IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS, et al.,	)	
Plaintiffs,	)	
v.	)	**Case No. 1:24-cv-03594**
U.S. DEPARTMENT OF THE INTERIOR, et al.,	)	
Defendants.	)	

DEFENDANTS' OPPOSITION TO PLAINTIFFS' RENEWED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Other Authorities

INTRODUCTION

Plaintiffs' renewed motion for preliminary injunctive relief should, like their first, be denied. On January 10, 2025, The U.S. Department of the Interior ("Interior") issued a Record of Decision ("ROD") approving a request from the Coquille Indian Tribe ("Coquille") that Interior take into trust land Coquille owns so that Coquille can develop a gaming facility. Plaintiffs—the Cow Creek Band of Umpqua Tribe of Indians, the Karuk Tribe, and the Tolowa Dee-ni' Nation—oppose Coquille's gaming facility because they fear it will compete for revenue with their own casinos in surrounding areas. Having failed in their prior attempt to enjoin Interior from making a decision on Coquille's application, Plaintiffs now renew their request for injunctive relief. But they once again fail to carry their burden to justify the extraordinary remedy of a temporary restraining order or preliminary injunction.

First, Plaintiffs fail to allege any imminent, irreparable harm that would warrant preliminary relief. Plaintiffs' claims that they will lose revenue as a result of Coquille's planned gaming operations rely on long-term projections of revenue loss that are not likely to occur while this litigation is pending. And Plaintiffs fail to otherwise show the type of severe economic injury that would necessitate preliminary relief.

Second, Plaintiffs have not shown they are likely to succeed on the merits of any of their claims. As to their NEPA claims, Plaintiffs lack prudential standing because they have not alleged they will suffer any environmental injury that falls within NEPA's zone of interests. On the substance, Plaintiffs' arguments based on the D.C. Circuit's decision in *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 908–15 (D.C. Cir. 2024), lack any merit. Plaintiffs also fail to demonstrate a likelihood to succeed on their claim that Interior failed to conduct any required consultation with them during the NEPA process, or that Interior acted contrary to the Indian Gaming Regulatory Act ("IGRA"), the Indian Reorganization Act (the "IRA"), or their

implementing regulations.

Third, having failed to demonstrate that they will suffer any harms that would warrant injunctive relief, Plaintiffs cannot show that the balance of equities or public interest tip in their favor. Plaintiffs' renewed motion for preliminary injunctive relief should be denied.

BACKGROUND

A. Factual Background

1. The Coquille Indian Tribe

The Coquille people were originally known by the name "Mishikhwutmetunne," which means "people living on the stream called Mishi or Misha." Ltr. from Assistant-Secretary – Indian Affairs Bryan Newland to Hon. Brenda Meade (Jan. 10, 2025) at 1, ECF No. 32-2 ("Coquille Decision Letter"). Coquille "was one of a group of tribes and bands that occupied permanent villages on the Oregon coast." *Id.* In 1855, the Coquille were party to a treaty with the United States to cede land, receive payment, and to remove themselves and settle on new reservation lands on the coast. *Id.* at 2. The 1855 treaty was never ratified. *Id.*

In 1954, Congress enacted the Western Oregon Indian Termination Act, which terminated Coquille's federal recognition. *Id.*; *see* Act of August 13, 1954, Pub. L. 588, 68 Stat. 724. Despite termination and the withdrawal of federal supervision, Coquille maintained its internal structures and self-governance. *See* S. Rep. No. 101-50, 101st Cong., 1st Sess. at 3-4 (1989).

The United States subsequently restored its government-to-government relationship with Coquille in 1989, when Congress enacted the Coquille Restoration Act ("CRA"). Act of June 28, 1989, Pub. L. 101-42, 103 Stat. 91. The CRA restored Coquille's rights and privileges and made Coquille and its citizens eligible for federal services and benefits. *Id.* § 3(b). As the Senate explained, "[r]estoration of the trust relationship and the government-to-government relationship

with the Coquille Tribe of Oregon is the last step in the process [of] correcting an historic injustice and restoring to a Federal relationship a tribe whose existence and relationship to the United States was specifically extinguished by an Act of Congress." S. Rep. No. 101-50, at 2.

Coquille is federally recognized and, as of 2019, had a total enrollment of 1,100 members. Approximately 52% of those members live in Coquille's Congressionally-designated service area covering 15,603 square miles across five counties in southwestern Oregon. Final Environmental Impact Statement, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project Vol. II at 1-1, 1-2, ECF No. 2-2 at 122-23 ("FEIS").

2. Coquille's Land-to-Trust Application

In January 2015, the Bureau of Indian Affairs ("BIA") issued a Notice of Intent to prepare an environmental impact statement ("EIS") in connection with Coquille's application requesting that an approximately 2.4 acre parcel of land in Medford, Oregon ("Medford Parcel") be transferred from Coquille's fee ownership to federal trust.[1] The Medford Parcel is located within Coquille's service area as defined in the CRA. CRA § 2(5).

Coquille's Medford Parcel includes an existing bowling alley, on which Coquille previously offered gaming in the form of Oregon State Lottery Video Lottery Terminal machines. Coquille Decision Ltr. 1, ECF 32-2. Coquille intends to renovate and convert that existing bowling alley into a Class II gaming facility. *Id.* Coquille's planned facility would consist of 650 electronic bingo machines within a 16,700-square-foot gaming floor area. *Id.* The renovated facility would also include a bar and deli and a space devoted to gaming support

[1] FEIS, Volume II, 1-1, ECF No. 2-2 at 122; *see also* Dep't of Interior, Bureau of Indian Affairs, Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon, 80 Fed. Reg. 2120 (Jan. 15, 2015), *available at* https://coquille-eis.com/wpcontent/uploads/2022/03/Coquille-NOI-Scoping-508.pdf.

services. *Id.*

In September 2020, BIA published a Notice of Cancellation of the EIS in the Federal Register. FEIS Vol. II 1-3, ECF No. 2-2 at 124. That Notice of Cancellation was subsequently withdrawn in December 2021. *Id.* at 1-3 & 1-4, ECF No. 2-2 at 124-25. Interior released a Draft EIS for public comment in November 2022. Interior accepted comments on the Draft EIS for 90 days, ending in February 2023. FEIS Vol. II 1-4, ECF No. 2-2 at 125. It also held two public hearings in December and January to discuss the proposed project, explain the analysis in the Draft EIS, and hear any oral comments from the public. *Id.* Interior later released the Final EIS ("FEIS") on November 22, 2024.[2] It continued to accept comments on the FEIS for 30 days, which ended on December 23. *Id.*

On January 10, 2025, Interior issued its Record of Decision ("ROD") explaining Interior's decision to take the Medford Parcel into trust for Coquille. ROD at 26, ECF No. 32-2 at 53. The ROD incorporated a summary of all substantive comments received during the 30-day, post-EIS comment period and provided Interior's responses to any issues not previously raised. *Id.* at 3, ECF No. 32-2 at 30; *see also* ROD Attach. 3 (providing supplemental responses to FEIS comments), ECF No. 32-2 at 68-183. That same day, Interior accepted conveyance of the Medford Parcel in trust for Coquille. Exhibit 1, Interior Recorded Deed at 6. Interior recorded the deed with the Department's Land Titles and Records Office on January 10, *id.* at 1, and with the Jackson County Official Records Office on January 13. Exhibit 2, Jackson Cnty. Recorded Deed at 1. Consistent with the ROD, Interior has completed all the steps necessary to acquire the

[2] FEIS Vol. II 1-4, ECF No. 2-2 at 125; Dep't of Interior, Bureau of Indian Affairs, Notice of availability of Final Environmental Impact Statement for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon ("FEIS Notice of Availability"), 89 Fed. Reg. 92,712 (Nov. 22, 2024), *available at* https://coquille-eis.com/wpcontent/uploads/2024/11/Federal-Register_BIA-NOA-2024-27409.pdf.

