretary may accept any additional acreage located in the [Coquille's] service area pursuant to his authority under the Indian Reorganization Act of 1934.

H. Rep. No. 101-61, 101st Cong., 1st Sess., at pp. 4–5 (May 23, 1989). The House Committee on Interior and Insular Affairs' amendments were accepted in their entirety and are reflected in the final statute.

49. The Senate Committee on Indian Affairs reviewed the bill as amended by the House Committee and explained: "The purpose of H.R. 881 is to restore the Federal trust relationship with the Coquille . . . in the State of Oregon, to provide for the development of an economic development plan for the tribe, and to provide for the transfer of certain lands within Coos and Curry Counties to the Secretary of the Interior in trust for the benefit for the Coquille." S. Rep. No. 101-50, 101st Cong., 1st Sess., at p. 1 (June 13, 1989).

50. As Senator Ron Wyden and Representative Peter DeFazio, two of the three original authors of the CRA, explained to previous DOI Secretary Sally Jewell,

> When first introduced, the CRA authorized the blanket acquisition of land in trust for Coquille within its service area—which included Coos, Curry, Douglas, Jackson, and Lane Counties in Oregon, and it did not include a reference to Indian Reorganization Act (IRA) land acquisition. However, before the CRA passed, the House Natural Resources Committee amended the bill to clarify that the Secretary of the Interior "shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres," and "may accept any additional acreage in the [Coquille's] service

> area pursuant to his authority under the [Indian Reorganization] Act of June 18, 1934 (48 Stat. 984)." (emphasis added.) *This discretionary language was added to ensure that the Secretary could use the authority under the IRA to take land into trust for the Coquille* . . .the same way it can for other Oregon tribes, to be in addition to the original one thousand acres of restored lands that were taken into trust under the CRA.[5]

51. The purpose of establishing a service area in the CRA was to provide federal services available to members of federally recognized tribes residing on a reservation to Coquille's members residing in the five named counties. Pub. L. No. 101-42. In establishing the service area, it was neither the purpose nor the intention of Congress to expand the counties in which a reservation would be established for Coquille outside of their aboriginal homelands. Rather, "notwithstanding the existence of a reservation," the demarcation of the service area served to provide "the tribe and its members . . . all federal services available to Indians because of their status as Indians." H. Rep. No. 101-61, 101st Cong., 1st Sess., at p. 4 (May 23, 1989).[6]

52. For the 1,000 acres in Coos and Curry Counties, "the Secretary lack[ed] his usual discretion." *Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians v. Portland Area Director*, 27 IBIA 48, 56, 1994 WL 682979, at *6 (I.B.I.A. Nov. 30, 1994). Instead, "the Secretary's trust acquisition of this tract [was] essentially ministerial." *Id.*

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[5] January 25, 2016, Letter to Secretary Jewell from Senator Wyden and Representative DeFazio. Senator Wyden was, at the time of the CRA's passage, a member of the U.S. House of Representative (emphasis added in italics and underline).

[6] DOI recognizes, as a general matter, that a Tribe's service area has little to with that Tribe's historical territory. When adopting 25 C.F.R. Part 292, DOI explicitly declined to recognize service area as establishing a tribe's modern connection to a particular parcel of land and stated, "service area is not necessarily defined by the DOI and would thus add complication to the analysis due to the added necessity of collaboration with other agencies. Furthermore, the tribe's service area is often based on factors not connected with the DOI's section 2719 analysis and is often ill-defined, overlapping and potentially inconsistent." *Gaming on Trust Lands Acquired After October 17, 1986*, 73 Fed. Reg. 29354, 29365 (May 20, 2008).

53. But, as Coquille previously admitted, "acreage beyond the first 1,000 acres is expressly subject to the normal IRA and 25 C.F.R. Part 151 process."[7]

E. Federal Statutes and Laws Requiring Meaningful Pre-Decisional Tribal Consultation

54. For at least the last half-century, it has been the policy of the U.S. Executive Branch to consult with affected Tribal nations prior to federal decision-making of tribal implication. *See e.g.* President Lyndon B. Johnson, Special Message to Congress on the Problems of the American Indian: "The Forgotten American," 1 Pub. Papers 336 (Mar. 6, 1968); Richard Nixon, Special Message to the Congress on Indian Affairs, July 8, 1970; George W. Bush, Government-to-Government Relationship with Tribal Governments (Sept. 23, 2004); President William J. Clinton, Government-to-Government Relations with Native American Tribal Governments: Memorandum for the Heads of Executive Departments and Agencies, 59 Fed. Reg. 22,951 (Apr. 29, 1994); Exec. Order No. 13,084, 63 Fed. Reg. 27,655 (May 14, 1998); Exec. Order No. 13175, 65 Fed. Reg. 67,249 (Nov. 6, 2000); President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 57881 (Nov. 5, 2009); President Joseph R. Biden, Memorandum on Uniform Standards for Tribal Consultation (Nov. 30, 2023).

55. Pursuant to these Presidential proclamations and Executive Orders, DOI has adopted an agency Tribal consultation policy, requiring "robust, interactive, pre-decisional, informative, and transparent consultation" with affected Tribal nations "whenever there is a Department action with Tribal implications." DOI Manual, 512 DM 4, § 4.4 (Nov. 30, 2022).[8]

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[7] October 27, 1997 IBIA Brief of Intervenor, Coquille Economic Development Corporation, In Support of the Portland Area Director and In Opposition to the Confederated Tribes' Brief on Appeal, for the United States Department of the Interior Office of Hearings and Appeals Interior Board of Indian Appeals Case Nos. IBIA-94-168-A and IBIA 94-169-A.

[8] *Available at*: https://www.bia.gov/sites/default/files/dup/tcinfo/512-dm-4-final_508.pdf.

56. NEPA, as well as Section 106 of the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101, *et seq*., require early and ongoing consultation with "relevant" or affected Tribal governments. *See* 73 Fed. Reg. 61312 (Oct. 15, 2008); 36 C.F.R. § 800(c)(2)(ii)(a). DOI's own NEPA regulations, apart from the *ultra vires* CEQ regulations, require its agencies to "whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments . . . concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities." 43 C.F.R. § 46.155.

57. DOI's own NEPA regulations, which are incorporated in the BIA's own NEPA Guidebook and which stand apart from the *ultra vires* CEQ regulations, confirm that DOI and its agencies' Tribal consultation duties arise "apart from NEPA." 73 Fed. Reg. 61312 (Oct. 15, 2008). DOI and the BIA's "requirement to engage in government-to-government consultation with Indian tribes is a requirement apart from NEPA, and, in effect, broadens any consultation that needs to take place as a function of compliance with NEPA.").

IV. FACTUAL BACKGROUND

A. Coquille's History and its Successful Economic Enterprises

58. Aboriginally, Coquille inhabited the South Coast of Oregon. H. Rep. No. 101-61, 101st Cong., 1st Sess., at 3 (May 23, 1989). Though the federal government attempted to remove members of the Lower and Upper Coquille bands to the Siletz Reservation in 1856, "many Coquille members remained in their aboriginal territory or returned after removal." *Id.*

59. In 1954, the year the federal government's trust relationship with all Western Oregon Tribal nations was terminated, most of the members of the Lower and Upper Coquille bands still lived in Coos and Curry Counties, Oregon. As of 1988, Coquille had about 550 members, many of whom remained around Coos Bay, Oregon. Nevertheless, the diaspora of Coquille, brought

about by termination, extended beyond their aboriginal territory along the Oregon coast, with members residing in Jackson, Douglas, and Lane Counties, Oregon.

