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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, *et al.*,

Federal Defendants.

Case Nos. 3:24-cv-8582-RFL, 3:25-cv-1640-RFL (Consolidated)

Federal Defendants' Reply in Support of Their Motion for Summary Judgment

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Federal Defendants' motion demonstrated that the U.S. Department of Interior ("Interior") complied with its statutory obligations when deciding to accept land into trust for the Koi Nation of Northern California ("Koi"). Federated Indians of Graton Rancheria ("FIGR") has not met its burden of proving that Interior's decision was arbitrary and capricious or otherwise not in accordance with federal law. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 499 F.3d 1108, 1115 (9th Cir. 2007). Interior's determinations are entitled to heightened deference, and their validity is presumed absent a showing to the contrary. *Id*. Federal Defendants should be granted summary judgment.

I. FIGR's IGRA Claim Lacks Merit

A. The Record Supports Interior's finding that Koi has a "Significant Historical Connection"

FIGR's efforts to discredit specific parts of the Record of Decision ("ROD") are unavailing. FIGR selectively picks and chooses parts of Interior's Indian Gaming Regulatory Act ("IGRA") analysis on which to focus, but this cannot overcome the ultimate fact that the record shows that Koi has had a presence in the vicinity of the Shiloh Site for more than a century. FIGR makes much of the fact Shiloh Site was privately owned, Pl.'s Reply in Supp. of Summ. J. and Opp. to Fed. Gov't Cross-Mot. for Summ. J. 6-7, 11, ECF No. 124 ("Pl.'s Resp."). But this does not affect Koi's ability to establish "the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the *vicinity*" of the Shiloh Site. 25 C.F.R. § 292.2 (emphasis added). Neither IGRA nor the Part 292 regulations require previous ownership. Indeed, the restored lands exception, 25 C.F.R. § 292.7, applies to "newly acquired lands." As explained in the Mechoopda decision, "[t]he restored lands exception is not limited to lands that previously were owned by the Tribe." ECF No. 99-6 at 19. FIGR also fails to make a convincing challenge to Interior's finding that Koi had extensive trade routes and networks around the Shiloh Site. Pl.'s Resp. 7. FIGR notes that a significant historical connection "requires something more than evidence that a tribe merely passed through a particular area." *Id.*; Gaming on Trust Land Acquired After Oct. 17, 1988, 73 Fed. Reg. 29354, 29366 (May 20, 2008). But the record shows that Interior followed this instruction, and its determination is entitled to deference. Interior

detailed Koi's traditional trail system, AR14, and explained that Koi's "post-1855 road path closely paralleled the traditional trail system and also arrived in the Santa Rosa basin on the Mark West Springs Road, immediately east of the Shiloh Site." *Id*.; AR30591. The record contains maps showing these trail systems and their proximity to the Shiloh Site. AR30473-74; AR30596; AR30642. FIGR discounts (Pl.'s Resp. 7, 11) Koi's sourcing of clamshells and magnesite, making beads, and trading them, AR30465-84, but Interior explained that these resources were geographically specific to the site's region. AR27. Dr. Gregory G. White's report recounted the significance of these trade resources and documented trade and subsistence trails near the Shiloh Site, AR30578-634, as did Dr. John Parker's report, AR30635-47. FIGR again presses its point that trade routes, by themselves, are insufficient to establish a significant historical connection. Pl.'s Resp. 7. But Interior relied on much more than just trade routes in making its IGRA finding. Fed. Defs.' Mot. for Summ. J. 10-16, ECF No. 115 ("Defs.' Mot.").

B. Interior Relied on "Historical Documentation" to Make its Findings

Interior's restored lands determination was the result of an extensive evaluation of the evidence and arguments submitted by Koi, FIGR, other tribes, and third parties, as well as factual and historical evidence relevant to whether Koi had "a significant historical connection." Defs.' Mot. 9. FIGR argues that Koi failed to demonstrate its connection with "historical documentation," § 292.2. Pl.'s Resp. 8. But Interior reached the opposite conclusion, which the record supports. Koi submitted scholarly reports with its land into trust application. *Supra* p. 2; AR28751-946; AR30496-520. Interior regularly relies on this type of report to make restored lands determinations. *See Butte Cnty. v. Chaudhuri*, 887 F.3d 501, 504-10 (D.C. Cir. 2018).[1] Koi's request was also supported by substantial primary sources. *See* AR29220-30338; AR30339-432.

FIGR raises a handful of complaints (Pl.'s Resp. 8-13), but none of them show that

[1] *See also* Bear River Band of Rohnerville Rancheria Indian Lands Opinion (Aug. 5, 2002); Elk Valley Indian Lands Determination (July 13, 2007); Karuk Restored Lands Opinion (Apr. 9, 2012). These decisions are available at https://www.nigc.gov/general-counsel/indian-lands-opinions.

Interior's conclusion was arbitrary or capricious. FIGR challenges the conclusions on farm workers in the report, jointly written by a history professor and an anthropology professor, on Koi's connection to Sebastopol and Santa Rosa, *id.* at 8. The report relies, in part, on the HISTORY OF SONOMA COUNTY (1880) (AR29913-26), which discusses the early settlement of Analy Township, AR29925-26. But it is not the only historical document that shows that Koi members had a pattern of orchard-farming and labor in the site's vicinity. The report also discusses and relies on newspaper articles and other historical documents to reach its conclusions about Koi's labor near the site. *See*, *e.g.*, AR28827-35; AR29224-52, 58-60, 73-75 (articles from 1875 to 1924); AR29703-09 (California Indians enrollment affidavits). Contrary to FIGR's claim, Pl.'s Resp. 9, 12, Interior's conclusion that Koi's tribal leader, Tom Johnson, "occupied the area of the Shiloh Site with his family and established tribal political headquarters there," AR27, is also well-supported. The first Beckham report discusses the history of the Johnson family, AR28852-72, and their establishment of "a permanent presence of the Koi Nation in Sebastopol and Santa Rosa more than a century ago," AR28872. The report relies on censuses, AR28852-53; Bureau of Indian Affairs enrollment applications, AR28853-58; newspaper accounts of Johnson's political activities, AR28862-66, 69-70; and other historical documents, AR28860-69. The second Beckham report also details political activities relying on numerous newspaper articles, AR30502-14. It explains how such activities show that Koi has resided for more than a century near the site, "emerged in the 1920s as a major tribal leader and arbiter in Indian affairs in northern California," and has "a well-documented record of its acceptance and leadership among the Indians of the Russian River Valley," AR30516. In support of its argument, FIGR cites its own opposition letter. Pl.'s Resp. 9 (citing AR1825-28). The ROD makes clear that Interior did not ignore FIGR's comments. Instead, Interior described the letters opposing Koi's application, AR21-23, including two from FIGR, AR23 n.90. But Interior did not find these arguments persuasive. AR24. The Administrative Procedure Act ("APA") does not require Interior to accept all countervailing interpretations of record evidence. "[W]here there is conflicting evidence in the record, the [agency's] determination is due deference—especially in areas of [its] expertise… ." *Nat'l Parks & Conserv. Ass'n v. U.S. Dep't of Transp.*, 222 F.3d 677,

682 (9th Cir. 2000).