Medford Parcel in trust, and the Medford Parcel is now part of the Coquille reservation.

B. Legal Background

1. Indian Reorganization Act

Section 5 of the Indian Reorganization Act ("IRA") authorizes the Secretary of the Interior ("Secretary"), "in [her] discretion," to take lands into trust "for the purpose of providing land for Indians." 25 U.S.C. § 5108. The IRA also prohibits Interior and other Federal agencies from issuing regulations or decisions that "classif[y], enhance[], or diminish[] the privileges and immunities available to one Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes." 25 U.S.C. § 5123(g).

Interior's regulations implementing Section 5 are found at 25 C.F.R. part. 151. The regulations set forth the policies and procedures governing the Secretary's decision-making on tribal applications to have land transferred into trust.

The Assistant Secretary-Indian Affairs ("Assistant Secretary") holds delegated authority to review and discretionarily approve applications for off-reservation trust acquisitions for gaming. The Office of the Assistant Secretary must make its decision whether to approve an application in writing and provide the reasons for the decision. *Id.* § 151.13(b). If the Assistant Secretary decides to approve the application, Interior must file a notice in the Federal Register and "[i]mmediately acquire the land in trust status" once any other applicable legal requirements are met. *Id.* § 151.13(c); *see also id.* § 151.16. "A decision made by the Office of the Secretary or the Assistant Secretary . . . pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance." *Id.* § 151.13(c).

2. The Coquille Restoration Act

As explained above, the CRA restored Coquille's federal recognition. *See* Coquille Restoration Act, Pub. L. 101-42, 103 Stat. 91. In addition, the CRA expressly make all

provisions of the IRA applicable to Coquille and its members. *Id.* § 3(e). The CRA also designates a five-county service area for Coquille in Coos, Curry, Douglas, **Jackson**, and Lane Counties in Oregon. *Id.* § 2(5). And, as relevant here, the CRA also provides the Secretary with both mandatory and discretionary trust land acquisition authority within that service area. *Id.* § 5.

Specifically, Section 5(a) requires the Secretary to take into trust 1,000 acres of land in Coos and Curry Counties if conveyed or otherwise transferred to the Secretary. And it authorizes the Secretary to take additional land into trust for Coquille, stating: "[t]he Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the [IRA] (48 Stat. 984)." The CRA goes on to provide that "the land transferred shall be taken in the name of the United States in trust for the Tribe and shall be part of its reservation." *Id.* § 5(b).

3. Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act ("IGRA") was enacted in 1988 "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments[.]" 25 U.S.C. § 2702(1). IGRA permits federally recognized tribes to conduct gaming (subject to rules dependent on the type of gaming) on "Indian lands" within the tribe's jurisdiction. *Id.* §§ 2703(5), 2710(b)(1), (d)(3).[3] "Indian lands" is defined as land within the limits of an Indian reservation and "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." *Id.* § 2703(4).

Generally, IGRA bars gaming on lands taken into trust after October 17, 1988. *Id.*

[3] Some portions of Section 2710 not relevant here have been held unconstitutional. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996).

§ 2719(a). However, there are limited exceptions to this prohibition. As relevant to Coquille's application, IGRA's time limitation does not apply to lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." *Id.* § 2719(b)(1)(B)(iii); FEIS Vol. II, 2-9, ECF No. 2-2 at 135.[4] In 2008, Interior promulgated regulations implementing IGRA. Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354 (May 20, 2008) ("Part 292"). These regulations articulate the standards that Interior follows when implementing the various exceptions to IGRA's prohibition on gaming, including the restored lands exception. 25 C.F.R. §§ 292.7-.12.

IGRA distinguishes between three "classes" of gaming. Class I gaming includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6). Class II gaming includes "the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)," as well as "card games" that either are "explicitly authorized" or "not explicitly prohibited" by applicable state law. *Id.* § 2703(7)(A). Subject to certain exceptions, class II gaming does not include "banking card games, including baccarat, chemin de fer, or blackjack (21)" or "slot machines of any kind." *Id.* § 2703(7)(B)-(F). Class III gaming refers to "all forms of gaming that are not class I gaming or class II gaming," such as slot machines and other table games that are not permitted at class II gaming facilities. Here, Coquille intends to develop a class II facility.

[4] The FEIS is attached as Exhibits 1 and 2 to the Galanda Declaration, ECF No. 2-2. It is also available online. Volume 1 is available at https://coquille-eis.com/wp-content/uploads/2024/11/1_Coquille-FTT-and-Gaming-Facility-Final-EIS-Vol-I-Nov-2024-508C.pdf, and Volume II is available at https://coquille-eis.com/wp-content/uploads/ 2024/11/3_Coquille-FTT-and-Gaming-Facility-Final-EIS-Vol-II-Nov-2024-508C.pdf. (last visited Dec. 31, 2024).

4. The National Environmental Policy Act and CEQ's regulations

The National Environmental Policy Act requires preparation of an environmental impact statement for "major [f]ederal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). NEPA mandates procedures—not results. *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004).

NEPA also established the Council on Environmental Quality ("CEQ"). 42 U.S.C. §§ 4342, 4344(3), (4). In a 1977 Executive Order, President Carter directed CEQ to promulgate regulations implementing NEPA and directed all agencies to comply with those regulations. Exec. Order No. 11,991, 42 Fed. Reg. 26,967. CEQ's regulations have been amended over the years and are now found at 40 C.F.R. parts 1500-1508. On January 20, 2025, (after the ROD issued here) President Trump issued an Executive Order revoking Executive Order 11,991, issued by Present Carter in 1977. *See* White House, Presidential Actions, Unleashing American Energy, Executive Order, *available at* https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/ (issued Jan. 20, 2025).

LEGAL STANDARDS

"Temporary restraining orders and preliminary injunctions are 'extraordinary remed[ies] that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion.'" *Lofton v. Dist. of Columbia*, 7 F. Supp. 3d 117, 120 (D.D.C. 2013) (citation omitted). When deciding whether to grant a temporary restraining order, the Court analyzes the same factors used in a request for a preliminary injunction. *Gordon v. Holder*, 632 F.3d 722, 723-24 (D.C. Cir. 2011). A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)).

To prevail in a request for a preliminary injunction, a plaintiff "must demonstrate 1) a substantial likelihood of success on the merits, 2) that it would suffer irreparable injury if the injunction is not granted, 3) that an injunction would not substantially injure other interested parties, and 4) that the public interest would be furthered by the injunction." *CityFed Fin. Corp. v. Off. of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir.1995). "The 'most significant' of these four factors are the 'likelihood of the movant's success on the merits of his claims and whether or not he is likely to suffer irreparable injury while the lawsuit is pending, because these factors relate directly to the purpose of a preliminary injunction.'" *Fredericks v. U.S. Dep't of Interior*, No. 20-CV-2458, 2021 WL 2778575, at *9 (D.D.C. July 2, 2021) (quoting *Make the Rd. N.Y. v. McAleenan*, 405 F. Supp. 3d 1, 23-24 (D.D.C. 2019)), *rev'd on other grounds*, 962 F.3d 612 (D.C. Cir. 2020)). In fact, "if a party makes no showing of irreparable injury, the court may deny the motion for injunctive relief without considering the other factors." *Id.* (citing *CityFed Fin. Corp.*, 58 F.3d at 747).