60. In 1989, as described *supr*a, Congress enacted the CRA, including Jackson, Douglas, and Lane Counties in Coquille's service area so that Coquille Tribal members living in those counties as a result of termination would be eligible for Indian Health and other federal services available to members of federally recognized Tribal nations.

61. On October 9, 1993, Coquille requested several parcels, totaling 954 acres, in Coos County be taken into trust. Pursuant to the CRA, the Secretary exercised his ministerial authority, transferred the requested acreage into trust, and established Coquille's reservation in its aboriginal homelands along the Oregon coast.

62. The United States currently holds in trust a total of 6,434 acres for Coquille, including Coquille's 954-acre reservation, 80 acres of waterfront land, and 5,400 acres of timberland, all of which are located on or near Coquille's aboriginal land, now known as Coos and Curry Counties.

63. Coquille negotiated a gaming compact with the Governor of Oregon and, in 1995, opened the Mill Casino, a class III gaming facility and resort complex located on its reservation in North Bend, Coos County, Oregon. The Mill Casino has been very successful and remains fully operational to this date.

64. Coquille also operates Tribal One, known as the Mith-ih-Kwuh Economic Development Corporation, a federally chartered corporation and conglomerate that is 100% owned by Coquille's Tribal government. Since 2016, Tribal One has been awarded hundreds of millions of dollars in federal contracts.

B. Coquille's Application to Take Additional Land Into Trust for Gaming Pursuant to the IRA

65. In 2012, Coquille purchased a 2.42-acre parcel within its service area in Medford, Jackson County, Oregon, about 170 miles (three hours away) from its restored lands, Tribal headquarters, and Mill Casino, in Coos County, Oregon.

66. On November 2, 2012, Coquille submitted a letter application to the BIA asking it to take the 2.42-acre Medford parcel into trust, stating its intention to use the land for gaming. Coquille's 2012 fee-to-trust application stated that its request was made pursuant to the IRA. Since then, Coquille has acquired or developed over forty acres of land contiguous to the 2.42-acre parcel, for a total of at least 45.3 acres. Although Coquille's fee-to-trust application for the 2.42-acre parcel referenced the CRA, it did so only for the proposition that the CRA made the IRA applicable to Coquille.

67. In response, the BIA requested documentation from Coquille demonstrating that they meet the requirements for the connections-based restored lands exception set forth in 25 C.F.R. § 292.12—namely, evidence of Coquille's modern, significant historical, and temporal connections to the Medford parcel. Because Coquille could not meet those requirements,[9] it attempted to change the legal basis for its fee-to-trust application.

68. On January 23, 2013, Coquille submitted its request to the agency for an opinion that the Medford parcel qualifies for gaming because it meets the requirements for the statute-based restored lands exception set forth in 25 C.F.R. § 292.11(a)(1). For the first time, Coquille asserted that language in the CRA—that "[t]he Secretary may accept any additional acreage in the Coquille's service area pursuant to his authority under the [IRA]"—established that the CRA (as opposed to the IRA), granted the Secretary authority to take the Medford parcel into trust. That is,

[9] Among other impediments to Coquille meeting the connections requirements, 25 C.F.R. § 292.12(c)(2), regarding "temporal connections," requires the applicant tribe to show that it "is not gaming on other lands."

despite the CRA's plain language incorporating the Secretary's discretionary authority under the IRA, Coquille confusingly maintained that because the CRA alone "requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area," the Medford parcel is excepted from IGRA's prohibition on gaming on land acquired after October 17, 1988 under the statute-based restored lands exception, 25 C.F.R. § 292.11(a)(1).

69. By newly asserting the CRA satisfied the statute-based restored lands exception to IGRA's prohibition, under § 292.11(a)(1), Coquille clearly sought to avoid meeting the requirements of connections-based restored lands exception under § 292.12. This is because Coquille cannot demonstrate the requisite significant historical, modern, and temporal connections to the Medford parcel. *See* fn.10.

70. To politically justify its new "restored lands" application for the 2.42-acre parcel, Coquille has, since at least 2013, falsely claimed to the public that Medford and Jackson County sit within Coquille's aboriginal and historical territory. *See* "Medford council hears debate over Coquille tribe's casino plan," *The Oregonian* (April 26, 2013) ("The Coquille tribe claims it has historic roots in the Medford market . . ."). "The Coquille Medford casino plan moves ahead, again," *Jefferson Public Radio* (May 15, 2024) (Coquille Vice Chair Jen Procter Andrews said of Medford, "we've been a part of this community before Oregon was a state."). Coquille has since expressed its plans to "build" a second reservation in Jackson County. *See* Coquille Chair Brenda Meade, "Attacks on Coquille tribe's casino proposal undermine tribal sovereignty," *The Oregonian* (July 2, 2024).

71. The BIA began processing Coquille's application under the IRA and its implementing regulations, 25 C.F.R. §§ 151.10–151.11(d) (1995), issuing letters dated February 1, 2013, to the

Board of Commissioners for Jackson County, the Mayor of the City of Medford, and the Governor of Oregon, informing them of the application and requesting their comments.

72. Coquille submitted the Unmet Tribal Needs Report, on which its application relies, on March 22, 2013, and a Business Plan in April 2013, outlining its purported unmet needs. To date, other than a minimal update in 2014, the BIA has failed to request an update to Coquille's 2013 Unmet Tribal Needs Report or its 2013 Business Plan, despite the fact that Coquille founded its extremely successful construction venture, Tribal One, after their submission.

C. The BIA Received Extensive Opposition to Coquille's Application.

73. On April 30, 2013, the Jackson County Board of Commissioners provided comments to BIA in opposition to the proposed casino development. The Board of Commissioners raised concerns regarding the proposed casino development's potential adverse effects on law enforcement services, regional infrastructure, and various community social and mental health services. The Board of Commissioners also raised concerns that Coquille's application was being processed under IGRA's restored lands exception when it should be processed under IGRA's two-part determination process.

74. On May 3, 2013, the City of Medford provided comments to BIA in opposition to the proposed casino development. Medford raised similar concerns regarding the potential adverse impacts of the proposed casino development, as well as Coquille's position that the BIA did not need to conduct a two-part determination. The City of Medford reemphasized its concerns in a letter dated June 4, 2013.

75. On May 6, 2013, the then Governor of Oregon, John Kitzhaber, provided comments to BIA in opposition to the proposed casino development. The Governor raised similar concerns "about the potential impacts and legal process relating to this particular casino," but his "most

significant concerns [were] about the broader policy implications and the potential for expansion of casinos and gaming throughout the state."

76. On May 13, 2013, in a letter from Plaintiff Karuk Tribe to BIA, Karuk expressed its opposition to Coquille's application. Karuk reemphasized its opposition in a letter dated April 14, 2016.

77. From September to November 2013, in letters to the agency from federal and state legislators, including from U.S. Representative Earl Blumenauer (Oregon), U.S. Senators Ron Wyden and Jeffrey Merkley (Oregon), and the State of Oregon Senate Majority Leader Diane Rosenbaum and House Majority Leader Van Hoyle, the legislators expressed their opposition to Coquille's trust application.

78. A number of other federal lawmakers, including members of Congress, likewise urged DOI to reject Coquille's position that the Medford parcel is eligible for gaming under IGRA's restored lands exception.

79. In addition to Plaintiff Karuk, Tribal nations throughout Oregon and northern California, including Plaintiff Cow Creek, Plaintiff Tolowa, Shasta Nation, Klamath, Modoc and Yahooskin-Paiute Tribes ("Klamath"), Confederated Tribes of the Grand Ronde Community of Oregon, Elk Valley Rancheria, Shingle Springs Band of Miwok Indians, Dry Creek Rancheria, and Lytton Rancheria, each urged DOI to reject Coquille's position that the Medford parcel is eligible for gaming under IGRA's restored lands exception. Since 2013, these Tribal nations have raised existential and territorial concerns with DOI about Coquille's "restored lands" application, including its false claim that Medford and Jackson County sit within its aboriginal and historical territory.