Contrary to FIGR's claim (Pl.'s Resp. 9, 12), Interior's conclusion that "census reports indicate the presence of tribal ancestors near the Shiloh Site" is supported in the record. AR27. The census data shows that the Johnson family resided in Sonoma County in the early twentieth century.[2] FIGR emphasizes that this "was *the only* Koi family in Santa Rosa in the 1900s." Pl.'s Resp. 9. But when Koi created its "base roll," in 1952—which served as the basis for tribal membership—the Johnson family made up a significant part of the tribe. AR28898-99. It is also not surprising that census data shows some Koi tribal members remained near Lower Lake. Indeed, the ROD acknowledges this, AR1. But what Interior found significant for the restored lands analysis was, among other things, that Koi had tribal ancestors that occupied the area of the site and had a pattern of occupancy, political activity, orchard-farming, labor, and burial locations in and around the site. AR10-17, 24-28. Contrary to FIGR's argument (Pl.'s Resp. 10), Interior has relied on more recent connections to a site, including evidence of burial sites, to find a historical connection. AR27 (discussing a 2010 decision relying on burial grounds from the previous 88 years).[3] Interior's reliance on Koi burial locations from the past 80 years tracks this decision. *Id.*; AR28704; AR28912. FIGR criticizes this evidence because it involves public cemeteries. But the ROD notes that "traditional burial sites are difficult to locate because the Koi Nation historically cremated their dead instead of burying them . . . ." AR27. Still, Koi submitted information on over 20 burial locations in Windsor and Santa Rosa. Defs.' Mot. 16. There is record support for Interior's conclusions and Interior's reasonable interpretation of the evidence should not be jettisoned in favor of FIGR's preferred interpretation.

C. Interior's Decision Aligns with its Past Decisions

FIGR repeats its arguments about record evidence, Pl.'s Resp. 11-13, which Federal

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[2] AR28872 (their residency was documented in the Indian and federal decennial censuses); AR28884 (1920 census data lists 8 individuals in county); AR28895 (1930 census data lists 18 individuals in county); AR28896 (1940 census data lists 8 individuals in county).

[3] This decision is available at: https://www.nigc.gov/images/uploads/indianlands/Redding%20Final%20Decision%20Letter.pdf

Defendants have explained are unfounded, *supra* pp. 1-4. FIGR again looks to Interior's past decisions, Pl.'s Resp. 13, but their argument fares no better. FIGR's cited case—*FDA v. Wages & White Lion Invs.*, 145 S. Ct. 898, 918 (2025)—does not show that the ROD was arbitrary and capricious.[4] Here, as in *Wages & White Lion Invs.,* Interior did not violate the change-in-position doctrine. 145 S. Ct. at 916-28. Rather, the agency issued a restored lands decision based on Koi's "unique history and circumstances." AR18; 73 Fed. Reg. at 29366. In doing so, Interior explained how this case differed from its Guidiville decision, AR26 n.102, and adhered to several other prior decisions. *Id*., AR27 n.111. And the facts in *Wyandotte Nation v. Nat'l Indian Gaming Comm'n,* 437 F. Supp. 2d 1193 (D. Kan. 2006) diverge from this case. Defs.' Mot. 13-14, 22. As in *Confederated Tribes of Grand Ronde Cmty. of Oregon v. Jewell*, although FIGR claims "that the ROD broke from past precedent, . . . the gist of their argument is really that they disagree with [Interior's] finding that the record establishes 'significant' connections to the parcel." 830 F.3d 552, 567-68 (D.C. Cir. 2016). Interior did not make a "sharp break" from its previous decisions in that case, *id*., nor did it here.

This is not, as FIGR suggests, a case where Interior failed to do the "work" and provide enough analysis. Pl.'s Resp. 14. To the contrary, Interior discussed Koi's historical background, AR10-17, addressed arguments opposing and in support of the acquisition, AR21-24, analyzed the evidence, AR24-28, and reasonably explained why the Shiloh Site meets the "restored lands" exception, *id*. In FIGR's view, the ROD's analysis is less detailed than some of Interior's past decisions. But other decisions show that a lengthy analysis is not required. *See* ECF No. 99-5 at

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[4] FIGR partially quotes a phrase from *Wages & White Lion Invs.*; the rest of the phrase is "'abandon[ed a] decades-old practice' applied in enforcement actions." 145 S. Ct. at 918 (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 218 (2016)). In *Encino Motorcars*, the Court found that an agency issued a new regulation with "barely any explanation." 579 U.S. at 222. Acknowledging that a "summary discussion may suffice in other circumstances," the Court held that "because of decades of industry reliance on the Department's prior policy—[the agency's] explanation fell short." *Id*. *Encino Motorcars* confirms that Interior's 29-page ROD complied with the APA.

4-5 (one paragraph of "significant historical connection" analysis).[5] To comply with the APA, "[n]othing more than a brief statement is necessary, so long as the agency explains why it chose to do what it did." *Muwekma Ohlone Tribe v. Salazar*, 813 F. Supp. 2d 170, 190 (D.D.C. 2011) (citation modified), *aff'd*, 708 F.3d 209 (D.C. Cir. 2013). And "[e]ven when an agency explains its decision with less than ideal clarity," a court "will not upset the decision on that account 'if the agency's path may be reasonably discerned." *Alaska Dep't of Env't Conservation v. EPA*, 540 U.S. 461, 497 (2004) (citation modified). Interior exceeded the APA's requirements.

D. FIGR's Remaining Arguments Should be Rejected

FIGR challenges Interior's restored lands determination in two other ways, Pl.'s Resp. 14-16. Both lack merit. FIGR again argues that Interior's Part 292 regulations as applied to the Shiloh Site conflict with IGRA. *Id*. Interior properly applied the regulatory standards that have been part of the regulations since their adoption in 2008. Defs.' Mot. at 17. The regulations simply do not require, as FIGR seeks (Pl.'s Resp. 15), tribes to acquire lands as near as possible to their original ancestral homeland. *See* AR20; 73 Fed. Reg. at 29360-61, 67. Nor do the regulations require that tribes have "lived or worked on that land," Pl.'s Resp. 15, to establish a "significant historical connection," § 292.2. For good reason, because neither of these requirements is in IGRA's restored lands exception, 25 U.S.C. § 2719(b)(1)(B)(iii), and it "would create too large a barrier to tribes in acquiring lands" and be "inconsistent with IGRA." 73 Fed. Reg. at 29360. Contrary to FIGR's claims, Interior's application of the regulations here was not "limitless," Pl.'s Resp.; rather, it reflects IGRA's intent to promote "parity" between established tribes and restored tribes, tribal economic development, and self-sufficiency. *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015); *Koi Nation of N. California v. U.S. Dep't of the Interior*, 361 F. Supp. 3d 14, 41-42, 47 (D.D.C. 2019) (finding the restored lands exception compensates tribes for lost opportunities).[6]

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[5] *See also* Habematolel Pomo of Upper Lake Determination (Nov. 21, 2007) (three paragraphs of analysis), https://www.nigc.gov/images/uploads/indianlands/landopinion%2011.21.07.pdf

[6] FIGR's other citations do not support a finding that there is a conflict with IGRA. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), did not involve Part 292, of course, and held that courts should "do their ordinary job of interpreting statutes, with due respect for the views of the

FIGR's argument about the Indian canon (Pl.'s Resp. 16) should also be rejected. FIGR's brief confirms that it is arguing that Interior viewed Koi's evidence too leniently. *See id*. (contending Interior is "paper[ing] over inconsistencies"). FIGR appears to demand a standard of proof that is not required by the regulations. Defs.' Mot. 18. FIGR also quotes part of a sentence in the ROD, Pl.'s Resp. 16, but ignores that the preceding sentence reads: "In this case, the Tribe's evidence must be viewed within the context of the violence and disregard for Indian life that were hallmarks of California from the 1820s to the early 1900s." AR26. Viewing Koi's evidence against "this backdrop," *id*., is consistent with the Part 292 regulations and Interior's previous decisions. *See* 73 Fed. Reg. at 29366; *Confederated Tribes of the Grand Ronde v. Jewell*, 75 F. Supp. 3d 387, 413 (D.D.C. 2014), *aff'd*, 830 F.3d 552 (discussing the Scotts Valley decision, which explained that the restored lands analysis is "based on the unique history and circumstances of any particular tribe").