ARGUMENT

I. Plaintiffs have not identified an irreparable harm that would warrant preliminary relief.

This Court should deny Plaintiffs' motion because Plaintiffs have not identified an irreparable harm that would warrant preliminary injunctive relief. Failure to show irreparable harm is independently sufficient to defeat Plaintiffs' Motion. *See Novartis Pharm. Corp. v. Becerra*, No. 24-CV-02234 (DLF), 2024 WL 3823270, *4 (D.D.C. Aug. 13, 2024) ("Failure to show a likelihood of irreparable harm is sufficient to defeat a motion for a preliminary injunction 'even if the other three factors entering calculus merit such relief.'") (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). "The D.C. Circuit 'has set a high standard for irreparable injury.'" *Id.* (quoting *Mdewakanton Sioux Indians of Minn. v. Zinke*,

255 F. Supp. 3d 48, 52 (D.D.C. 2017). To make a showing of irreparable harm, a plaintiff must establish an injury that is "both certain and great, actual and not theoretical, beyond remediation, and of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C Cir. 2015) (emphasis and internal quotation marks omitted).

Plaintiffs fall short of that standard here. They rely primarily on allegations that Coquille's gaming facility in Medford will compete with their own casinos in surrounding areas, causing them to lose revenue. But Plaintiffs' generalized allegations do not establish that they will imminently suffer the type of severe economic harm that would warrant preliminary relief. And Plaintiffs' remaining allegations of non-economic harm fall even further short of the mark.

A. Plaintiffs have not demonstrated that they are likely to suffer imminent, irreparable economic harm.

Plaintiffs' primary argument on irreparable harm is that they will suffer economic losses in the form of diminished gaming revenues if Coquille proceeds with its planned gaming facility in Medford. Pls.' Mot. & Mem. in Supp. of Emergency Mot. for a TRO & for a Prelim. Inj., ECF No. 32 at 38-42 ("Pls.' Mot."). But because Plaintiffs have not established that they will suffer the type of imminent harm that would necessitate preliminary relief, they cannot meet the D.C. Circuit's "high standard for irreparable injury," *Novartis*, 2024 WL 3823270 at *4. That bar is particularly high for claims of economic loss, because "the 'general rule' is that 'economic harm does not constitute irreparable injury.'" *Fredricks*, 2021 WL 2778587, at *18 (quoting *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009)); *see also Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (it is "well settled that economic loss does not, in and of itself, constitute irreparable harm"); *Novartis*, 2024 WL 3823270, at *4. To establish irreparable harm sufficient to warrant a preliminary injunction, "[m]onetary loss, even

irretrievable monetary loss" must be "so severe as to cause extreme hardship to the business or threaten its very existence." *Mylan Lab'ys Ltd. v. FDA*, 910 F. Supp. 2d 299, 313 (D.D.C. 2012) (cleaned up).

Plaintiffs' attempted factual showing does not clear that hurdle. They do not establish any irreparable harm that is both (i) imminent and (ii) so severe as to warrant preliminary relief. With respect to imminence, Plaintiffs contend that, "once Coquille begins gaming on the Medford parcel, it will cause considerable declines in revenues for Cow Creek (21.3%, but as high as 28.5%), Karuk (23.4%, but as high as 37%), and Tolowa (5.3%, but as high as 13.4%)." Pls.' Mot. 39. For support, Plaintiffs point to the FEIS's substitution analysis. *Id.* But the FEIS does not support Plaintiffs' claim that they will *imminently* suffer such harm. The FEIS did identify potential substitution effects to Plaintiff's projected revenue, which it measured in three stages that would occur in 2025, 2027, and 2029, respectively. FEIS Vol. II 4-22. The FEIS estimated that, in 2025, Cow Creek's Seven Feathers Casino Resort would potentially experience a 7.1% reduction in annual revenue; that Karuk's Rain Rock Casino would potentially experience a 9.4% reduction; and that Tolowa Dee-ni's Lucky 7 Casino would potentially experience a 2.2% reduction. *Id.* 4-22 – 4-23. For 2027, those annual projected reductions increased to 15.7% for Cow Creek, 16.2% for Karuk, and 3.4% for Tolowa Dee-ni'. *Id.* And in 2029, when Coquille's gaming facility is estimated to be operating at full capacity, the projected reductions are 21.3% for Cow Creek, 23.4% for Karuk, and 5.3% for Tolowa Dee-ni'. *Id.*[5] Thus, in estimating the revenue loss they claim they will experience "once Coquille starts gaming," Plaintiffs are relying

[5] The FEIS's analysis projected temporary losses only during the year in which each phase of project operations would occur. FEIS Vol. II 4-23 ("Estimated substitution effects are anticipated to diminish after the first year of each phase of project operations because local residents will have experienced the casino and will gradually return to more typical and diverse spending patterns.").

on potential losses that are not projected to occur until 2029 to attempt to establish that they will suffer imminent irreparable harm now. Pls.' Mot. 39. Even assuming that the impacts projected to occur in 2029 could establish irreparable harm in 2029 (it is not clear they would), any harm Plaintiffs might experience *in 2029* certainly cannot establish that Plaintiffs "will suffer irreparable injury *while the lawsuit is pending*," as is required. *Fredericks*, 2021 WL 2778575 at *9 (emphasis added). Plaintiffs' case is brought under the Administrative Procedure Act ("APA") and will be resolved on cross-motions for summary judgment based upon Interior's administrative record. *See, e.g.*, *Cigar Assoc. of Am. v. U.S. Food & Drug Admin.*, 436 F. Supp. 3d 70, 80 (D.D.C. 2020) ("When reviewing agency action under the APA, 'summary judgment is the mechanism for deciding whether as a matter of law an agency action is supported by the administrative record and is otherwise consistent with the APA standard of review.'") (citation omitted). It could be ripe for judicial decision this year, and certainly well before 2029.

Nor have Plaintiffs pointed to any other evidence demonstrating that they will suffer imminent irreparable harm. For example, Plaintiffs submitted a declaration attesting that, as of January 12, Coquille was operating eight machines—far from the 650 machines Coquille plans to operate when the project is fully built out. Camarena Decl. ¶ 6, ECF No. 32-9 (stating that, on January 12, 2025, Ms. Camarena observed "eight slot machines up and running and approximately 14 slot machines that were not turned on"). Plaintiffs have not provided evidence that they are presently experiencing revenue loss from those operations, nor demonstrated that they will suffer irreparable harm from those more limited operations in either the near term or in the time it would take to litigate this case in the ordinary course.