D. After Publishing the Notice of Intent to Prepare an EIS in 2015, the BIA Failed to Properly Consult and Otherwise Continued to Receive Extensive

Opposition to the Project.

80. On January 15, 2015, the BIA published in the Federal Register a Notice of Intent to prepare an EIS, as required by NEPA. The BIA initiated scoping on February 2, 2015, and BIA issued a scoping report in June 2015. In the meantime, the agency continued to receive comment letters in opposition to Coquille's application.

81. On August 13, 2015, the BIA sent a perfunctory Section 106 NHPA request for comment to Cow Creek Chairman Daniel Courtney. Chairman Courtney responded by letter on September 4, 2015, pointing out the BIA's letter did not provide sufficient information on which to comment, as required by Section 106, and asking for additional information so that the Tribe could provide comments.

82. The BIA never responded to Chairman Courtney's September 4, 2015, letter or otherwise addressed the deficiency in the BIA's Section 106 NHPA request, which rendered substantive comments by the Cow Creek impossible. The BIA never otherwise consulted with Cow Creek as required by Section 106. 36 C.F.R. § 800(c)(2)(ii)(a).

83. From January through May 2016, multiple members of Congress, including U.S. Senator Ron Wyden (Oregon) and U.S. Representatives Earl Blumenauer, Suzanne Bonamici, Kurt Schrader, and Peter DeFazio (Oregon) expressed or reiterated their opposition to Coquille's application.

84. On April 13, 2016, the then-Governor of Oregon, Kate Brown, expressed her opposition to Coquille's application. Likewise, on May 20, 2016, the former Governor of Oregon, Barbara Roberts, also expressed her opposition to Coquille's application.

85. On September 26, 2017**,** BIA's Acting Northwest Regional Director sent letters to the Governor of Oregon, the Jackson County Board of Commissioners, and the City of Medford. The letters requested information about the subject property, including information on the property

taxes, special assessments, governmental services, and zoning.

86. On January 19, 2017 at 4:27 PM ET, mere hours before the inauguration of the forty-fifth U.S. President, the Director of the Office of Indian Gaming ("OIG") sent an internal memo to the then Regional Director for the BIA's Northwest Region, indicating that the agency had completed "its preliminary review of the [Coquille] request for a determination of gaming eligibility, and initially finds that the [Medford parcel] will qualify for the Restored Lands Exception ***if*** the land is acquired in trust pursuant to the CRA." (Emphasis added.) The Director of the OIG then directed the Regional Director to "proceed to process the [Coquille] application pursuant to the Restored Lands Exception analysis."

87. In the months that followed, from October 2017 to June 2018, state and local governments continued to voice their opposition to Coquille's application, including then-Oregon Governor Brown, and the City of Ashland, which is located approximately 12 miles from the Medford parcel. Governor Brown reiterated her position that Coquille's proposed second casino would *not* "be in the best interests of the people of Oregon."

88. From 2013 to 2024, Defendants received nearly 10,000 pieces of correspondence from the public in opposition to the Coquille Medford gaming project.

E. The BIA Denied Coquille's Application and Discontinued Preparation of the EIS in 2020, Only to Resume Preparation of the EIS in 2021, and Then Publish the FEIS Without Pre-Decisional Consultation in 2024.

89. More than three years after the BIA informally indicated its initial finding that the Medford parcel would be eligible for gaming under 25 C.F.R. § 292.11(a)(1) if taken into trust pursuant to the CRA, on May 27, 2020, the then Principal Deputy AS-IA ("PDAS-IA") denied Coquille's application to take the Medford parcel into trust and discontinued preparation of the EIS.

90. In a letter to Coquille on May 27, 2020, the PDAS-IA clarified that the language of

the CRA explicitly made acquisition of the Medford parcel discretionary and pursuant to the Secretary's discretionary authority under the IRA, not the CRA—meaning the statute-based restored lands exception, 25 C.F.R. § 292.11(a)(1), does not apply to Coquille's application.

91. On December 27, 2021, after a new U.S. President and Administration took office on January 20, 2021, current AS-IA Newland, Defendant herein, withdrew the agency's previous denial of Coquille's application to take the Medford parcel into trust and resumed preparation of an EIS for the proposed project.

92. Defendant AS-IA Newland cited the failure to complete the NEPA process as grounds for his reversal of the previous Administration's denial of Coquille's application. However, AS-IA Newland's remand for the resumption of the NEPA process "in accordance with applicable requirements, including those set out in . . . the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA"[10] violated the separation of power doctrine and was itself *ultra vires* in light of the determination that the CEQ regulations are unlawful.

93. Despite the significant passage of time, the BIA did not update or request updates to any of the underlying reports on which the EIS is based. In particular, the BIA failed to request an update to Coquille's March 22, 2013, Unmet Tribal Needs Report or April 2013 Business Plan outlining its purported unmet needs, despite the fact that Coquille founded Tribal One after their submission. The success of Tribal One has undoubtedly changed the landscape of Coquille's economic needs.

94. After the current AS-IA, Defendant Newland, withdrew the agency's previous denial of Coquille's application, the agency received additional letters and comments in opposition to the agency's decision to reconsider the application under IGRA's restored lands exception.

[10] FEIS, Vol. II, p. 1-3.

95. On November 25, 2022, the BIA published in the Federal Register a Notice of Intent to issue a Draft EIS ("DEIS"). This initiated a thirty-day comment period.

96. On December 20, 2022, following numerous requests, the BIA extended the DEIS comment period to February 23, 2023.

97. Throughout consideration of Coquille's application, from 2013 to 2024, multiple Tribal nations throughout Oregon, California, and beyond, including Plaintiff Cow Creek, Plaintiff Karuk, Plaintiff Tolowa, Shasta, Klamath, Grand Ronde, Elk Valley Rancheria, Shingle Springs Band, Dry Creek Rancheria, Lytton Rancheria, and the Saginaw Chippewa Indian Tribe of Michigan each urged DOI to reject Coquille's position that the Medford parcel is eligible for gaming under IGRA's restored lands exception. 25 U.S.C. § 2719(b)(1)(B)(iii).

98. In addition, the Northern California Tribal Chairperson's Association ("NCTCA") expressed its opposition to Coquille's application in a letter sent to the agency on February 14, 2023. NCTCA's member Tribal nations include: Plaintiff Karuk, Plaintiff Tolowa, Bear River Band of the Rohnerville Rancheria, Elk Valley Rancheria, Wiyot Tribe, Resighini Rancheria, Big Lagoon Rancheria, Pitt River Tribe, Blue Lake Rancheria, Hoopa Valley Tribe, Redding Rancheria, Trinidad Rancheria, Yurok Tribe, Quartz Valley, and Susanville Rancheria. The Tribal Alliance of Sovereign Indian Nations ("TASIN") and California Nations Indian Gaming Association ("CNIGA") also expressed opposition to Coquille's Medford gaming project.

99. The agency continued to receive letters and comments in opposition to its decision to reconsider Coquille's application under IGRA's restored lands exception. The agency similarly received letters from Tribal nations requesting consultation with their respective governments, but DOI either rejected or ignored these Tribal nations' multiple requests for consultation.

100. On July 11, 2024, Plaintiff Cow Creek joined other Tribal nations in reporting to the

White House Domestic Policy Council that DOI and Defendant AS-IA Newland were not properly consulting with them about the potential adverse impacts of the Coquille Medford gaming project, and asking for the White House's assistance.

