IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR, et al.,

Defendants.

No. 1:24-cv-03594-APM

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Plaintiffs Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek"), Karuk Tribe ("Karuk"), and Tolowa Dee-ni' Nation ("Tolowa")—a coalition of Tribal nations in Oregon and California (collectively, "Plaintiffs")—move for summary judgment on six of their claims for declaratory and injunctive relief under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*[1]

Plaintiffs challenge the unconstitutional final decision of Defendant U.S. Department of the Interior ("DOI") and its officers and sub-agencies (collectively, "Federal Defendants") approving Intervenor-Defendant Coquille Indian Tribe's ("Coquille") application to take a 2.42-acre parcel of land in Medford, Oregon into trust for the purpose of opening and operating Coquille's second casino. Plaintiffs challenge the adequacy of Federal Defendants' (1) Final Environmental Impact Statement ("FEIS") issued on November 22, 2024, pursuant to the National Environmental Policy Act of 1969 ("NEPA"), and (2) Record of Decision ("ROD") issued on January 10, 2025, pursuant to the Indian Reorganization Act ("IRA"), Coquille Restoration Act ("CRA"), and Indian Gaming Regulatory Act ("IGRA").

Plaintiffs are entitled to summary judgment on six of their claims because Federal Defendants' final decision, embodied in the FEIS and ROD, is *ultra vires* under the U.S. Constitution and violates the plain terms of IGRA, the IRA, NEPA, and the federal regulations implementing those statutes. The FEIS was based on the Council for Environmental Quality's ("CEQ") regulations implementing NEPA, which Federal Defendants treated as mandatory and binding. But ten days before the FEIS was issued, the D.C. Circuit held that those CEQ regulations are *ultra vires* and invalid under separation of powers principles. *See Marin Audubon Soc'y v. Fed.*

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[1] Plaintiffs do not move for summary judgment on their sixth claim for relief.

Aviation Admin., 121 F.4th 902 (D.C. Cir. 2024). Both the FEIS and the ROD unlawfully rely on those unconstitutional CEQ regulations as mandatory and binding.

Likewise, the agency's final decision entirely failed to consider or apply certain IRA regulations, 25 C.F.R. Part 151, applicable to "off-reservation" acquisitions, despite concluding in 2020 that Coquille's application failed to satisfy those same requirements. Nor does the agency's final decision explain why the agency changed its position on why Coquille's application now satisfies Part 151's requirements. Finally, the final agency decision contravenes the plain terms of IGRA and its implementing regulations, violates the IRA's "privileges and immunities" clause, fails to take a "hard look" in violation of NEPA, and is otherwise arbitrary and capricious. The agency's final decision must be set aside under 5 U.S.C. § 706(2).

Because no material fact is in dispute and Plaintiffs are entitled to judgment as a matter of law, the Court should grant their motion for summary judgment. Fed. R. Civ. P. 56(a).

II. STATEMENT OF FACTS

Coquille's status as a federally recognized Indian tribe, like many other Oregon tribes, was terminated by Congress in 1954. *See* Pub. L. No. 588, 68 Stat. 724 (Aug. 13, 1954). In 1989, the year after IGRA's enactment, Congress passed the CRA, thereby restoring Coquille to federal recognition, establishing a "service area"[2] "composed of Coos, Curry, Douglas, Jackson and Lane Counties," and providing for the establishment of a reservation in Coquille's aboriginal homelands, now known as Coos and Curry Counties. Pub. L. No. 101-42, 103 Stat. 91 (June 28,

[2] The "service area" referenced in connection with a Tribe's restoration act refers to a defined geographic area where Tribal members are considered to be residing on Indian lands for the purpose of accessing certain federal services and benefits. A Tribe's service area is not necessarily a reflection of its historical territory, however, as it is generally based on factors unrelated to IGRA's restored lands exception analysis and is often "ill-defined, overlapping and potentially inconsistent" with a Tribe's aboriginal occupation of the land. 73 Fed. Reg. 29354, 29365 (May 20, 2008).