II. The Director was Authorized to Issue the ROD

Interior's Director of the Bureau of Indian Education ("Director") had a temporary delegation of authority to issue the ROD. Defs.' Mot. 18-21. Under Reorganization Plan No. 3 of 1950, the Secretary and the Assistant Secretary issued a succession memorandum (AR03-05) that provided the Director with this authority. FIGR makes no attempt to grapple with Reorganization Plan No. 3 of 1950, which established that the Secretary may authorize "the performance by *any other officer*, or by any agency or employee, of the Department of the Interior of *any function* of the Secretary" to ensure continuity. 43 U.S.C. § 1451, 15 Fed. Reg. 3174 (May 24, 1950) (emphasis added). FIGR's arguments (Pl.'s Resp. 4-5) are not supported by Reorganization Plan No. 3, Interior's Departmental Manual ("DM"), or caselaw.

Initially, FIGR claimed that the succession memorandum did not comply with the DM's "Delegation 200 Series." *See* Pl.'s Mot. for Summ. J. 17, ECF No. 98 ("Pl.'s Br."). After Federal Defendants explained that FIGR relied on provisions that do not apply, Defs.' Mot. 20, FIGR has

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Executive Branch." *Id.* at 403. *Butte Cnty. v. Hogan*, 609 F. Supp. 2d 20, 29 (D.D.C. 2009), held that a broad interpretation of "restoration of lands" in IGRA is "permissible."

largely dropped that claim, *see* Pl.'s Resp. 5. But FIGR continues to argue that the memorandum should comply with other procedural or formalistic requirements. *Id*. These quibbles lack merit. Reorganization Plan No. 3 does not require the Secretary to use any one form for making temporary delegations. Defs.' Mot. 20.[7] In *Stand Up for California! v. U.S. Dep't of the Interior*, 994 F.3d 616, 625-26 (D.C. Cir. 2021), the D.C. Circuit rejected similar flyspecking and held that a memorandum issued by Interior's Deputy Secretary did not violate the DM. FIGR's arguments should be rejected too.

Because the Interior official just before the Director in the succession memorandum was unavailable when the ROD was ripe, the Director properly signed and issued the ROD. Defs.' Mot. 20. FIGR insists that the third subordinate official should have made the decision, and that the record should show that immediate action was required. Pl.'s Resp. 4. But FIGR points to nothing in the record (or elsewhere) to show that Interior acted in bad faith or that the third subordinate official was available at the time the ROD was ripe. Contrary to FIGR's claim, the presumption of regularity applies here. "The presumption of regularity has been applied far and wide to many functions performed by government officials." *Angov v. Lynch*, 788 F.3d 893, 905 (9th Cir. 2015). The record includes the succession memorandum, AR03-05, as well as the Director's signature noting that he is "[e]xercising by delegation the authority of the Assistant Secretary-Indian Affairs," AR36. Having invoked the presumption of regularity, FIGR "must rebut with clear, affirmative evidence to the contrary." *Gov't of Guam v. Guerrero*, 11 F.4th 1052, 1058 (9th Cir. 2021). "In the absence of clear evidence to the contrary, courts presume that Government agents have properly discharged their official duties." *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2004) (citation modified). FIGR's speculation fails to show

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[7] FIGR contends that the Federal Defendants "attempt[] a sleight of hand" and argue that 302 DM 2.4C's procedures apply. Pl.'s Resp. 5. To the contrary, Federal Defendants explained that the succession memorandum covered two situations: acting performance under the Federal Vacancies Reform Act and a temporary delegation of authority under Reorganization Plan No. 3. Defs.' Mot. 19-20. Federal Defendants then explained that the memorandum complied with the DM's format for the Vacancies Act (302 DM 2.4C) and that Reorganization Plan No. 3 did not require a specific format. *Id*.

that the Director lacked authority.

III. FIGR's Privileges and Immunities Have Not Been Diminished, nor was Interior's Decision Under the IRA Arbitrary or Capricious

FIGR's privileges and immunities have not been arbitrarily "diminished" by Interior permitting Koi—like FIGR—to have land taken into trust for gaming. 25 U.S.C. § 5123(f); Defs.' Mot. 21-22. In doing so, Interior considered Koi's "unique history and circumstances," just as it did when issuing other restored lands decisions. Interior also harmonized the ROD with past decisions. FIGR's arguments are circular in many ways. FIGR's Indian Reorganization Act ("IRA") argument (Pl.'s Resp. 16-18) rehashes its complaints about Koi's significant historic connection and Interior's prior decisions. This has been thoroughly addressed by Interior and Federal Defendants. Defs.' Mot. 13-16, 22-23; *supra* pp. 1-9. Further, Interior's previous decisions on land into trust applications are not akin to legislative rules creating standards for future applications. Even so, Interior acted consistent with its Cloverdale, Mechoopda, and FIGR decisions. In Cloverdale, Interior found that the tribe had occupied its former rancheria since 1925 and that the land at issue was contiguous and within the former rancheria. ECF. No. 99-5 at 5. But neither IGRA nor the Part 292 regulations require this. 73 Fed. Reg. at 29366. And in Cloverdale, as it did here, Interior relied on cemetery evidence. ECF No. 99-5 at 5. In Mechoopda, as here, the tribe established a historical connection to land that was not part of its former rancheria and that it did not previously own. ECF No. 99-6 at 19. Interior was able to deduce that connection because, pre-contact with settlers, the tribe had a village about eight miles from the parcel. *Id*. at 21-22. Like this case, Interior also relied on evidence that the tribe ventured near the parcel "for trade, ceremonies, and the use of nearby lands for sustenance . . . ." *Id*. at 23. FIGR is different because Congress mandated its restoration of land. ECF No. 99-11 at 4 (citing 25 U.S.C. § 1300n-3(c)). As Interior noted, "[t]his factor alone almost conclusively establishes that the land will constitute restored lands . . . ." *Id*. at 6. Still, Interior considered the same sort of evidence as it did here, such as the distance between where the tribe lived and the site, "trade[]," and "trails." *Id*. at 7. At bottom, none of these tribes have the same "unique history and circumstances," AR18. FIGR cannot show that Interior's analysis of Koi's unique

facts deprived FIGR of any privileges.[8]