101. The White House followed up with Plaintiff Cow Creek in writing on July 17, 2024, affirming that "the Biden-Harris Administration is committed to regular, meaningful, and robust consultation and engagement with Tribal leaders." Citing President Joe Biden's November 30, 2023, Memorandum on Uniform Standards for Tribal Consultation and its mandate for "uniform and meaningful consultation," the White House directed those Tribal nations to direct their written questions to DOI and Defendant Secretary Haaland, which Plaintiff Cow Creek did on August 2, 2024.

102. Plaintiff Cow Creek posed a short set of questions to Defendant Secretary Haaland, including asking her for consultation regarding the DEIS and before DOI might publish an FEIS. Secretary Haaland never responded to Cow Creek's August 2, 2024 communication.

103. After Plaintiff Cow Creek wrote Defendant Secretary Haaland about the status of its outstanding August 2, 2024, communication on September 4, October 2, and 21, 2024, her Chief of Staff, Rachael Taylor, finally responded on October 23, 2024. Taylor "apologize[d] for the delay in responding," explained that AS-IA was "preparing a response on behalf of the Department to [Cow Creek's] inquiry," and promised that PDAS-ASIA Wizi Garriott would "be in touch with [Cow Creek] directly."

104. Neither Defendant Secretary Haaland, PDAS-ASIA Garriott, nor DOI ever responded to Cow Creek's August 2, 2024 communication as promised. Nor was PDAS-ASIA Garriott in touch with Plaintiff Cow Creek directly as promised.

105. Therefore, on November 13, 2024, Cow Creek wrote President Joe Biden, protesting

that "Interior officials have not properly consulted with us about the adverse impacts of [Coquille's Medford gaming] project to our people, cultures, economies, and homelands." Cow Creek expressed concern that Defendant AS-IA Newland's expected FEIS decision would be arbitrarily "tied to a Presidential election."

106. Also, on November 13, 2024, Cow Creek again wrote Defendant Secretary Haaland and DOI:

> Three more weeks have passed without any response to our August 2, 2024 letter to Secretary Haaland, which we sent at the White House's direction.
>
> We understand ASIA and OIG are preparing multiple off-reservation gaming decisions for issuance this month, including a decision on the Coquille Indian Tribe's Medford application.
>
> When will we receive the promised response from Mr. Garriott?
>
> Because, as you acknowledge in your apology, we have not been properly consulted with in accordance with the White House's request of Interior, we demand that Secretary Haaland halt any decision on Coquille's Medford application until we receive the promised response from Mr. Garriott and related consultation.

107. Nevertheless, on November 22, 2024, the agency published the FEIS without having consulted with or responding to Cow Creek as promised.

108. Nevertheless, on November 22, 2024, the agency published the FEIS, purportedly pursuant to NEPA and the CEQ regulations, identifying as its proposed action the acquisition of "the 2.4-acre site in trust pursuant to the Secretary's authority under the [IRA] and the [CRA]" for Coquille to "remodel . . . an existing bowling alley into an approximately 30,300-square-foot gaming facility . . . in the City of Medford, Oregon." According to the agency, the purpose of its proposed action "is to facilitate tribal self-sufficiency, self-determination, and economic development, thus, satisfying both the [agency's] land acquisition policy . . . and the principle [sic] goal of IGRA."

109. For months, if not years, prior to the issuance of the FEIS on November 22, 2024, Coquille undertook to renovate the existing bowling alley on the 2.4-acre site into a Class II Indian gaming facility. *See* 25 U.S.C. § 2703(7) (defining Class II Indian gaming).

110. Defendants assert the FEIS was completed in accordance with all applicable *requirements*, including the CEQ regulations. In explaining its environmental analysis, Defendants extensively cited the CEQ regulations implementing NEPA, asserting "the CEQ[] NEPA regulations *require* that mitigation measures be developed for all of a proposed action's effects on the environment where it is feasible to do so," citing 40 C.F.R. §§ 1502.14(f) and 1502.16(h). Defendants cite the CEQ regulations at least 17 times and do not appear to reference the agency's own regulations, 43 C.F.R. Part 46, which Defendants do have statutory authority to establish (but see paragraph 29, supra., explaining the invalidity of Part 46).

111. The FEIS falsely states that the BIA "consulted with tribes pursuant to Section 106 of the NHPA." The FEIS claims Section 106 "consultation letters were sent by the BIA to the Cow Creek Band . . . to request information on known cultural resources in the vicinity of the alternative sites. To date, no response has been received by the BIA." As outlined in paragraph s 81-2, supra., on September 15, 2025, Cow Creek responded to the BIA's August 13, 2015, Section 106 NHPA request for comment, but never received a response or any other form of consultation.

F. Defendants' Refused Pre-Decisional Consultation with Plaintiff Tribal Nations and Officials' Requests for Additional Time for Public Comment Regarding the FEIS, Before Issuing the ROD on January 10, 2025.

112. On November 25, December 2, and December 9, 2024, respectively, Plaintiffs Cow Creek, Karuk, and Tolowa each requested that the BIA extend the FEIS comment period by at least thirty days to January 22, 2025. Plaintiffs wrote Defendant AS-IA Newland to express concern that DOI's publication of the FEIS on November 22, 2024, the Friday before Thanksgiving, foretold his issuance a ROD on Coquille's Medford gaming project thirty days later, on or about

Christmas Eve. Plaintiff Cow Creek, for example, objected to "the strategic timing of the publication of the FEIS" over the holidays, and while Cow Creek staff are traveling and otherwise unavailable. Plaintiffs Cow Creek, Karuk, and Tolowa also cited DOI's failure to conduct pre-decisional consultation with them prior to DOI's publication of the FEIS. Each Plaintiff, therefore, requested an additional thirty days to comment on the FEIS.

113. Neither Defendant Secretary Haaland, Defendant AS-IA Newland, nor Defendant DOI ever responded to Plaintiffs Cow Creek, Karuk, or Tolowa's respective November 25, December 2, and December 9, 2024 correspondence.

114. On November 26, December 17, and December 16, 2024, respectively, Grand Ronde, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, and Elk Valley, also requested that the BIA extend the FEIS comment period by at least thirty days.

115. During a short conference call with Defendant AS-IA Newland on November 26, 2024, which representatives of Plaintiffs Cow Creek and Tolowa specifically disclaimed constituted appropriate consultation at the time, they expressed concerns about the FEIS, including its arbitrary timing vis-à-vis a change in Presidential Administrations and the Christmas holiday, AS-IA Newland indicated he intended to issue a ROD on Coquille's Medford gaming application before he leaves office on January 17, 2025, as part of the change in Presidential Administrations that will consummate on January 20, 2025. AS-IA Newland also denied Cow Creek's request for an additional thirty days to comment on the FEIS.

116. On December 10, 2024, in a telephone call with Plaintiff Cow Creek Chairwoman Carla Keene, Defendant AS-IA Newland reiterated he intends to issue the ROD on Coquille's Medford gaming project before the change in Presidential Administrations.

117. On December 13, 17, 19, and 30, 2024, respectively, Oregon Governor Tina Kotek, Attorney-General Elect Dan Rayfield, the City of Phoenix, and U.S. Senators Wyden and Merkley also requested that DOI officials extend the FEIS comment period by at least thirty days.

118. Governor Kotek wrote to Defendant AS-IA Newland: "This decision carries significant implications for Oregon's communities, economic landscape, and broader state interests. It is critical to ensure that all stakeholders—Tribal Nations, local governments, and residents alike—have sufficient time to thoughtfully consider the FEIS and provide meaningful feedback."