Plaintiffs attempt to manufacture imminence by claiming that "there is no basis to assume Coquille will conduct its gaming operation in 'phases'" as the FEIS assumes, suggesting that

perhaps Coquille will operate at full capacity at some (unspecified) time in the near future. Pls.' Mot. 40. But that is mere speculation, which is an insufficient basis for injunctive relief. *See Mexichem*, 787 F.3d at 555 (irreparable harm must be "both certain and great, actual and not theoretical"). Plaintiffs offer no evidence to suggest that Coquille intends to accelerate operational buildup, nor any explanation as to how it possibly could do so before any construction occurs. Indeed, Plaintiffs acknowledge that construction is estimated to take one year. *Id.* Thus, even assuming *arguendo* that Plaintiffs could establish irreparable harm once Coquille's casino is fully built and operational, they have not demonstrated that they would suffer that harm during the pendency of this litigation. Plaintiffs therefore have not demonstrated any irreparable injury that is sufficiently imminent to justify a preliminary injunction.

Second, Plaintiffs also have not established that any revenue loss they might suffer during the pendency of this lawsuit would cause the type of "severe" and "extreme hardship" that would warrant preliminary relief. *Mylan Lab'ys*, 910 F. Supp. 2d at 313. Plaintiffs submit declarations from numerous tribal members and employees who attest to critical services that Plaintiffs provide and express concern about the impact that reduced gaming revenue could have on those services. *See generally* ECF Nos. 32-3 – 32-9. We do not dispute that Plaintiffs provide important services to their members and communities, or that they utilize gaming revenue to do so. But none of the generalized concerns expressed in Plaintiffs' declarations establish the type of "certain" and "severe" economic harm necessary to justify a preliminary injunction.[6] *See*

[6] *See, e.g.*, Corbett Decl. ¶ 12, ECF No. 32-3 ("I am opposed to the Coquille Indian Tribe opening a casino in Medford because it is going to decrease the money available to my Tribe's government to provide the services that we need."); Haskell Dec. ¶¶ 7,8 ECF No. 32-4 (gaming revenue has been "earmarked" to "provide basic services to our tribal members" and to "restor[e] the [Klamath River], which "would be prevented by the elimination of income from Karuk casino."); Jackson Decl. ¶ 13, ECF No. 32-5 (detailing, but not quantifying, tribal programs that

Mexichem, 787 F.3d at 555; *Mylan*, 910 F. Supp. 2d at 313.

Similarly, while Plaintiffs say in their brief that their "enterprises risk *going out of business*," Plaintiffs do not point to any evidence to support that conclusory statement. Pls.' Mot. 38. Instead, they cite (i) the FEIS, which directly contradicts that conclusion (*see* FEIS Vol. II 4-23 (while substitution effects "may impact the operations of [Plaintiffs'] casinos," "they are not anticipated to cause their closure")); and (ii) a declaration from the Karuk Tribe's Chairman stating that "*at full operation* a Coquille casino in Medford" would "most likely prevent the [Karuk] casino from ever becoming an ongoing source of tribal government revenue." ECF No. 2-6 ¶ 7 (emphasis added). Neither cited source establishes that Plaintiffs' enterprises are likely to imminently "go out of business." Plaintiffs' allegations of economic harm do not rise to the extreme level necessary to justify an injunction.

In arguing to the contrary, Plaintiffs cite this Court's decision in *Confederated Tribes of Chehalis Rsrv. v. Mnuchin*, 456 F. Supp. 3d 152, 164 (D.D.C. 2020). In *Chehalis*, this Court preliminarily enjoined the Treasury Secretary from disbursing CARES Act emergency relief funds that Congress allocated for "Tribal governments" to Alaska Native regional and village corporations ("ANCs"). *Id.* at 174.[7] The plaintiffs in *Chehalis* argued that ANCs did not qualify

---

would "face significant funding shortfalls if Coquille is permitted to open a casino in Medford and substantially reduce [Cow Creek's] Tribal government funding"); Ralstin Decl. ¶ 6, ECF No. 32-6 (stating that an "annual loss of $1.2 million gaming revenues by Tolowa will force layoffs" and lead to "budget cuts" but not detailing timing or scope of such cuts); Hervey Decl. ¶¶ 4-6, ECF No. 32-8 (describing estimated reduction in government funds as "substantial," such that it would "likely result in significant cuts to community health care and other services and benefits for Tribal and community members"). While these declarations project impacts from reduced gaming revenue that the declarants conclude will be meaningful, they provide only conclusory and speculative statements, none of which establish that severe harm would occur during the pendency of this litigation.

[7] This Court subsequently terminated the injunction on other grounds. *Chehalis*, 471 F. Supp. 3d 1 (D.D.C. 2020).

as "tribal governments" within the meaning of the CARES Act, and thus that "[a]ny dollars improperly paid to ANCs will reduce the funds to Plaintiffs." *Id.* at 163.

In finding that the plaintiffs had established irreparable harm, this Court observed that "to characterize Plaintiffs' claimed harm as merely 'economic' is terribly misguided." *Id.* Plaintiffs read that observation to mean that irreparable harm is established anytime a tribal plaintiff can "demonstrate a final agency action resulting in substantially diminished funding to Tribal governments for 'core services." Pls.' Mot. 38. That reading ignores the extraordinary circumstances present in *Chehalis* related to the COVID-19 pandemic, which are readily distinguishable from the circumstances here. As this Court explained in *Chehalis*, the CARES Act funds were not intended for "secondary or residual government functions"; instead, they were "monies that Congress appropriated on an emergency basis to assist Tribal governments in providing core public services to battle a pandemic that [was] ravaging the nation, including in Indian country." *Chehalis*, 456 F. Supp. 3d at 164. No such emergency circumstances are present here. And unlike here, where Plaintiffs' alleged losses stem from ongoing gaming revenue, the CARES Act funds at issue in *Chehalis* were a one-time, limited Congressional appropriation that could not be recovered once disbursed. *Id.* The facts that led the Court to find irreparable harm in *Chehalis* are not present here.

Plaintiffs thus have failed to establish that they will suffer any imminent irreparable revenue loss that would warrant preliminary injunctive relief.

B. Plaintiffs' remaining allegations of non-economic injury also fail to establish irreparable harm.

In addition to their claims of economic harm, Plaintiffs also allege a few other categories of injury, none of which is sufficient to establish irreparable harm. First, Plaintiffs appear to claim that they have suffered irreparable harm because they supposedly "were subjected to

'unconstitutional agency authority'" in the form of Interior's NEPA process. Pls.' Mot. 37-38. They are incorrect. Plaintiffs can make no serious argument that it was unconstitutional for Interior to undertake an environmental impact statement under NEPA. That is so because NEPA is a statute that expressly directs federal agencies to analyze the environmental effects of "major Federal actions significantly affecting the quality of the human environment," including by preparing an environmental impact statement. 42 U.S.C. §§ 4332(C), 4336(b)(1); *see also infra* Section II.A.2.

In arguing otherwise, Plaintiffs point to inapposite cases that involved administrative enforcement proceedings where the plaintiffs argued that the enforcement proceedings themselves violated the Constitution. Pls.' Mot 37 (citing *Meta Platforms, Inc. v. Fed. Trade Comm'n*, 723 F. Supp. 3d 64 (D.D.C. 2024), and *Alpine Sec. Corp. v. FINRA*, No. 23-5129, 2023 WL 4703307 (D.C. Cir. July 5, 2023)). Importantly, Plaintiffs here have not been "subjected" to any unlawful enforcement proceeding. And even the cases Plaintiffs cite recognize that "the irreparable injury prong of the preliminary injunction inquiry focuses on the alleged *injury*—not on the cause of action." *Meta Platforms*, 723 F. Supp. 3d at 81. For that reason, the court in *Meta* rejected the plaintiff's argument that "a constitutional violation is always an irreparable injury." *Id.* at 80. Instead, the court made clear that normal rules for irreparable injury applied, even in cases alleging constitutional claims, and denied Meta's request for a preliminary injunction. *Id.* at 97.