FIGR's remaining argument (Pl.'s Resp. 18-19) ignores Interior's thorough examination of land use conflicts and jurisdictional issues. Defs.' Mot. 23-25. FIGR does not counter Federal Defendants' point that Interior must *consider* such impacts, not *resolve* any conflicts identified. *Id.* at 23. Contrary to FIGR's claim, Interior provided a "rational basis" for its decision. Interior acknowledged that the proposed land use was "not consistent with" Sonoma County's land use and zoning designations, AR33, AR30962, but concluded Koi's proposal would not physically disrupt neighboring land uses (residences, agriculture, a church, commercial buildings, and a storage yard) or prohibit access to neighboring parcels, AR30962-64. Interior also considered it significant that land .3 miles to the northwest had "large scale" and "high intensity" commercial uses. AR30964. FIGR suggests that the Court shouldn't consider the Final EIS's ("FEIS") land use findings, Pl.'s Resp. 19, but the FEIS supports, and explains in detail, the rationale for Interior's conclusion. Interior reasonably determined that Koi's proposal would have a minimal impact. AR30964; AR18088-89. The Court should not second-guess Interior on this basis. An IRA argument based on 25 C.F.R. § 151.11(b)'s off-reservation acquisitions instructions was rejected in *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F. Supp. 3d 212, 263 n.24 (D.D.C. 2016), *aff'd*, 879 F.3d 1177 (D.C. Cir. 2018). This Court should find it "unpersuasive" too. *Id*. The acquisition was considered under § 151.11(b)'s off-reservation criteria because Koi does not have a reservation. Any measure of distance from its "reservation" is therefore irrelevant. And the "greater weight" FIGR seeks to impose only applies to those concerns raised by state and local governments under § 151.11(d). Finally, FIGR fails to acknowledge that Koi's former Rancheria land is not a reservation. Defs.' Mot. at 25. Interior considered the distance

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[8] None of FIGR's other citations (Pl.'s Resp. 17-18) aid their claim. In *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 368 (1998), the Court found that administrative board erred by refusing "to credit probative circumstantial evidence" and by requiring "evidentiary demands" that went beyond the board's substantive standard. In *Koi,* 361 F. Supp. 3d at 53-57, the court ultimately concluded that Koi was similarly situated to two other tribes. This offers little to show that Interior violated the IRA by finding that Koi *can* demonstrate a historic connection. *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, 633 F. Supp. 3d 132, 154-56 (D.D.C. 2022), found no IRA violation.

from the Shiloh Site to Koi's longtime tribal office, Koi's orchards, and residences, *id*. at 25, as well as FIGR's comments, AR21-23, AR 23 n.90. This easily meets the APA standard.

IV. Interior Complied with the NHPA

Interior complied with the National Historic Preservation Act ("NHPA") in approving Koi's application.[9] Interior made a reasonable and good faith effort to identify historic properties that included appropriate consultation with FIGR and other tribes. Interior's review led to the reasonable conclusion that there were no historic properties that might be affected by taking the Shiloh Site into trust for gaming. When the State Historic Preservation Officer ("SHPO") did not timely object to that finding, it was proper for Interior to move forward to issue the ROD.

A. Interior Made a Reasonable and Good Faith Effort to Identify Historic Properties and Reasonably Evaluated Historic Significance

Federal Defendants detailed the "reasonable and good faith effort" Interior made to identify historic properties and evaluate historic significance. 36 C.F.R. § 800.4(b)(1); Defs.' Mot. 25-30. It was reasonable for Interior to conclude, as a result of that process, that a destroyed house and scattered historic and prehistoric items, many not reflecting any human activity at all, did not qualify for inclusion on the National Register of Historic Places. FIGR's arguments to the contrary are unavailing. FIGR argues the "government fails to come to grips with the relevant legal standard," though it is unclear what legal standard FIGR is referencing. Pl.'s Resp. 26. If it is the standard for harmless error, this reflects a misunderstanding on FIGR's part. Interior is not making a harmless error argument, because there was no error here. Rather, the record shows that Interior made a reasonable and good faith effort to identify historic properties in compliance with the NHPA. The standard set by the Ninth Circuit for evaluating whether consultation was timely initiated is whether a plaintiff has identified information it would have provided had it been

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[9] FIGR states "nothing has changed" since the Court granted its motion for a temporary restraining order. Pl.'s Resp. 20. The Court is not bound by preliminary conclusions made in ruling on a motion for emergency relief, and for good reason. *See S. Ore. Barter Fair v. Jackson Cnty.*, 372 F.3d 1128, 1136 (9th Cir. 2004). In December, Interior had not completed its decision-making and neither the parties nor the Court had the administrative record, The Court now has the benefit of a completed decision-making process, the record, fulsome summary judgment briefing, and time to consider that briefing on a non-emergency basis.

earlier consulted. *See infra* pp. 13-14. But that is not a harmless error argument.

Next, FIGR argues Interior did not consider the report of Alex DeGeorgey and a report produced by FIGR's archeologist. Pl.'s Resp. 26-27. Interior's consideration of these reports from a procedural perspective, and FIGR's argument that it did not have an opportunity to discuss issues raised therein, is discussed below. *See infra* p. 17. As to substance, the deficiencies in the DeGeorgey report speak for themselves. Defs. Mot. 35-36. Federal Defendants' motion "d[id] not engage with FIGR's August 2024 report," Pl.'s Resp. 27, because FIGR's motion did not discuss it. The report took issue with the percentage of the Shiloh Site surveyed. *Id.* Dr. Parker reported that "[g]round visibility was excellent" during his survey and that "[e]very 3rd row was walked and inspected." AR217. He was "confident that all major cultural sites were discovered and recorded." *Id*. Dr. Parker also visited the site a second time to collect obsidian samples. AR261. Archeologist Thomas Origer's team also walked "every 4 to 5 vineyard rows," likewise reporting that ground visibility was excellent, in addition to using a hand auger at points along Pruitt Creek. AR240. And the canine survey extensively covered the property, as depicted in the map at AR282.[10] Considering these studies individually, but especially taken together, the Shiloh Site was searched extensively.

FIGR also contends that Interior "failed to account for Koi's proposed casino," but this is contradicted by the record. Pl.'s Resp. 27. Archeologists surveying the site considered the potential for buried sites. AR206, 239-40. Interior facilitated a canine survey to search for buried remains. AR270-332. Archeologists observed subsurface excavations. AR252-58, 334-45. Interior considered use of ground penetrating radar but found it infeasible due to characteristics of the Site. AR32159. It is unclear what else FIGR would have had Interior do to consider the proposed casino development short of digging up the entire property to the depth necessary for construction, the very activity it seeks through this suit to keep from happening.

Finally, the Ninth Circuit's decision in *Tohono O'odham Nation v. U.S. Dep't of Interior*,

[10] The map on this page is being redacted at FIGR's request. An unredacted copy was filed under seal at ECF No. 11-6.