119. Attorney General-elect Rayfield wrote to Defendant AS-IA Newland: "The impacts of this decision will have significant consequences on Oregon's tribal governance, inter-tribal relations, Oregon's economic landscape, and our state's longstanding 'one tribe, one casino" policy. The current comment timeline has demonstrated significant challenges for comprehensive input and meaningful consultation with Oregon's federally recognized tribes and has come at a time of significant turnover in Medford's local leadership. At this critical juncture, additional time for consultation with Oregon's federally recognized tribes and the incoming City Council would benefit and strengthen the process and outcome."

120. The City of Phoenix, the local jurisdiction of a proposed alternative second Coquille casino site according to the FEIS, wrote to Defendant Director Mercier, requesting thirty days of additional "time to thoroughly review the FEIS . . . and work with our local government partners in Medford, which has a new Mayor and Council who deserve the opportunity to represent their community as well. . . . [A] rushed decision for the outgoing [Presidential] Administration should not be prioritized over the voice of those elected to serve and represent the people in Jackson County who will be directly impacted by this project if approved."

121. Senators Wyden and Merkley wrote to Defendant AS-IA Newland: "The federal government has a responsibility to provide impacted tribes and communities with a meaningful opportunity to be heard before it finalizes this decision. To fulfill this responsibility, it is imperative that the Department extend the public comment period . . . It should not be rushed merely because of the upcoming Presidential transition."

122. On December 20 and 23, 2024, respectively, Plaintiffs Cow Creek, Karuk, and Tolowa, as well as Dry Creek Rancheria and Lytton Rancheria, each submitted comments on the FEIS to Defendant Directors Mercier and Peone. These Tribal nations further raised existential and territorial concerns with the BIA about Coquille's "restored lands" application, including its false claim that Medford and Jackson County sit within its aboriginal and historical territory. Plaintiffs Cow Creek, Karuk, and Tolowa's comments each included complaints that Defendants had not meaningfully consulted with them about the potential implications of the Coquille's Medford gaming project on their governments and peoples.

123. Neither Defendant Directors Mercier or Peone, Defendant Secretary Haaland, Defendant AS-IA Newland, nor Defendant DOI ever responded to Plaintiffs Cow Creek, Karuk, or Tolowa's respective December 20 and 23, 2024 correspondence.

124. On December 27 and 30, 2024, respectively, Plaintiffs Cow Creek, Karuk, and Tolowa each wrote letters to Defendant Secretary Haaland and DOI Solicitor Robert Anderson, expressing concerns about the unconstitutionality of the FEIS by way of its at least 52 references to the *ultra vires* CEQ regulations vis-à-vis the D.C. Circuit Court of Appeals' November 12, 2024, decision in *Marin Audubon, supra*. Cow Creek, Karuk, and Tolowa's comments each requested that DOI consult with them prior to issuance of the ROD.

125. Neither Defendant Secretary Haaland, Solicitor Anderson, Defendant AS-IA

Newland, nor Defendant DOI ever responded to Plaintiffs Cow Creek, Karuk, or Tolowa's respective December 20 and 23, 2024 correspondence regarding *Marin Audubon* and the unconstitutional reliance upon CEQ regulations referenced at least 52 times in the FEIS. As a result, Defendants have irreparably subjected Plaintiffs Cow Creek, Karuk, and Tolowa to an unlawful NEPA review process that was based on unconstitutional CEQ regulations and did not involve adequate pre-decisional consultation with Plaintiffs in regard to the FEIS.

126. On January 3, 2025, Defendant AS-IA Newland emailed Cow Creek Chairwoman Keene, only to decline "to extend any comment period or conduct additional consultation on this matter."

G. Defendants' Issuance of the Unconstitutional ROD Caused and Causes Irreparable Harm to Plaintiff Tribal Nations.

127. On January 10, 2025, Defendant AS-IA Newland issued the ROD, which approved the taking the Medford parcel into trust "pursuant to Indian Reorganization Act of 1934 and the Coquille Restoration Act" and proves "[o]nce acquired into trust, the Medford Site will be eligible for gaming pursuant to the Indian Gaming Regulatory Act's (IGRA) restored lands exception."

128. As a result of the agency's ROD, Plaintiffs Cow Creek, Karuk, and Tolowa, and their Tribal members, have suffered and will suffer immediate and irreparable injury, including to Plaintiffs' governmental, property, economic, socio-economic, environmental, cultural, and historical interests and constitutional participatory and sovereign consultation rights.

129. Additionally, as a result of the agency's ROD, Plaintiffs Cow Creek, Karuk, and Tolowa, and their Tribal members, have suffered and will suffer immediate and irreparable harm to Plaintiffs' governmental, property, economic, socio-economic, environmental, cultural, and historical interests and constitutional participatory and sovereign consultation rights.

130. Plaintiff Cow Creek currently operates the Seven Feathers Casino on its Reservation

in Canyonville, Oregon, which is approximately 73 miles (about an hour) away from the Medford parcel. The economic environment is not conducive to the operation of another gaming facility so close to the Seven Feathers Casino. Seven Feathers Casino is projected to experience at least a 28.5% decline in gaming revenues and a 52.1% in non-gaming revenue—i.e., a loss of *tens of millions* of dollars in projected annual revenue—if the Coquille's second casino is developed on the Medford parcel. This will result in a 12.3% decrease in total revenue Cow Creek's government uses to fund essential public services, such as healthcare and education.

131. Plaintiff Karuk's trust land on which it operates the Rain Rock Casino is approximately 53 miles (less than an hour) from the Medford parcel and draws a substantial portion of its patronage from the Medford area. The Rain Rock Casino is projected to experience at least a 37% decline in gaming revenues and a 52.7% in non-gaming revenue—i.e., also loss of *tens of millions* of dollars in projected annual revenue—if the Coquille's second casino is developed on the Medford parcel.

132. Plaintiff Tolowa's Lucky 7 Casino and Fuel Mart are approximately 118 miles from the site of Coquille's proposed Medford casino. Lucky 7 Casino is projected to experience at least a 13.4% decline in gaming revenues if Coquille's second casino is developed on the Medford parcel, translating into at least a $1.2 million reduction in Tolowa gaming revenue annually.

133. The FEIS concedes that the scope of Coquille's Medford project has increased from 2.42 to 7.24 acres but fails to consider the environmental effects of Coquille's acquisition and development of another 38 acres of contiguous land—a total of 45.3 contiguous acres—in Medford.

134. Upon information and belief, Coquille intends to begin operating Class II Indian gaming machines in its existing bowling alley as soon as the 2.4-acre parcel is taken into trust by

Defendants—despite a requirement in federal law that it provide as much as 120 days' notice to the National Indian Gaming Commission ("NIGC") prior to opening a Class II gaming facility. 25 C.F.R. § 559(2)(a). That notice to the NIGC requires "an attestation certifying that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner that adequately protects the environment and the public health and safety, pursuant to the Indian Gaming Regulatory Act." 25 C.F.R. § 559(1)(a).

135. Plaintiff Cow Creek relies on the net revenues from their casino to support numerous initiatives, including two health and wellness centers, educational programs for Native American children and adults, a community economic development and recovery program (CEDAR), several environmental programs, cultural/traditional resources protection programs, community services programs, behavioral health programs, nutritional programs, language programs, higher educational programs, occupational certification/license programs, and community events. 42 U.S.C. §§ 4331(a), 4331(b)(4), 4332(A); 40 C.F.R. § 1502.16 (2020). Cow Creek's casino also employs hundreds of Cow Creek Tribal members.