Here, while Plaintiffs claim (incorrectly) that Interior's NEPA process violated separation of powers principles due to its reliance on CEQ regulations, they do not explain how Interior's reliance on the CEQ regulations injured them *at all*, much less how it caused them to suffer irreparable injury. *See infra* Section II.A.2 & n.8. Nor would any procedural harm related to

Interior's NEPA process be sufficient to show irreparable harm in any event, even if Plaintiffs had established one (they have not). Indeed, "a chorus of federal courts . . . has found that procedural injury, standing alone, cannot constitute irreparable harm." *E. Band of Cherokee Indians v. U.S. Dept. of Interior*, No. CV 20-757 (JEB), 2020 WL 2079443 (D.D.C. April 30, 2020) (gathering cases). *See also, e.g., Friends of Animals v. U.S. Bureau of Land Mgmt.*, 232 F. Supp. 3d 53, 67 (D.D.C. 2017) ("[A] procedural harm arising from a NEPA violation is insufficient, standing alone, to constitute irreparable harm justifying issuance o a preliminary injunction." (citation omitted)).

Plaintiffs' remaining allegations—raised in the context of their standing arguments—likewise fail to establish irreparable harm. Pls.' Mot. 9-12. For example, Plaintiffs claim that Interior's decision to take land into trust for Coquille will "create immediate irreparable [harm] to the public" by "caus[ing] the public and local and state governments to misunderstand which Tribal people belong where." Pls.' Mot. 9, 10. But Plaintiffs cannot establish irreparable harm on the basis of purported harms to third parties, nor can they show that any supposed "cultural and historical" misunderstanding would be irreparable. The rest of Plaintiffs' allegations relate to tribal services that they allege they will be unable to provide if they face significant revenue shortfalls. Pls.' Mot. 11-12. But as explained above, those allegations are conclusory because they do not establish that any such shortfalls will occur imminently to the degree that would cause the harms Plaintiffs allege. None of Plaintiffs' theories of injury establish that they will suffer irreparable harm that would necessitate a preliminary injunction. The motion should be denied.

II. Plaintiffs are unlikely to succeed on the merits of their claims.

Plaintiffs' motion should also be denied because Plaintiffs have not met their burden to show they are likely to succeed on the merits of any of their claims. The merits of Plaintiffs'

claims will be reviewed under the APA, 5 U.S.C. § 706. To succeed, Plaintiffs will have the burden to establish that Interior's actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A).

As to their NEPA claims, Plaintiffs fail to allege any economic injury that falls within NEPA's zone of interests and therefore they lack prudential standing. Their substantive NEPA claims also fail on the merits because (i) nothing in the D.C. Circuit's decision in *Marin Audubon* supports Plaintiffs' argument that the FEIS violated NEPA, and (ii) they cannot show that Interior failed to carry out any required consultation. And Plaintiffs have not shown that their reading of IGRA and its implementing regulations equates to a likelihood they will succeed on their IGRA claim.

A. Plaintiffs have not demonstrated likely success on the merits of their NEPA claims.

1. Plaintiffs do not allege any environmental injury that falls within NEPA's zone of interests.

NEPA is an environmental law that Congress enacted to promote environmental interests. *See* 42 U.S.C. § 4321; *see also Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 274 (D.C. Cir. 2015). Thus, "[t]he zone of interests protected by the NEPA is, as its name implies, environmental; economic interests simply do not fall within that zone." *Gunpowder Riverkeeper*, 807 F.3d at 274.

For this reason, the D.C. Circuit has repeatedly rejected claims of competitive economic harm of the type Plaintiffs allege here as outside NEPA's zone of interests. *See, e.g.*, *Viasat Inc, v. FCC*, 47 F.4th 769, 780 (D.C. Cir. 2022), 47 F.4th at 780 (alleged injury based on "FCC licens[ing] one of [plaintiff's] competitors" "is a pure economic harm well beyond the purview of NEPA."); *ANR Pipeline Co. v. FERC*, 205 F.3d 403, 408 (D.C. Cir. 2000) ("suppressing competition . . . is not within the zone of interests protected by NEPA."); *Mountain States Legal*

Found. v. Glickman, 92 F.3d 1228, 1235–36 ("NEPA's rather sweeping list of interests . . . do not include purely monetary interests, such as the competitive effect that a construction project might have on plaintiff's commercial enterprise." (internal citation omitted)).

Here, Plaintiffs' allegations of injury primarily consist of future economic harm that they claim will result from competition from Coquille's planned gaming facility. *See, e.g.*, Pls.' Mot. 10-11 (contending Plaintiffs will suffer "substantial gross gaming revenue losses" due to "the loss of customers to Coquille's new second casino."). That competitive injury is precisely the type of economic harm that the D.C. Circuit has consistently found to be "well beyond the purview of NEPA." *Viasat*, 47 F.4th at 780.

Plaintiffs cannot sidestep this problem by pointing to alleged downstream effects of reduced revenue to their budgets and services. Most of the downstream effects that Plaintiffs identify also are not environmental interests that would fall within NEPA's zone of interests. *See* Pls.' Mot. 9-10 (alleging "cultural and historical interests"); 11-12 (alleging "socio-economic and community interests"). As for purported environmental effects, Plaintiffs allege that economic injury from Coquille's gaming facility will "reduce governmental revenues needed to provide Karuk members clean water," "to restore the Klamath River," and to "combat climate change." *Id.* at 12. But any decisions about how to allocate revenue will depend on independent decisions of Karuk, and would not flow directly from Coquille's construction of a Class II gaming facility. Indeed, it would stretch credulity to claim that the renovation of an existing bowling alley on a 2.4 acre property in Medford will cause environmental harm to the Klamath River. The same is true of Plaintiffs' conclusory claim that "Tolowa and Cow Creek will face substantial cuts to Tribal governmental natural resource and environmental protection efforts." *Id*. That economic loss could impact the allocation of Plaintiffs' resources going forward does

not transform their economic injury into environmental harm.

None of Plaintiffs' allegations establish a likelihood that they will suffer environmental harm within the NEPA's zone of interests. Plaintiffs therefore lack prudential standing to pursue a NEPA claim under the APA. *Viasat*, 47 F.4th at 779.

2. Plaintiffs' arguments concerning Marin Audubon *lack merit here.*

Plaintiffs contend that the FEIS is invalid because it cited and relied upon regulations issued by the CEQ, which a divided panel of the D.C. Circuit recently stated are *ultra vires. See* Pls.' Mot. 24–29 (relying on *Marin Audubon.*, 121 F.4th at 908–15). Plaintiffs make the sweeping argument that, if CEQ lacked authority to promulgate judicially enforceable regulations, then a NEPA document like the FEIS here, which relies on those regulations, is by extension also *ultra vires*, rendering unlawful the agency action the EIS was intended to inform. *See* Pls.' Mot. 26. That argument lacks merit.