138 F.4th 1189 (9th Cir. 2025), does not help FIGR. FIGR argues that "it was enough for a party to identify a site that the agency had not properly identified as a protected cultural property—as FIGR has here." Pl.'s Br. 27. But the Ninth Circuit was reviewing an order granting a *motion to dismiss*, not a motion for summary judgment or, as FIGR states, a preliminary injunction. 138 F.4th at 1193 & n.1. This entails a different standard of review than for summary judgment or even a preliminary injunction. *Id.* at 1202. The Ninth Circuit found, "construing the complaint in Plaintiffs' favor" as required in considering a motion to dismiss, *id.* at 1193, that plaintiffs' identification of a site allegedly not properly identified was enough to raise a plausible—not necessarily successful—claim to relief. *Id.* at 1202-04. That is not the standard FIGR must meet to succeed. It is FIGR's burden to prove, based on the record, that Interior's decision was arbitrary or capricious. At most, FIGR identified a difference in expert opinion on how to apply National Register Criteria to resources found on the site. Pl.'s Br. 27. But how Interior applied the criteria here was reasonable, and that finding and how Interior weighed competing expert opinions on the issue is entitled to significant deference. *Ecology Ctr. v. Castaneda*, 574 F.3d 652, 658-59 (9th Cir. 2009).

B. Interior Appropriately Consulted With FIGR

The record shows that Interior timely initiated consultation and gave FIGR a reasonable opportunity to advise on the identification of historic properties and articulate its views. FIGR's response continues to overstate its role as a consulting party and the requirements of the NHPA, and to underplay the opportunities it had to provide input throughout Interior's review of Koi's application.

1. Interior Timely Initiated Consultation

Interior initiated Section 106 consultation more than two years before it made a decision on Koi's application, giving FIGR a reasonable opportunity to articulate its views and advise on the identification of historic properties. AR96, 1455. Whether consultation was timely initiated ties back to this reasonable opportunity; consultation need not be initiated within a certain amount of time after receiving an application or beginning study. Thus, the standard governing the Court's review is whether FIGR has "identif[ied] any new information that [it] would have

brought to the attention of [Interior] had it been consulted earlier[.]" *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of the Interior*, 608 F.3d 592, 609 (9th Cir. 2010). FIGR has not done so. FIGR has identified only methodological disagreements. And FIGR *did* raise those methodological disagreements throughout consultation. *See* Defs.' Mot 33.

Further, Interior's consideration of studies performed on Koi's private land without FIGR's involvement did not violate the NHPA. FIGR's assertion that it "could not have advised on" information gained through those studies because it was not directly involved in conducting them, Pl.'s Resp. 21, is contradicted by FIGR's comments advising Interior of its views and concerns with those studies. AR363-72. And FIGR's argument that "'meaningful' consultation [was] effectively 'impossible'" without the studies only underscores why Interior sequenced consultation the way it did. Pl.'s Br. 21-22 (quoting *Quechan Tribe of the Fort Yuma Indian Rsrv. v. U.S. Dep't of the Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010)); *see also* AR18099. Indeed, this statement in FIGR's brief is quoting a court's holding that *not* providing information as the basis for consultation rendered an agency's decision arbitrary and capricious.

FIGR's attempt to distinguish the Ninth Circuit's decision in *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800 (9th Cir. 1999) is unavailing. In *Muckleshoot*, the Forest Service conducted field surveys, then initiated consultation and public comment, reconsidered its listing eligibility decision for one property after comment from the SHPO, and then executed the land exchange at issue. 177 F.3d at 803-06. This is the same sequencing of surveys and initiation that FIGR takes issue with here, and which the court in *Muckleshoot* found did not violate the NHPA. The Ninth Circuit's decision upholding the Forest Service's action did not turn on the agency changing its eligibility finding for one property. Pl.'s Resp. 22. The *Muckleshoot* plaintiff argued there were *additional* eligible sites present, but that the agency refused its request to perform more studies. *Id.* at 806. The Ninth Circuit was thus focused on properties for which the Forest Service did *not* change its position. As stated by Advisory Council on Historic Preservation (and quoted by the Ninth Circuit), even if the agency "fell short in involving the Tribe in developing its identification strategy . . . the record demonstrates the [Agency] did make a reasonable and good faith effort to identify historic properties that may be affected" by the undertaking. *Id.* at

807 n.4. As discussed in Federal Defendants' Motion, Interior went beyond what was found acceptable in *Muckleshoot* by conducting further study at FIGR's request. Defs.' Mot. 28-30.

FIGR's additional arguments on timing do not fully engage with the record. First, FIGR has repeatedly taken issue with Interior conducting obsidian hydration testing, as recommended by a professional archeologist, without notice to FIGR. *See* Pls.' Resp. 21 n.5. For the reasons discussed above, Interior did not need to directly involve FIGR in surveys and testing done to search for historic properties. But Federal Defendants also note that the report from the testing does not indicate that any of the samples tested were destroyed, AR266-68, and the samples were returned to the site after testing, AR18178.[11] FIGR also repeatedly points to the time between initiation of consultation and the November 2023 meeting. Pl.'s Resp. 20, 22. FIGR ignores that part of that timespan is due to FIGR's own months-long delay in responding to the reports Interior circulated. *See* Defs.' Mot. 28. At base, FIGR has not shown how this impeded its ability to advise on the identification of historic properties. FIGR argues its August 2023 comments "could not be addressed because [Interior] had *already* determined that no historic properties would be affected before it even met with FIGR." Pl.'s Resp. 22. But the record shows Interior did consider FIGR's comments, met with FIGR to discuss their concerns, and conducted additional study. *See* Defs.' Mot. 8, 28-30.[12] Further, FIGR's argument that Interior's reinitiation of consultation in 2023 could not overcome the alleged consultation deficiencies proceeding that point is irreconcilable with the procedural nature of Section 106 and that vacatur and remand for further consultation is the only remedy even a court could provide.

2. FIGR Had a Reasonable Opportunity to Advise on the Identification of Historic Properties

FIGR effectively concedes that it had an opportunity to advise on the identification of historic properties, and that its real grievance is instead what it sees as Interior "ignor[ing]

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[11] The report on the testing results contains a comment column and abbreviations to be used there. AR266-68. One abbreviation is "DES," which would indicate a specimen was "destroyed in the process of thin section preparation," which "sometimes occurs during the preparation of extremely small items[.]" AR268.

[12] While FIGR asserts Interior "with[e]ld studies months after completion[] throughout the consultation," Pl.'s Resp. 21, its citation to the record does not support this statement.

FIGR's advice." Pl.'s Resp. 22. It then returns to FIGR's methodological disagreements with the experts on which Interior relied. Those methodological disagreements are not well founded and do not form the basis for a valid NHPA claim. FIGR primarily focuses on its concerns with the canine survey, arguing that Interior only "makes it *seem* like" it considered FIGR's concern regarding water on the property during the survey. *Id.* at 23. In December 2024, Interior met with the professional who conducted the canine survey to discuss FIGR's concerns regarding weather conditions, and she stated no further surveys were warranted. AR23590. FIGR argues the memorandum summarizing this call was just a "belated attempt to buttress a conclusion." Pl.'s Resp. 23. But Federal Defendants made clear throughout proceedings on FIGR's motions for emergency relief that Interior's decision-making process was not over and that Interior could conduct additional review if something arose warranting it. ECF No. 26 at 11-15; 12/20/2024 Tr. at 14:3-14; ECF No. 40 at 7-8. Indeed, that was Federal Defendants' primary, jurisdictional defense. FIGR cannot nullify part of the decision-making process by prematurely filing suit and then claiming that the pendency of litigation taints everything post-dating their complaint. FIGR also cannot make this argument only to rely two paragraphs later on a declaration from FIGR's THPO created expressly to support its motion for a temporary restraining order. Pl.'s Resp. 24. Other documents FIGR relies on, like Alex DeGeorgey's report, post-date the FEIS and would not be part of the record if the FEIS marked the end of the decision-making process.