136. Likewise, Plaintiff Karuk relies on its Rain Rock Casino to provide much-needed employment for its members residing on or near its trust land and traditional territory, as well as net gaming revenues to support its Tribal government and the following programs and services that are essential to the health, safety and well-being of its members and their families, as well as protection of the environment in which its members live: Heating assistance; Cooling assistance; Clothing assistance; Housing assistance; Medical/Dental services; Substance Use Disorder Services that include full rehabilitation referral service, outpatient therapy, batterer's intervention, DUI classes; Behavior Health Education Scholarships; Tutoring; Youth Services; Domestic Violence Prevention; MMIP; Food Assistance; Emergency Services; Job Training; Workforce

Development; Telecommunication Services. The BIA does not attempt to quantify the impact of this estimated reduction in gross gaming revenue on Rain Rock Casino's workforce or the Karuk government's ability to provide essential services and programs to its citizens, including protecting and restoring the environment on and near the trust lands upon which many of its citizens depend for their subsistence and maintenance of their culture and traditions. Indeed, the BIA admits it could not quantify these impacts for any of the Plaintiff Tribes because it refused to consult with them.[11]

137. Plaintiff Tolowa similarly relies on its Lucky 7 Casino's net gaming revenues to support its Tribal government and the following programs and services that are essential to the health, safety, and well-being of its members:

a. Education: Language preservation, Head Start, K-12, and higher education programs;

b. Natural Resources: Water quality, ocean protection, cultural resources, and emergency management;

c. Historic Preservation: Protection of ancestral and cultural heritage;

d. Family Wellness: Social and economic support.

e. Community Development: Cultural property maintenance, elder assistance, and cemetery upkeep; and

f. Utilities: Safe drinking water and wastewater treatment.

[11] The FIES then asserts, "[w]ithout confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined." FEIS Vol. I, p. 3-16. Had the BIA fulfilled its fiduciary duty and consulted with the affected Tribal nations, it would have been able to engage with them on this topic and determine "the environmental justice impact on governmental and social services" (as the BIA is required to do but admits in the FEIS *it has not done*).

138. Although the FEIS and ROD acknowledge certain environmental impacts (*e.g.,* greenhouse gas emissions), they do not include any analysis of the environmental concerns raised by Plaintiffs Cow Creek, Karuk, or Tolowa. While acknowledging "[a]n adverse economic, fiscal, or social impact would occur if the effect of the project were to negatively alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services," FEIS Vol. II, p. 4-18, the FEIS dismisses the impacts to the Plaintiff Tribal nations as primarily economic, citing to an inapposite holding from *Citizens for a Better Way, et al. v. United States Department of the Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925 (E.D. Cal., 2015). FEIS Vol. II, p. 4-23.

139. The revenues available to Plaintiffs directly fund the social, public health, and safety services and programs that their governments provide to their citizens and the surrounding communities. For all three Plaintiff Tribal nations, Defendants' failure to account for adverse socio-economic effects will also have profound environmental consequences, given the vulnerability of the surrounding area to repeated wildfires.

H. Defendants' Issuance of FEIS and ROD Without Adequate Tribal Consultation Caused and Causes Irreparable Harm to Plaintiffs.

140. With regard to Coquille's Medford gaming project, Plaintiffs have unsuccessfully attempted to engage DOI, Defendants Secretary Haaland, AS-IA Newland and Directors Mercier and Peone in robust, interactive, pre-decisional, informative, and transparent consultation regarding the DEIS, FEIS, and ROD, as required by NEPA and the agency's own Manual, NEPA regulations, and NEPA Guidebook, since at least March of 2021.

141. As a result of the agency's FEIS and ROD, Plaintiffs Cow Creek, Karuk, and Tolowa, and their Tribal members, have suffered and will suffer severe, immediate, and irreparable injury, including to Plaintiffs' governmental, property, economic, socio-economic, environmental,

cultural, and historical interests and constitutional participatory and sovereign consultation rights.

I. Defendants' Issuance of FEIS and ROD in Reliance on Unconstitutional CEQ Regulations Caused and Causes Irreparable Harm to Plaintiffs.

142. Defendants' issuance of Coquille's FEIS and ROD, which are based on invalid CEQ regulations and were issued without meaningful consultation with Plaintiffs Cow Creek, Karuk, Tolowa, and other Tribal nations, has resulted and will result in immediate and irreparable injury to Plaintiff Tribal nations and their Tribal members, including to Plaintiffs' governmental, property, economic, socio-economic, environmental, cultural, and historical interests and constitutional participatory and sovereign consultation rights.

143. As the FEIS acknowledges, Coquille's proposed Medford casino would cannibalize at least ***75.2%*** of the gaming revenue (about $36,218,686 in cannibalized gaming revenue) that would otherwise be generated from Plaintiff Cow Creek, Karuk, and Tolowa's existing casinos located in proximity to the greater Medford area. The economic environment in the region is not conducive to the operation of another gaming facility so close to these Tribal nations' existing casinos.

144. The location of Coquille's proposed gaming facility in the heart of the Medford urban area—from which Plaintiffs Cow Creek's, Karuk's, and Tolowa's more rural casinos draw many, if not most, of their patrons—gives Coquille a particularly unfair competitive advantage vis-à-vis Plaintiff Tribal nations; an advantage Defendants deliberately discount by relying on inapposite precedent finding economic impacts for a commercial enterprise do not constitute a significant environmental impact under the *ultra vires* CEQ NEPA regulations. To the detriment of Plaintiffs, the FEIS violates the Constitutional requirement of separation of powers.

145. Defendants' issuance of the FEIS and ROD based on invalid CEQ regulations and related refusals to meaningfully consult with Plaintiffs in violation of their constitutional participatory and sovereign consultation rights, have resulted and will result in irreparable and

devastating harm to their governmental, property, economic, socio-economic, environmental, cultural, and historical interests, including the ability of their Tribal nations to meet the needs of their Tribal members and communities.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Declaration that the FEIS and, Therefore, the ROD Are Ultra Vires and Invalid

146. Plaintiffs reallege and incorporate each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

147. Defendants, in explaining the agency's environmental analysis in the FEIS and determining that Coquille's proposed casino presented no or minimal environmental impact, repeatedly cited to and relied on the CEQ regulations as mandatory "requirements." Defendants asserted they had complied with NEPA by applying these regulations.

148. Indeed, the FEIS does not appear to meaningfully cite or otherwise reference the agency's own regulations implementing NEPA, 43 C.F.R. Part 46, which Defendants do have statutory authority to establish.

149. The FEIS violates the U.S. Constitution because the FEIS, on its face, is based on CEQ regulations that are *ultra vires* and invalid under separation of powers principles. Because the ROD relies upon the *ultra vires* FEIS, the ROD, too, is *ultra vires* and invalid under the separation of powers principles.

150. Once the FEIS and ROD were issued, that final agency decision cannot be undone except by remanding the matter to DOI to recommence the process under valid regulations.

151. The Court may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

152. The Court should, therefore, declare that Defendants' FEIS reviewing Coquille's proposed Medford casino, and, therefore, the ROD, are *ultra vires* and invalid under separation of powers principles and thus cannot be enforced or implemented.

SECOND CLAIM FOR RELIEF

Violations of IGRA, NEPA, and the APA

Failure to Meaningfully Consult Tribal Nations

153. Plaintiffs reallege and incorporate each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

154. Under the APA, this Court must hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. The Court must further compel agency action unlawfully withheld or unreasonably delayed.

155. Since at least 2015, long before Defendants published the FEIS or ROD, Plaintiffs Cow Creek, Karuk, and Tolowa have made multiple requests to the agency for consultation regarding Coquille's application to have the Medford parcel taken into trust for gaming. Defendants nevertheless refused or ignored these requests for consultation, despite Defendants' knowledge that Plaintiffs Cow Creek, Karuk, and Tolowa would be substantially adversely impacted by the transfer to trust of the Medford parcel for gaming purposes.