As an initial matter, the Court need not reach Plaintiffs' substantive NEPA claims at all. Because Plaintiffs have not provided evidence of an irreparable harm that would warrant injunctive relief, the Court can deny Plaintiffs' renewed motion on that basis alone. *See supra* Section I. And because Plaintiffs fail to allege an environmental injury that falls within NEPA's zone of interests, this Court can also find that Plaintiffs are unlikely to succeed on the merits of their NEPA claims without reaching Plaintiffs' arguments concerning *Marin Audubon*. Finally, given that petitions for rehearing are currently pending in the D.C. Circuit, the Court may wish to avoid reaching the merits of Plaintiffs' *Marin Audubon* arguments. *See* Pet. for Reh'g En Banc by Fed. Resp's, *Marin Audubon Soc'y v. FAA*, No. 23-1067 ((D.C. Cir. Dec. 5, 2024), Doc. 2088265; Pet'rs Reh'g Pet. *Marin Audubon Soc'y v. FAA*, No. 23-1067 (D.C. Cir. Nov. 27, 2024), Doc. 2087208; *see also Ely v. U.S. Parole Comm'n*, 1987 WL 11425, at *1 (D.D.C. May 20, 1987) (staying case pending *en banc* decision that was "highly pertinent" to the case); *United*

States v. Germano-Tanka, 2024 WL 3316312, at *1 (D. Haw. July 5, 2024) ("because a petition for rehearing en banc is pending in the Ninth Circuit, the court determines that it is in the interests of justice to stay the pending [ ] motion until the Ninth Circuit determines whether to hear the matter en banc.").

Should the Court nonetheless reach this claim, Plaintiffs have not shown a likelihood of success. Plaintiffs' arguments concerning *Marin Audubon* fail for at least three reasons.

First, Plaintiffs' argument proceeds from a flawed premise that altogether ignores Interior's statutory obligation to comply with NEPA when assessing Coquille's land-to-trust application. NEPA—irrespective of any implementing regulations promulgated by CEQ—requires federal agencies to assess the environmental impacts of all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C); *see also id.* § 4336(b)(1) (2023 amendment to NEPA that also references "an environmental impact statement"). Here, Interior did just that: it prepared the FEIS to assess the environmental impacts of Coquille's application.

Plaintiffs therefore have not demonstrated that "Defendants' FEIS issuance [was] *ultra vires*," Pls.' Mot. 24. To succeed in that argument, Plaintiffs would need to "show a 'patent violation of agency authority.'" *Am. Clinical Lab'y Ass'n v. Azar*, 931 F.3d 1195, 1208 (D.C. Cir. 2019) (quoting *Indep. Cosmetic Mfrs. & Distribs., Inc. v. U.S. Dep't of Health, Educ. & Welfare*, 574 F.2d 553, 555 (D.C. Cir. 1978)). But here, Interior had the authority to undertake an EIS. Interior implemented that authority by preparing an environmental impact statement consistent with NEPA, including the 2023 NEPA amendments. 42 U.S.C. § 4336(b)(1). That Interior also did so consistent with CEQ regulations does not strip Interior of its authority (and obligation) to follow NEPA's statutory directives. Interior's preparation of the FEIS cannot have

been *ultra vires* because NEPA is a statute with which Interior had to comply, and Plaintiffs make no serious argument to the contrary.

Second, Plaintiffs fail to establish that any aspect of the FEIS's reliance on CEQ regulations violated NEPA's statutory provisions. Plaintiffs tick through a list of steps in Interior's NEPA process that were conducted consistent with the CEQ regulations, "[f]rom providing notice to the public and affected Tribal nations, to reviewing and responding to their comments, to considering mitigation measures and proposed alternatives, to suspending and resuming the EIS, to scoping and preparing the DEIS and FEIS, to issuing the ROD." Pls.' Mot. 27. Plaintiffs complain that those procedural steps complied with CEQ's regulations, but they never contend that any of those procedural steps are inconsistent with NEPA.[8]

Plaintiffs cannot cure this deficiency by posturing their claims as arising under "separation of powers principles" rather than NEPA. *See, e.g.*, Pls.' Mot. 25. CEQ is not a defendant in this action, and the question of whether CEQ had authority to issue binding and judicially enforceable regulations has no bearing on the question of whether Interior complied with NEPA's statutory requirements. In the ROD, Interior acknowledged the D.C. Circuit's decision in *Marin Audubon*, and explained that, "[t]o the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations . . . in addition to the Department of Interior's procedures/regulations implementing NEPA . . . and the BIA NEPA Guidebook . . . *to meet the agency's obligations under NEPA*." ROD at 24 n.1, ECF No. 32-2 at

[8] Nor do Plaintiffs argue that they were in any way injured by Interior's citation to the CEQ regulations, or by receiving the extensive procedure that Interior provided consistent with those regulations. It therefore is not clear that Plaintiffs even have standing to pursue this claim. *See TransUnion, LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (plaintiffs must establish standing "for each claim that they press and for each form of relief that they seek.").

PDF p. 51 (emphasis added). Plaintiffs fail to show how Interior's reliance on the CEQ regulations here—even if voluntary—in any way violated NEPA.

Third, nothing in *Marin Audubon* suggests that every NEPA review conducted by a federal agency that cites or relies on the CEQ regulations is invalid. To the contrary, after stating that the CEQ regulations are *ultra vires*, the *Marin Audubon* panel proceeded to evaluate the agencies' NEPA analyses based on petitioners' separate arguments that were made "without invoking CEQ regulations." *Marin Audubon*, 121 F. 4th at 915. Had the panel concluded that the agencies' NEPA analyses were invalid based solely on their citations to the CEQ regulations, it would have had no need to consider petitioners' alternative arguments that were not based on those regulations.

For all these reasons, Plaintiffs are not likely to succeed on the merits of their NEPA claim based on *Marin Audubon*.

3. Plaintiffs have not demonstrated likely success on their failure to consult claims.

Plaintiffs have also failed to meet their burden to demonstrate likely success on the merits of their consultation claims. Plaintiffs argue that Federal Defendants "failed to make a reasonable or good faith effort to consult with Plaintiffs before issuing the FEIS or the ROD" in violation of Interior's NEPA regulations at 43 C.F.R. Part 46.[9] Pls.' Mot. 33-34. That regulation states that

[9] Plaintiffs also contend that Interior failed to follow guidance in its NEPA Guidebook. Pls.' Mot. 33-34. But Interior's Guidebook is not an enforceable rule; it merely "'clarifies' the agency's interpretation of the legal landscape" and does not "bind the agency." *Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30, 66 (D.D.C. 2020). As the Guidebook itself states, it "is strictly advisory" and "does not create policy, add to, delete from nor otherwise modify any legal requirement." ECF 2-2, Ex. 11 at PDF p. 458. That statement confirms the nonbinding, interpretive nature of the Guidebook. *See Friends of Animals v. Pendley*, 523 F. Supp. 3d 39, 54 (D.D.C. 2021). Moreover, the specific provision that Plaintiffs cite is not mandatory: it states that "Tribal governments and their delegated tribal programs *should* not only be consulted, but *should* be partners with the BIA in the NEPA process." ECF 2-2, Ex. 11 at PDF p. 463 (emphasis

Interior "must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies 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. Plaintiffs have not established any violation of that regulation here.