3. FIGR Had a Reasonable Opportunity to Articulate Its Views

FIGR's argument that it did not have a reasonable opportunity to articulate its views is belied by the record, which contains numerous comment letters from FIGR, minutes from Interior's meeting from FIGR, and several reports submitted by FIGR. FIGR protests that Interior "issued its 'no historic properties' determination while FIGR was still reviewing the information that [Interior] had provided, and before it had even received all the reports [Interior] relied on." *Id.* It is unclear what additional reports FIGR is alleging Interior had and did not provide at this point. But FIGR's argument again ignores that Interior sent its initial request for concurrence to the SHPO more than three months after Interior circulated the cultural resource reports to FIGR and requested its comments. *See* Defs.' Mot. 8. More importantly, it ignores that

Interior nonetheless reinitiated consultation.

FIGR next takes issue with how Interior responded to the DeGeorgey report and two reports by FIGR's archeologist. Pl.'s Resp. 24. FIGR argues there is "no trace" that Interior considered these reports. *Id.* But the evidence of their consideration is the fact that they are in the administrative record, which "includes all documents and materials that the agency directly or indirectly considered . . . [and nothing] more nor less." *Pac. Shores Subdivision, Cal. Water Dist. v. U.S. Army Corps of Eng'rs*, 448 F. Supp. 2d 1, 4 (D.D.C. 2006) (alteration in original). Further, with respect to the two reports by FIGR's archeologist, they were discussed in FIGR's comments on the Draft EIS, which cited the reports extensively. AR17787, 17791-95. Interior responded to that letter and its concerns in Interior's response to comments. AR18177-79. It is true Interior did not specifically respond to the DeGeorgey report, but that does not mean it was not considered. Expecting an agency to respond to every comment or document submitted to it is not realistic, particularly when it 1) does not provide new information and 2) is submitted after public comment periods have closed.[13] *Cf. Granat v. U.S. Dep't of Agric.*, 238 F. Supp. 3d 1242, 1255 (E.D. Cal. 2017).

Finally, Federal Defendants' motion accurately characterized *Quechan* and *Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165 (D. Ariz. 2024). FIGR does not point out anything allegedly incorrect about Federal Defendants' discussion of *Quechan*. And *Hualapai* did not turn simply on an alleged lack of sensitivity. Pl.'s Resp. 24. FIGR quotes the concluding sentence of a paragraph finding the Bureau of Land Management "arbitrarily substituted the Arizona Protocol Agreement for its Section 106 obligations," and that "the Agreement does not give the BLM license to ignore evidence of effects . . . that are clearly acknowledged in the NEPA process[.]" *Hualapai*, 755 F. Supp. 3d at 1190. This loops back to Federal Defendants' discussion of *Hualapai*. *See* Defs.' Mot. 36. Indeed, FIGR's characterization of *Hualapai* would run into the Ninth Circuit's decision in *Muckleshoot*, which upheld the Forest Service's action even where

[13] While there was a waiting period after publication of the FEIS during which Interior continued to accept comments, it was not a period set aside for public comment.

the Service "could have been more sensitive to the needs of the Tribe[.]" 177 F.3d at 806.

C. Interior's Obligations Under Section 106 Were Fulfilled When the SHPO Did Not Timely Object to Interior's Findings

Federal Defendants are not arguing that the SHPO's failure to timely respond makes the ROD unreviewable under the NHPA; what Federal Defendants *are* arguing is that the SHPO's failure to provide a response by the deadline made it proper under the Section 106 regulations for Interior to move forward with issuing the ROD. *See* 36 C.F.R. § 800.4(d)(1)(i). Interior did not "waive" this argument by later voluntarily meeting with the SHPO to discuss their concerns, and FIGR provides no legal support for this argument. Pl.'s Resp. 24. It would create a perverse incentive to find that discussing issues with the SHPO to try in good faith to resolve disagreement means an agency is "waiv[ing]" its ability to move forward as it is otherwise entitled to under the regulations implementing the NHPA. Interior's ability to move forward under Section 800.4(d)(1)(i) makes FIGR's arguments regarding Interior's compliance with Section 800.4(d)(1)(ii)—relegated to a footnote—irrelevant. Pl.'s Br. 25 n.7.

V. Interior Complied with NEPA

A. Interior Evaluated a Reasonable Range of Alternatives

Interior complied with NEPA by considering "a reasonable range of alternatives to the proposed [] action" of taking the Shiloh Site into trust for Koi's proposed Project. 42 U.S.C. § 4332(2)(C)(iii). Interior's consideration of alternatives was properly limited to those that were feasible and thus had the potential to meaningfully inform consideration of environmental impacts. "Black-letter administrative law instructs that when an agency . . . decides what qualifies as . . . feasible . . . a reviewing court must be at its 'most deferential.'" *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1512 (2025) (quoting *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983)). Interior reasonably concluded that an off-site alternative in Lake County was speculative and thus did not warrant further consideration in the NEPA process. *See* Defs.' Mot. 40-43. FIGR's assertions to the contrary continue to rest on faulty legal arguments and its own speculation about Koi's finances and the market.

Contrary to FIGR's assertions, Interior did not "limit its review to the single parcel of

land Koi happened to own, ignoring all other possibilities." Pl.'s Resp. 28. Interior considered locations other than the Shiloh Site in Sonoma and Lake Counties at the scoping stage and explained why those alternatives were not feasible. Defs.' Mot. 40-43; *see also* AR23251-56; AR20467-90. As Interior explained in response to the public comments, "[c]onsideration of a highly speculative circumstance under which the Tribe would be able to purchase an alternative site that could be developed with an economic enterprise with which to fund the tribal government would not aid in expanding the range of alternatives in a manner that promotes informed decision-making." AR20488. While FIGR might disagree with that conclusion, it is not "ignoring" the alternative. Pl.'s Resp. 28.

FIGR's argument that Interior's narrowing of alternatives at the scoping phase is "[p]erhaps most damning" is a baseless attempt to turn the routine NEPA process into a pre-determination argument. Pl.'s Resp. 30. That an agency need only consider feasible alternatives presupposes the agency will engage in a process to determine what alternatives are feasible. *See Seven Cnty.*, 145 S. Ct. at 1513. The NEPA regulations Interior applied here provided that agencies make those determinations through the scoping process. 40 C.F.R. § 1502.4 (2024). FIGR's assertion that Interior narrowed alternatives "twenty-two months *before* it even issued a Draft EIS and invited public comment," Pl.'s Resp. 30, incorrectly implies that the public had no chance to provide input at the scoping phase. In initiating scoping in May 2022, Interior invited the public to "submit comments identifying potential . . . alternatives to be considered." AR7849. FIGR itself submitted two comment letters during that period. AR26015-22; AR26023-28. In total, Interior received and considered 262 letters during scoping. AR23245. Interior's Alternatives Evaluation specifically considers "alternative sites identified by the public." AR20487 (capitalization altered). Nor did Interior "ignore" comments submitted later in the NEPA process "urging consideration of a Lake County alternative." Pl.'s Resp. 30; *see also, e.g.*, AR18083-86. FIGR's argument to the contrary rests on its repeated characterization of Interior explaining disagreement with a commenter or not adopting a commenter's position as "ignoring" them in violation of NEPA. That characterization turns NEPA's procedural mandate on its head.