156. Defendants' issuance of the FEIS and ROD without meaningfully consulting Plaintiffs Cow Creek, Karuk, and Tolowa violates NEPA.

157. Defendants' failure to engage in consultation with Plaintiffs also violates the Department's regulations implementing NEPA, 43 C.F.R. § 46.155, which Defendants had statutory authority to issue and were required to follow. 73 Fed. Reg. 61312.

158. Defendants failed to "whenever possible consult, coordinate, and cooperate with"

Plaintiffs concerning the environmental effects or "interests of these entities" regarding Coquille's proposed Medford casino. 43 C.F.R. § 46.155.

159. Likewise, Defendants failed to follow DOI's own Manual, 512 DM 4, § 4.4, which mandates that, "whenever there is a Department action with Tribal implications," Tribal nations receive "robust, interactive, pre-decisional, informative, and transparent consultation."

160. Defendants also failed to follow DOI's own NEPA regulations and the BIA's own NEPA Guidebook by engaging in broad government-to-government consultation with Plaintiffs. 73 Fed. Reg. 61312

161. Defendants also failed to consult with at least Plaintiff Cow Creek as required by Section 106 of the NHPA. 36 C.F.R. § 800(c)(2)(ii)(a).

162. When an agency establishes a policy or practice requiring prior consultation or coordination with affected Tribal governments—thereby creating a justified expectation that each affected Tribal government will receive a meaningful opportunity to express its views before decisions are made—that opportunity must be provided.

163. To the extent that Defendants failed to sufficiently consult, partner, or cooperate with Plaintiffs Cow Creek, Karuk, and Tolowa on the ground that their land or government headquarters are located outside of the Medford parcel's 25-mile radius (and although Coquille's lands and government headquarters are located even *farther* outside that radius), Plaintiffs challenge 25 C.F.R. § 292.2's definition of "nearby Indian tribe," as applied to Cow Creek, Karuk, and Tolowa, as exceeding the agency's statutory authority under IGRA.

164. Because Defendants failed to consult, partner, and cooperate with Plaintiffs Cow Creek, Karuk, and Tolowa before issuing the FEIS and ROD in violation of NEPA and other applicable laws, policies, or practices, Defendants' actions are arbitrary, capricious, an abuse of

discretion, and otherwise contrary to law.

165. Defendants' issuance of the FEIS and ROD without meaningfully consulting Plaintiffs Cow Creek, Karuk, and Tolowa, will result in immediate and irreparable injury, including to these Tribal nations' governmental, property, economic, socio-economic, environmental, cultural, and historical interests and constitutional participatory and sovereign consultation rights.

166. Absent declaratory and injunctive relief vacating the FEIS and ROD, Plaintiffs will be immediately, continuously, and irreparably harmed by Defendants' unconstitutional actions.

167. The Court should, therefore, enjoin and vacate the FEIS and ROD.

THIRD CLAIM FOR RELIEF

Violations of IGRA and the APA

Defendants Failed to Comply with IGRA's Statutory and Regulatory Requirements

168. Plaintiffs reallege and incorporate each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

169. In order to permit gaming on land that did not meet the definition of "Indian lands" on October 17, 1988, Defendants must comply with IGRA and its implementing regulations in Part 292.

170. Coquille's restoration act, the CRA, required the Secretary to acquire up to 1,000 acres of land in Coos and Curry Counties, Oregon, for Coquille, a requirement that was satisfied in the early 1990s. The CRA authorizes the Secretary to take land into trust for Coquille in Jackson County, Oregon, but only pursuant to her discretionary authority under the IRA, not the CRA itself.

171. Because the IRA grants the Secretary discretionary authority to take the Medford parcel into trust pursuant to her authority under the IRA, *not* the CRA itself, Coquille cannot meet the statute-based restored lands exception under 25 C.F.R. § 292.11(a)(1).

172. Even assuming that Coquille satisfied the requirements set forth under § 292.11(a)(1), that regulation, as applied to Coquille's application, exceeds the agency's statutory authority under IGRA.

173. Defendants further failed to adequately explain the agency's change in the interpretation of the restored lands exception by finding that language in a restoration act, which merely grants the Secretary discretionary authority to take land into trust pursuant to the IRA (like the CRA), qualifies under the statute-based restored lands exception. Previously, such as in the case of the Ponca, the agency found that if a tribe's restoration act grants the Secretary discretionary authority to take land into trust pursuant to the IRA (like the CRA and Ponca's restoration act), the Tribe's application qualifies under the restored lands exception only if the tribe could show significant historical, modern, and temporal connections to the land.

174. Acknowledging that the Coquille cannot satisfy § 292.11(a)(1) (or that regulation is otherwise unlawful, as applied to the Coquille), the Tribe was required to show significant historical, modern, and temporal ties to the land to satisfy the restored lands exception under § 292.12. Coquille concedes that it cannot demonstrate significant historical, modern, and temporal connections to the Medford parcel, as it has not even attempted to do so.

175. More critically, because Coquille's application does not meet the restored lands exception, Defendants were statutorily required to conduct a two-part determination by, after consulting with the appropriate State and local officials and other nearby Indian tribes, (1) determining that a gaming establishment on the Medford parcel would not be detrimental to the surrounding community and (2) securing the concurrence of the Governor of Oregon.

176. Defendants' failure to comply with IGRA and its implementing regulations included, without limitation, the Secretary's refusal to conduct the two-part determination and thereby

failing to consult with nearby Indian tribes, like Plaintiffs Cow Creek, Karuk, and Tolowa, which will be substantially adversely impacted by the acquisition. Accordingly, Defendants failed to acknowledge that a gaming operation on the Medford parcel would be detrimental to the surrounding community and failed to secure the concurrence of the Governor of Oregon.

177. Once DOI solicited comments on Coquille's application to have the Medford parcel taken into trust, Defendants ignored or disregarded the repeated and documented concerns expressed by Plaintiffs Cow Creek, Karuk, and Tolowa's concerns.

178. Likewise, each sitting Governor of Oregon has opposed Coquille's application to build a second casino on the Medford parcel since the application was filed in 2012. Defendants simply ignored or disregarded the Governors' opposition.

179. By failing to comply with IGRA's implementing regulations governing the restored lands exception and the statutory mandate to conduct a two-part determination, and/or by failing to adequately explain the change in its interpretation of the statutory-based restored lands exception, Defendants' actions were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA.

FOURTH CLAIM FOR RELIEF

Violations of the IRA and the APA

Defendants Failed to Comply with the IRA's Regulatory Requirements

180. Plaintiffs reallege and incorporate each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

181. Before the Secretary takes land into trust on behalf of Coquille, Coquille must also comply with 25 C.F.R. Part 151, the IRA's implementing regulations. Part 151's requirements are separate from and in addition to any requirements set forth in IGRA's implementing regulations.

182. Defendants failed to comply with Part 151 when approving the ROD and issuing the Notice of Final Agency Determination that the Secretary would acquire approximately 2.42 acres of land in trust for gaming purposes for the Coquille.

183. Defendants' failures to comply with 25 C.F.R. § 151.11 included, without limitation, failure to consider the Medford parcel's 170-mile, three-hour driving distance from the boundaries of Coquille's reservation and its relative lack of need for additional land. For example, Defendants inadequately considered that Coquille already has existing ancestral lands in another part of Oregon already in trust on which gaming can occur. In light of Coquille's other successful economic enterprises (*e.g.*, Tribal One), Defendants also failed to provide support for the conclusion that transferring the Medford parcel into trust is necessary to support Coquille's goal of self-determination.

184. Defendants further failed to comply with § 151.11 because it did not give greater scrutiny to Coquille's justification of anticipated economic benefits from the acquisition of the Medford parcel, just as they failed to give greater weight to the concerns raised by the Governor of Oregon and the Jackson County Board of Commissioners. Defendants ignored or disregarded their opposition.