As an initial matter, the plain language of the regulation directs Interior officials to consult with tribal governments about "the environmental effects of any Federal action." *Id.* The subject matter of any required consultation therefore relates specifically to environmental effects. Here, Plaintiffs do not allege that Interior's decision to take the Medford Parcel into trust, and Coquille's subsequent development of an existing bowling alley into a Class II gaming facility, will cause any environmental harm at all, much less environmental harm within Plaintiffs' jurisdictions or related to Plaintiffs' interests. It follows, then, that Plaintiffs have not shown any deficiency in Interior's consultation efforts concerning environmental effects.

Even setting that aside, the information before the Court evinces Interior consultation with Plaintiffs about Coquille's land-to-trust application. Indeed, Interior officials met with representatives from Cow Creek, Karuk, and Tolowa Dee-ni' numerous times to discuss each Tribes' concerns. Newland Decl. ¶¶ 7–12, ECF No. 13-1. In fact, then-Assistant Secretary for Indian Affairs Bryan Newland and members of his staff met with Plaintiffs at least *six times* between February 2023 and December 2024, including hosting four in-person meetings with Plaintiffs at Interior's Washington D.C. headquarters. *Id.* ¶ 11.

Plaintiffs' claim that Interior "precluded Plaintiffs from participating in the NEPA process," Pls.' Mot 23, is likewise contradicted by the record presently before the Court.

---

added). By its plain language, it does not bind Interior officials to any mandatory action or create enforceable rights as to Plaintiffs.

Plaintiffs actively participated in the NEPA process, submitting numerous comment letters, which Interior responded to in the FEIS. *See,* e.g., FEIS Vol. 1, 3-28–29, 3-40–47, ECF 2-2 at PDF p. 46-47, 58-65 (responses to comments submitted by Cow Creek and members);[10] FEIS Vol. I, 3-29, 3-31–40, ECF No. 2-2 at PDF pp. 46-47, 49-58 (responses to comments submitted by Karuk and members);[11] FEIS Vol. I, 3-29, ECF No. 2-2 at PDF p. 47 (responses to comments submitted by Tolowa Dee-ni' and members).[12]

In addition, the FEIS references Interior consultations with Plaintiffs and evaluation of impacts to surrounding communities. *See,* e.g., FEIS Vol. II, 2-30–31, ECF No. 2-2 at PDF p. 156-57 (comparing the different impacts of the proposed project and the possible alternatives in "Comparison of Environmental and Economic Consequences"); *see also* FEIS Vol. II, 3-45–49, ECF No. 2-2 at PDF p. 203-07 (considering the socioeconomic conditions of the affected community); FEIS Vol. II, 4-18–38, ECF No. 2-2 at PDF p. 277-97 (evaluating the different impacts of each alternative on the affected community in more detail). The FEIS further observes that "'competition…is not sufficient, in and of itself, to conclude [there would be] a detrimental impact on' a tribe." FEIS Vol. II, 4-23, ECF No. 2-2 at PDF p. 282 (quoting *Citizens for a Better Way v. U.S. Dep't of the Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925, at *9 (E.D. Cal. Sept. 24, 2015); *see also Stand up for Cal. . v. U.S. Dep't of the Interior*, 919 F. Supp. 2d 51, 76 (D.D.C. 2013). Thus, the FEIS contradicts Plaintiffs' argument that they were not consulted during Interior's NEPA process.

[10] Comments submitted by and on behalf of Cow Creek members include T1, T6, T11, and T13.

[11] Comments submitted by and on behalf of the Karuk Tribe and its members include T2 and T10.

[12] Comments submitted by and on behalf of the Tolowa Dee-ni' Nation and its members include T4 and T7.

Plaintiffs plainly disagree with the outcome of Interior's NEPA analysis and with the decision that Interior reached in the ROD. But Interior was not required to obtain Plaintiffs' consent or agreement before making a decision on Coquille's land-to-trust application. Plaintiffs' disagreement with Interior's ultimate decision does not establish any violation of NEPA or Interior's implementing regulations. *See, e.g.*, *WildEarth Guardians v. U.S. fish & Wildlife Serv.*, 2024 WL 4056654, at *33 (D.D.C. Sep. 5, 2024) (rejecting plaintiffs' claims because "although framed as a NEPA challenge, Plaintiffs simply disagree with the FWS's decision.").

In arguing that Interior violated consultation obligations, Plaintiffs cite two cases, both of which are inapposite. Pls.' Mot. 34 (citing *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) and *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 205 F. Supp. 3d 4, 7 (D.D.C. 2016)). *Quechan* dealt primarily with the National Historic Preservation Act, which imposes altogether different consultation requirements on federal agencies than anything in Interior's NEPA regulations. *Quechan*'s discussion of NEPA was limited to two sentences in which it observed that "[t]he substance of the NEPA claim is less clear," but nevertheless concluded without analysis that tribal plaintiff in that case "was entitled to be consulted under NEPA as under the NHPA." 755 F. Supp. 2d at 1120. *Quechan* provides no basis for crediting Plaintiffs' consultation claims here. And in *Standing Rock Sioux*, the plaintiffs' consultation claims arose under the NHPA, and the court nevertheless *rejected* them because the federal agency had met its NHPA consultations. 205 F. Supp. 3d at 32-33. As in *Standing Rock Sioux*, "this is not a case about empty gestures." *Id.* The record before the Court demonstrates consultation between Interior and Plaintiffs. Thus, Plaintiffs have not shown a likelihood of success on their consultation claims.

B. Plaintiffs have not demonstrated likely success on the merits of their IRA or IGRA claims.

Plaintiffs also fail to identify any violation of the IRA or IGRA and have not met their burden to demonstrate a likelihood to succeed on the merits of those claims. Plaintiffs assert that, in issuing the ROD, Interior "acted contrary to IGRA" and misapplied IGRA's "restored lands exception." Pls. Br. 29. But the theory Plaintiffs present in their brief does not point to that conclusion.

Interior laid out its analysis of its authority to take Coquille's Medford Parcel into trust for gaming and other purposes in the Coquille Decision Letter. *See generally* ECF No. 32-2. Although it involves multiple statutory provisions of the IRA, CRA, and IGRA, Interior's analysis is straightforward.

Plaintiffs do not appear to dispute that Interior had authority to take the Medford Parcel into trust. Instead, they contend that the property is not eligible for gaming. The question of whether the Medford Parcel is eligible for gaming is governed by IGRA. 25 U.S.C. § 2719(b)(1)(B)(iii). Generally, IGRA prohibits gaming on lands acquired after the enactment of the statute in 1988. *Id.* § 2719(a); *Koi Nation of Northern California v. U.S. Dep't of Interior*, 361 F. Supp. 3d 14, 22 (D.D.C. 2019). But tribes that were deprived of federal recognition for any length of time prior to 1988 had fewer opportunities to acquire lands for gaming. Therefore, while IGRA generally prohibits gaming on newly acquired lands, the restored lands exception "helps ensure 'that tribes lacking reservations when [the statute] was enacted are not disadvantaged relative to more established ones,'" *Butte Cty. v. Chaudhuri*, 887 F.3d 501, 503 (D.C. Cir. 2018) (quoting *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003)). As a tribe once removed from and later restored to federal recognition, Coquille is potentially

eligible for the restored lands exception so long as the Medford Parcel itself qualifies as "restored lands." Coquille Decision Ltr. 4-6, ECF No. 32-2.