FIGR's argument that Interior had an obligation to consider alternative sites in Lake

County is inconsistent with NEPA and Ninth Circuit precedent. FIGR does not actually dispute that *'Ilio'ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083 (9th Cir. 2006), is distinguishable from this case in critical respects. Pl.'s Resp. 28. Instead, FIGR shifts its reliance to other cases. First, FIGR's quotation from *Muckleshoot* omits important context. The court in *Muckleshoot* rejected the Forest Service's argument that an alternative requiring it to "purchase[]" private land "outright" instead of exchanging them for other Forest Service lands was speculative and thus did not need to be considered under NEPA. 177 F.3d at 814. As the Ninth Circuit itself has stated, *Muckleshoot* presented "very rare circumstances." *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1208 (9th Cir. 2004) (internal quotation omitted). The Circuit in *Muckleshoot* was "troubled by [the Forest Service's] selective willingness to rely upon the availability of funding sources beyond [its] direct control." *Muckleshoot*, 177 F.3d at 814. "In th[at] circumstance," the Ninth Circuit "concluded that it would have been reasonable to consider seeking federal funds as an alternative." *City of Sausalito*, 386 F.3d at 1209. That "very rare" circumstance and internal contradiction on what is realistic is not present here. *Id.* at 1208. Further, in *Muckleshoot*, the agency was considering its own exchange of lands. 177 F.3d at 803. That is different from this situation, where an outside party has submitted a request or application to the agency. The government has more latitude in conducting its own affairs than it does in reviewing applications from private parties. *Compare City of Angoon v. Hodel*, 803 F.2d 1016 (9th Cir. 1986) (concerning the consideration of a permit application), *with Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058 (9th Cir. 2010) (concerning BLM's exchange of its own lands). Interior could not, for example, direct Koi to buy other land or seek out other sources of funding. The *Muckleshoot* plaintiff also identified a specific source from which the agency itself could request funds. 177 F.3d at 814. But Interior probing into Koi's finances would undermine Koi's sovereignty as a federally recognized Tribe. *Cf. Grand Ronde*, 75 F. Supp. 3d at 421.[14]

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[14] The out-of-circuit decision FIGR relies on, *Van Abbema v. Fornell*, 807 F.2d 633 (7th Cir. 1986), is inconsistent with NEPA and Ninth Circuit precedent. *See City of Angoon*, 803 F.2d at 1021. As the D.C. Circuit has observed, there are "two critical flaws in *Van Abbema*[.]" *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991). The first is that "[i]n commanding agencies to discuss 'alternatives to the proposed action,' [] NEPA plainly refers to alternatives" to the *agency's* action, "not to alternatives to the applicant's proposal." *Id.* "An

The Ninth Circuit's decision in *City of Angoon* supports Federal Defendants' position. There, Shee Atika, an Alaska Native Village Corporation, sought a permit for a log transfer facility to obtain a "safe, cost effective means of transferring timber harvested on their land to market." 803 F.2d 1021. The district court imposed a broader purpose and need of "commercial timber harvesting" and found that the agency should have considered an alternative in which Shee Atika would exchange its land for different land somewhere else where it could build its transfer facility. *Id.* The Ninth Circuit reversed, because the applicable regulations required consideration of the purpose for "which the applicant has submitted his proposal." *Id.* The IRA's regulations impose an analogous mandate by requiring a tribe applying to have land taken into trust provide either 1) an instrument showing it has title or 2) "a written agreement or affidavit" from the current owner "that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust status[.]" 25 C.F.R. § 151.14(a). FIGR protests that reliance on these regulations is a "post-hoc rationalization," Pl.'s Resp. 29-30, but the Part 151 regulations structured Interior's consideration of Koi's application. *See, e.g.*, AR20470 (Alternatives Evaluation), 23246 (Scoping Report), 30782 (FEIS), 42-43 (ROD).

Interior's consideration of alternatives here was appropriately "shaped by the application at issue and by the function that [Interior] play[ed] in the decisional process." *Citizens Against Burlington*, 938 F.2d at 199. Interior's role in the decision process was to determine whether to grant the application Koi submitted, not to decide where Koi should build its casino in the first instance. As in *City of Angoon*, requiring Interior to identify and consider a site that would "induce both an offer" from a seller/transferor "and acceptance" from Koi or vice versa "is to visit upon it a task that would involve almost endless speculation." 803 F.2dd at 1021. FIGR argues that *City of Angoon* is distinguishable because the goal was providing a "safe, cost

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agency cannot redefine the goals of the proposal that arouses the call for action; it must evaluate alternative ways of achieving *its* goals, shaped by the application at issue and by the function that the agency plays in the decisional process." *Id.* "Congress did expect agencies to consider an applicant's wants." *Id.* "The second problem with *Van Abbema*" is that it does not answer "why and how to distinguish general goals from specific ones and just who does the distinguishing." *Id.* at 199. "Implicit in *Van Abbema*," and contrary to NEPA and Supreme Court precedent, "is that the body responsible is the reviewing court." *Id.*; *see also Seven Cnty.*, 145 S. Ct. at 1512.

effective means of transferring timber harvested on *[Shee Atika's] land* to market[,]" and was thus "site-specific." Pl.'s Resp. 29 (emphasis in original). But FIGR does not explain how harvesting and transferring timber from *Shee Atika's land* is any more inherently tied to a specific piece of land than building a casino on *Koi's land*. In turn, FIGR's argument that Koi should build a casino elsewhere is no different than the *City of Angoon* plaintiffs' argument that Shee Atika should harvest and transport timber elsewhere.

Interior's prior decisions to which FIGR points are not to the contrary. Most important, fee-to-trust applications are heavily fact-specific. Defs.' Mot. 42. What may be possible or reasonable for one tribe may not be for another. FIGR is also referencing EISs and decisions unaccompanied by their respective administrative records, which would contain more information on the Tribes' applications, the properties considered, and the like. Further, while an agency can go beyond what is legally required in reviewing an application, this does not create a new, higher legal standard. In any case, FIGR has not identified a significant break from how Interior considered prior applications. FIGR's response references fee-to-trust applications from the Tejon Indian Tribe and Wilton Rancheria. But in reviewing Tejon's application, Interior eliminated suggested alternative sites from further consideration due to lack of a willing seller and other "financial viability considerations." Tejon EIS App. B at 1.[15] FIGR also argues Interior "not only identified land that the [Wilton Rancheria] did not own in Alternative F but eventually selected that parcel over the tribe's preferred alternative in the Draft EIS." Pl.'s Resp. 30. This omits that, after publication of the Draft EIS, Wilton Rancheria withdrew its fee-to-trust application and "submitted a revised [] application, requesting that [Interior] instead acquire the property identified as Alternative F in the [Draft EIS.]" Wilton ROD at 10 (ECF No. 99-7).