185. By failing to comply with the requirements set forth in Part 151, Defendants' actions were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA.

FIFTH CLAIM FOR RELIEF

Violations of the IRA and the APA

Defendants Violated the IRA's Privileges and Immunities Clause and the APA by Treating Similarly Situated Tribal Nations Differently

186. Plaintiffs reallege and incorporate each of the allegations set forth in the foregoing

paragraphs as if fully set forth herein.

187. The IRA's privileges and immunities clause, 25 U.S.C. § 5123(f), guarantees that federal agencies will not make any decision or determination pursuant to the IRA or other federal law with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Tribe relative to other federally recognized Tribal nations by virtue of their status as Indian Tribes.

188. A Tribe's ability to conduct gaming activities on off-reservation lands under IGRA's restored lands exception is a "privilege" available to it by virtue of its status as a federally recognized Indian Tribe.

189. Plaintiffs Cow Creek, Karuk, Tolowa, and other non-party Tribal nations (e.g., Klamath) are similarly situated to Coquille. All of these Tribal nations are located on the West Coast. The Tribal nations located in Oregon, including Cow Creek and Coquille, also share nearly identical political histories, as each of the Tribe's recognition status was "terminated" but later "restored" by an Act of Congress for purposes of IGRA. Today, these Tribal nations are federally recognized by DOI, and each Tribe operates one casino within or near their Reservations, on land with which each Tribe shares significant historical, modern, and temporal connections.

190. Defendants have approved Coquille's application to take the Medford parcel into trust for gaming activity near the lands of the Cow Creek, Karuk, Tolowa, and other Tribal nations, which have significant historical, modern, and temporal connections to their lands—unlike Coquille with aboriginal lands that are located about 170 miles (three hours away) from the Medford parcel.

191. Defendants' decision to approve Coquille's application in this manner violates the IRA's privileges and immunities clause, as it enhances the gaming privileges of Coquille relative

to, at a minimum, Plaintiffs Cow Creek, Karuk, and Tolowa, thereby diminishing the privileges available to those Tribal nations by virtue of their status as federally recognized Tribes.

SIXTH CLAIM FOR RELIEF

Violations of the APA

Defendants Violated the APA by Treating Similarly Situated Tribal Nations Differently

192. Plaintiffs reallege and incorporate the allegations set forth in each of the foregoing paragraphs as if fully set forth herein.

193. Under the APA, a fundamental norm of administrative procedure requires an agency to treat like cases alike. If the agency makes an exception in one case, then it must either make an exception in similar cases or point to a relevant distinction between the two cases.

194. Ponca Tribe of Nebraska is similarly situated to Coquille in that, like Coquille, Ponca's recognition status was "terminated" but later "restored" by an Act of Congress for purposes of IGRA. Both Tribes, which are now federally recognized by DOI, have restoration acts passed after IGRA was enacted, with language that grants the Secretary the discretionary authority to take land into trust for the Tribe pursuant to the IRA (but not pursuant to the restoration act itself). From 2007 to 2012, both Tribes submitted applications to BIA for proposed gaming projects on land outside the borders of their Reservations under the restored lands exception to IGRA's prohibition of gaming on lands acquired in trust after 1988.

195. Defendants approved Coquille's application based on language in the CRA alone, thereby exempting Coquille from the connections-based requirements to qualify under the restored lands exception under 25 C.F.R. § 292.12.

196. Despite the similarities of Coquille and Ponca's respective restoration acts, Defendants did *not* approve the similarly situated Ponca's application based on language in the Ponca's restoration act alone; nor did Defendants exempt Ponca's application from the

connections-based requirements to qualify under the restored lands exception (then recognized under common law).

197. Defendants' decision to exempt only Coquille's application from the connections-based requirements to qualify under the restored lands exception—while failing to exempt the similarly situated Ponca's application from the same requirements—was arbitrary, capricious, and abuse of discretion, and otherwise not in accordance with the law in violation of the APA. At the very least, Defendants were required to explain the agency's preferential treatment of Coquille relative to Ponca.

SEVENTH CLAIM FOR RELIEF

Violations of NEPA and the APA

Defendants Failed to Comply with NEPA's Requirements

198. Plaintiffs reallege and incorporate each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

199. Defendants, in certifying the FEIS and issuing the ROD, determined that a gaming establishment on the Medford parcel would not be detrimental to the surrounding community. This determination is not only factually incorrect, but it also violates NEPA and Part 1500 (were Part 1500 constitutional).

200. Defendants failed to adequately consider the significant detrimental impact that Coquille's proposed casino development on the Medford parcel will have on the surrounding community, including on Plaintiffs Cow Creek, Karuk, and Tolowa.

201. Defendants also failed to take a "hard look" at the environmental and interrelated socio-economic, social justice, aesthetic, historical, and cultural impacts of the proposed action. Taking a "hard look" requires considering all foreseeable direct and indirect impacts and a

discussion of adverse impacts that do not improperly minimize negative side effects.

202. In determining that the casino project would not be detrimental to the surrounding community, Defendants relied on stale, outdated, and incomplete information and reports and, therefore, failed adequately to analyze and mitigate the potential impact on public health and safety.

203. Nor were the regulatory and cumulative impacts of removing significant acreage in the midst of an urban area from the sovereign control of state and local governments adequately addressed by Defendants.

204. Defendants not only inadequately considered that Coquille already has existing ancestral lands in another part of Oregon in trust on which gaming can occur, but they also failed adequately to assess the impact that this determination will have on local communities, as required under NEPA and the agency's own regulations.

205. To the extent that Defendants considered the environmental and interrelated economic, cultural, socio-economic, and historical impacts of the proposed casino development, Defendants improperly minimized their negative side effects, in violation of the APA.

206. Finally, Defendants failed to meaningfully consider alternative actions and properly evaluate mitigation measures, as required by NEPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment as follows:

207. Declaring, adjudging, and decreeing that the FEIS, and by extension, ROD, are *ultra vires* and are otherwise contrary to law;

208. Compelling Defendants to properly consult all Tribal Plaintiffs before implementing any aspect of the project described in the ROD;

209. Declaring, adjudging, and decreeing that the ROD to accept title to the Medford parcel into trust for gaming violates the IRA and its implementing regulations, and is otherwise contrary to law, and order the Defendants to set aside and vacate the ROD approving the Coquille's fee-to-trust application and to enjoin its implementation;

210. Declaring, adjudging, decreeing that the ROD approving the Medford parcel for gaming activities under IGRA's restored lands exception violates IGRA and its implementing regulations, and is otherwise contrary to law, and order the Defendants to set aside and vacate the ROD approving gaming on the Medford parcel and to enjoin its implementation;

211. Declaring, adjudging, and decreeing that Defendants failed to comply with NEPA, or to assess in an unbiased fashion the impacts that acquiring the Medford parcel in trust for the Coquille would inflict on Plaintiffs Cow Creek, Karuk, and Tolowa;

212. Declaring, adjudging, and decreeing that the FEIS and ROD for the fee-to-trust transfer and the related Medford casino project failed to meet the requirements of NEPA and order the Defendants to set aside and vacate any action based on the FEIS or ROD;

213. Entering judgment and an order enjoining Defendants from taking the Medford parcel into trust for the benefit of the Coquille and enjoining Defendants from approving or implementing any aspect of the project described in the ROD;

214. Awarding Plaintiffs costs, attorneys' fees, and other expenses of this litigation; and

215. Providing such other relief as the Court may deem necessary and proper.

DATED this 10th day of January, 2025.

Respectfully submitted,

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