Under Interior's regulations implementing IGRA, to game on newly acquired lands under the restored lands exception, a tribe must meet four conditions: (1) the tribe was federally recognized at one time, (2) the tribe lost that recognition as described within the regulations, (3) the tribe "was [later] restored to Federal recognition," and finally, (4) "the newly acquired lands meet the criteria of 'restored lands' in § 292.11." 25 C.F.R. §§ 292.7(a)-(d). It is undisputed that Coquille meets the first three requirements.

As to the fourth, to determine whether a property qualifies as "restored lands" and may be taken into trust under the restored lands exception, Interior's regulations require the agency to examine the authority used to restore the tribe to federal recognition. 25 C.F.R. § 292.11(a)-(c). Subsection (a) applies where, as here, "the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe." § 292.11(a).

Under § 292.11(a), "the tribe must show that either (1) [t]he legislation 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," *or* (2) "must meet the requirements of § 292.12." (emphasis added). Section 292.12, in turn, requires a tribe to demonstrate a modern, historical, and temporal connection to the newly acquired lands.

Here, Interior concluded that the Medford Parcel qualified under subsection (a)(1). Coquille Decision. Ltr. 6-7, ECF NO. 32-2. Interior based that conclusion on the CRA providing that "[t]he Secretary may accept any additional acreage *in the Tribe's service area* pursuant to his authority under the [Indian Restoration Act]." Pub. L. No. 101-42, § 5(a) (emphasis added).

Coquille's "service area" includes "Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon." *Id.* at § 2(5). And Coquille's Medford Parcel is located in Jackson County. 25 C.F.R. § 292.11(a)(1); Coquille Decision. Ltr. 6, ECF No. 32-2. Interior therefore reasoned that the Medford Parcel is within the "specific geographic area" that the CRA authorized Interior to take property into trust for Coquille, and Interior concluded that it qualified for the restored lands exception. Coquille Decision. Ltr. 6-7, ECF NO. 32-2.

Plaintiffs raise two challenges to Interior's application of the restored lands exception; Plaintiffs have not demonstrated a likelihood success under either. First, they contend that Interior was required to examine whether Coquille established a sufficient "historical, modern, and temporal connection" to the Medford property under IGRA. Pls.' Mot. 30, citing 25 C.F.R. § 292.12. But Plaintiffs have not explained how § 292.11(a)(1) includes that requirement. The "historical, modern, and temporal connection" does apply if the tribe was "acknowledged under [25 C.F.R.] § 83.8" of the Interior's regulations, *see* 25 C.F.R. §§ 292.11(b), 292.12, or where the legislation restoring a tribe to federal recognition does not provide for a specific geographic area. 25 C.F.R. § 292.11(a)(2). But Coquille was recognized by statute, not the process under § 83.8. And as explained above, the CRA expressly provides the Secretary may take land into trust within a specific geographic area that includes Jackson County and, as a result, Coquille's Medford Parcel.

Plaintiffs' second argument is that the CRA did not actually authorize Interior to take land into trust for Coquille. Pls.' Mot. 30. This is so, according to Plaintiffs, because the CRA references Interior's authority under the IRA. *Id.* In other words, Plaintiffs contend that, because the CRA states that "[t]he Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the [IRA]," only the IRA—and not the CRA—authorizes

Interior to take Coquille's property into trust. *Id.* (citing CRA § 5(a)). Plaintiffs then claim that, as a consequence, no statute actually "authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area" and Coquille's Medford Parcel therefore does not meet the requirements of § 292.11(a)(1).

But Plaintiffs do not adequately explain how their argument comports with Interior's regulation or the CRA. Interior's regulation requires only that the legislation restoring recognition—here, the CRA—also "authorize[] the Secretary to take land into trust for the benefit of the tribe within a specific geographic area." § 292.11(a)(1). And the CRA does just that, by expressly extending the Secretary's discretionary authority to take land into trust within the "the Tribe's service area." Pub. L. No. 101-42, § 5(a). Plaintiffs do not explain how the CRA's reference to Interior's broad discretionary authority to take land into trust for tribes under the IRA somehow invalidates the CRA's more focused and specific authority to acquire land within Coquille's service area as part of the Coquille reservation.

Therefore, Plaintiffs have not met their burden to show that any of Interior's determinations were contrary to IGRA. The IRA, together with the CRA, provided Interior with the authority to take land into trust for Coquille. And, as described under Interior's regulations, IGRA's restored lands exception applies because the CRA specifically authorizes land to be taken into trust within Jackson County, where the Medford Parcel is located. Plaintiffs cannot show a likelihood of success on their IGRA claim.

III. Neither the balance of equities nor the public interest weigh in Plaintiffs' favor.

Finally, neither the balance of equities nor the public interest weigh in Plaintiffs' favor. The balance of equities and public interest factors "merge" when the government is a party. *See Nken v. Holder,* 556 U.S. 418, 435 (2009); *see also Padgett v. Vilsack*, No. CV 24-2425 (LLA), 2024 WL 4006050, *2 (D.D.C. Aug. 30, 2024). The "last two factors merge because 'the

government's interest *is* the public interest.'" *Booth v. Bowser*, 597 F. Supp. 3d 1, 10–11 (D.D.C. 2022) (quoting *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 102 (D.C. Cir. 2021)).

Plaintiffs' balancing argument relies on the harm that Plaintiffs say will occur once Interior takes the Medford Parcel into trust. But Interior has already taken the land into trust. Thus, the harm that Plaintiffs put forward in their balancing test is no longer applicable or remediable through a preliminary injunction against Interior.

To the extent Plaintiffs now ask the Court to temporarily strip the land from its trust status, they have not established that the balance of harms here would justify such extraordinary relief. Indeed, removing the land from trust would require a not just a preliminary injunction but a mandatory injunction, because "its terms would alter, rather than preserve, the status quo by commanding [a] positive act." *Singh v. Carter*, 185 F. Supp. 3d 11, 17 (D.D.C. 2016). To justify that relief, Plaintiffs would have to "meet a higher standard than in the ordinary case by showing that [they are] entitled to relief or that extreme or very serious damage will result from the denial of the injunction." *Id.* As explained above, Plaintiffs have not met their burden to establish that they are likely to succeed on the merits of their claims, much less that they are "entitled to relief." *See supra* Section II. Plaintiffs also have failed to put forward any non-conclusory allegations to show that they will suffer any severe economic harm during the pendency of this lawsuit. Moreover, those alleged harms are properly balanced between Plaintiffs and Coquille. Interior does not have oversight over when Coquille may begin gaming and does not have the authority to review or enforce laws related to the start of gaming on the Medford parcel. Thus, any balancing or public interest argument related to any gaming activity on the parcel is not appropriately made against Interior.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion should be denied.

Respectfully submitted this 31st day of January, 2025.

Lisa Lynne Russell
Deputy Assistant Attorney General

/s/ Angela N. Ellis
ANGELA N. ELLIS
DEVON TICE
Trial Attorney
Natural Resources Section
Environment & Natural Resources Division
United States Department of Justice
Ben Franklin Station, P.O. Box 7611
Washington, DC 20044-7611
(202) 305-0456 (Ellis)
202-514-4352 (Tice)
angela.ellis@usdoj.gov
devon.tice@usdoj.gov

Counsel for Federal Defendants