B. Interior Took a Hard Look at Environmental Impacts

Interior complied with NEPA in reviewing potential impacts to a wide range of resources, including the six subject areas identified by FIGR: 1) cultural resources, 2) land use conflicts, 3) wildfire and evacuations, 4) traffic, 5) groundwater, and 6) wastewater. FIGR's arguments to the

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[15] Available at https://www.tejoneis.com/wp-content/uploads/2020/10/final-eis-vol-2-appendices-a-d.pdf (last visited July 8, 2025).

contrary do not fully engage with the law or the record.

First, FIGR continues to fail to engage with NEPA's requirements, which "mandate[] separate and distinct procedures" from the NHPA. *Pres. Coal., Inc. v. Pierce*, 667 F.2d 851, 859 (9th Cir. 1982). It is not "nonsensical," Pl.'s Br. 30, to point out that different legal standards can be applied to the same administrative record and result in different conclusions about legal compliance (though the record here establishes Interior complied with both the NHPA and NEPA). Though the information gained during the NHPA consultation process may inform an agency's NEPA review, FIGR cannot simply point back to its NHPA arguments to sustain its NEPA claim. FIGR's arguments regarding mitigation measures also miss the mark. NEPA does not require "proactive protection" or any substantive protection at all. *Id.* at 31. But in any case, the ROD does impose proactive monitoring requirements for the most potentially sensitive areas of the Shiloh Site through Mitigation Measure A. AR85-86. And the distinction FIGR tries to draw between Mitigation Measures B and C and the measures the Ninth Circuit approved of in *Te-Moak* is one without meaning. Pl.'s Resp. 31. The fact that this case involves a land into trust transaction resulting in a change in legal regime does not have any bearing on the measures' ability to mitigate on-the-ground impacts to cultural resources. Rather, the distinction FIGR draws is another attempt to characterize its rights under California state law in a manner that is clearly contrary to the text of the California Public Resources Code and which this Court has rejected. *See* Defs.' Mot. 44-45; ECF No. 52 at 12-14.

Second, the record shows that Interior thoroughly considered potential land use conflicts stemming from Koi's Proposed Project. *See* Defs.' Mot. 46-47. In its response, FIGR focuses on the ROD's statement that taking the Shiloh Site into trust would remove it from state and local zoning law, AR74, to argue that Interior engaged in "some jiggery-pokery" on this issue. Pl.'s Resp. 31. But the record, including other portions of the ROD, shows Interior considered the exact issues regarding surrounding land uses that FIGR argues it should have. *See* Defs.' Mot. 46-47; AR 64; AR30959-66; AR31542. It would not comport with the "rule of reason" governing NEPA review to remand to Interior just for it to make line edits to the ROD. *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (citation omitted); *see also Seven Cnty.*, 145 S. Ct. at 1514.

Third, FIGR's argument about wildfire impacts doubles down on a battle of the experts the Court has no role in resolving. Federal Defendants described the extensive study Interior devoted to wildfire risks and Interior's consideration of the analysis FIGR submitted during the NEPA process. Defs.' Mot. 47-49. Where experts disagree, Interior is entitled to rely on its own experts, and it is not the Court's role to resolve expert disputes. *Ecology Ctr.*, 574 F.3d at 658-59; *Lands Council v. McNair*, 537 F.3d 981, 1000 (9th Cir. 2008) (en banc), *overruled in part on other grounds*, *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). FIGR argues Interior is not owed deference here because "this is not a battle of competing, credible analyses who all asked the right questions and came to different conclusions" and because "its chosen experts failed to perform the basic analytical work the situation demands." Pl.'s Resp. 32. But what the "right questions" are and what "work the situation demands" are themselves matters of expertise. These technical questions are classic examples of where "reviewing court[s] must be at [their] 'most deferential.'" *Seven Cnty.*, 145 S. Ct. at 1512 (quoting *Balt. Gas & Elec.*, 462 U.S. at 103).

And while FIGR claims it did not, Interior *did* respond to FIGR's "fundamental critique that" its analysis "wasn't based on a site-specific analysis of evacuating a casino during a real-world wildfire." Pl.'s Resp. 32 (pointing back to Pl.'s Mot. 45-46). As Federal Defendants discussed, the study on which Interior relied incorporated "[e]mpirical data related to wildfire related emergency evacuation scenarios . . . from both the Tubbs and Kincade fires in Sonoma County as well as data from actual traffic counts for the study area intersections" around the Site. Defs.' Mot. 49 (quoting AR18206 and explicitly responding to Pl.'s Mot. 45-46).

Interior also complied with NEPA in considering potential mitigation measures. *See* Defs. Mot. 49-50. FIGR argues Interior cannot "defer[] the creation of an actual evacuation plan to some point in the future[.]" Pl.'s Resp. 32. This argument presupposes a plan must be created in the first place. But there is no such requirement—NEPA does not require any mitigation measure "be actually formulated and adopted." *Okanogan Highlands All. v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989)). Nor was Interior's consideration of potential mitigation measures here the sort of "broad generalizations and vague references to mitigation measures" found inadequate in

Neighbors of Cuddy Mountain v. U.S. Forest Serv., 137 F.3d 1372, 1381 (9th Cir. 1998). "In *Cuddy Mountain,* [the Ninth Circuit] read the EIS as suggesting that 'the Forest Service *did not even consider* mitigating measures for the creeks actually affected by the sale'" at issue. *Okanogan Highlands All.*, 236 F.3d at 476 (emphasis is original) (quoting *Cuddy Mountain*, 137 F.3d at 1381). Here, Interior considered mitigation measures in sufficient detail to meaningfully assess potential environmental impacts in compliance with NEPA. *See* Defs.' Mot. 48-49.

Fourth, FIGR argues that Interior "inexplicably reject[ed] the standards in the Institute of Transportation Engineers (ITE) methodology for casinos," resulting in an alleged undercounting of trips. Pl.'s Resp. 32. Interior's explanation is in its response to comments on the FEIS:

> Trip generation rates provided in the ITE's Trip Generation Manual for casinos . . . are representative of sites commonly found in Las Vegas and Reno (i.e., large, urban). In other words, the characteristics of the sites used to establish the ITE trip generates are not similar to the characteristics of the Proposed Project (i.e., comparatively small, rural). For this reason, it was determined that the ITE trip generation rates . . . would yield inaccurate analysis results. To more accurately reflect trip generation for the Proposed Project, trip generation data obtained from other tribal casino and hotel facilities in California were considered.

AR18149. Disagreement with this rational explanation is not grounds for a NEPA claim. *Seven Cnty.*, 145 S. Ct. at 1513.

Finally, as discussed in Federal Defendants' motion, Interior thoroughly considered groundwater and wastewater issues. Defs.' Mot. 51-53. Rather than engage with Federal Defendants' arguments or Interior's analysis, FIGR's response states it "stands on its initial arguments and the expert analysis in the record[.]" Pl.'s Resp. 33. Federal Defendants stand on their detailed responses to those arguments, which establish that Interior complied with NEPA.

CONCLUSION

For these reasons and those set forth in Federal Defendants' motion, the Court should enter summary judgment for Federal Defendants.

Respectfully submitted this 8th day of July, 2025.

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