1989) (codified as 25 U.S.C. § 715 *et seq*. (omitted)). The CRA mandates that the U.S. Department of the Interior Secretary ("Secretary") acquire land for Coquille in Coos and Curry Counties, "not to exceed one thousand acres." *Id.* § 5(a). The CRA also permits the Secretary to acquire land in Jackson County (or other counties in Coquille's service area) for Coquille "pursuant to [the Secretary's] authority under the [IRA] of June 18, 1934 (48 Stat. 984)." *Id.*

On October 9, 1993, Coquille requested that several parcels in Coos County, totaling approximately 954 acres, be taken into trust. Pursuant to the CRA, the Secretary exercised his ministerial authority, transferred the requested acreage into trust, and established Coquille's reservation. CC-027743–44; CC-026027.[3] Coquille opened its first gaming facility on these lands that same year, CC-000192–93, later moving it to another parcel, known as the "Mill Site," in 1995. CC-000494–95. Nearly two decades after opening its first gaming facility, on November 2, 2012, Coquille submitted a letter application to DOI asking it to take a 2.42-acre fee parcel it owns in Medford, Oregon into trust pursuant to the Secretary's authority under the IRA and CRA, stating its intention to use the land for a second gaming establishment. CC-011662–68.

By then, Coquille's Mill Casino, a 30,000-square-foot class III gaming facility on its reservation in North Bend, Coos County, Oregon, was in full operation. CC-026022. Coquille continues to operate the Mill Casino, Hotel, and RV Park in North Bend today. CC-025996. North Bend is located about 170 miles from Medford. CC-020035. Coquille was also earning revenue from the sale of timber from the 5,410-acre Coquille Forest. CC-025996. More recently, Coquille launched Tribal One, a conglomerate of construction-related businesses that is wholly owned by

[3] The United States currently holds in trust a total of 6,434 acres for Coquille, including Coquille's 954-acre reservation, 80 acres of waterfront, and approximately 5,400 acres of timberland, all of which are located on or near Coquille's aboriginal homeland, now known as Coos and Curry Counties. CC-026027; CC-013041-139; CC-018082-166.

the Tribe. According to its website, from 2016 to 2024, Tribal One successfully secured *hundreds of millions* of dollars in federal government contracts. CC-025216–17. Since 2022, Coquille has also been operating a hotel, Compass by Margaritaville, in Medford. CC-026923–24.

In May 2020, DOI clarified that the CRA explicitly made the acquisition of the Medford parcel discretionary pursuant to the Secretary's authority under the IRA—*not* the CRA—rendering the statute-based restored lands exception, found at 25 C.F.R. § 292.11(a)(1), inapplicable to Coquille's application. The agency denied Coquille's application to take the Medford parcel into trust under the IRA's implementing regulations, particularly 25 C.F.R. § 151.11(b) (1995), determining Coquille's anticipated benefits did not outweigh the potential concerns raised by Oregon, Jackson County, and the City of Medford, which each possessed jurisdiction over the Medford parcel. CC-020047–48. DOI therefore discontinued preparation of an environmental impact statement ("EIS"). 85 Fed. Reg. 55026, 55026–27 (Sep. 3, 2020).

On December 22, 2021, however, the agency reversed itself, withdrawing its previous denial of Coquille's trust application and resuming EIS preparation. CC-020315; 86 Fed. Reg. 73313, 73313 (Dec. 27, 2021). DOI claimed the agency's prior denial resulted in the "cancellation of the environmental review process" required under NEPA, purportedly depriving the agency "of important information critical to making a final determination." CC-020315. DOI did not explain how Coquille could now satisfy § 151.11(b)'s balancing test. CC-020315; *see* CC-020343–45; 86 Fed. Reg. 73313, 73313 (Dec. 27, 2021).

On November 22, 2024, DOI published the FEIS, pursuant to NEPA and the CEQ regulations found at 40 C.F.R. Part 1500, identifying as its proposed action the acquisition of 2.42 acres for Coquille to "remodel . . . an existing bowling alley into an approximately 30,300-square-foot gaming facility . . . in the City of Medford, Oregon." CC-025957.

On January 10, 2025, after Plaintiffs initiated this action on December 23, 2024 (ECF

No. 1) and unsuccessfully moved to temporarily enjoin Defendant Assistant Secretary of the Interior for Indian Affairs ("AS-IA") from issuing the ROD (ECF No. 32), the AS-IA issued a ROD accepting the Medford Site into trust pursuant to the IRA and the CRA, and finding it eligible for gaming under IGRA's "restored lands" exception. CC-026848. According to Federal Defendants, their final decision to permit Coquille to establish a second casino in Medford is "necessary to facilitate tribal self-sufficiency, self-determination, and economic development," a principal goal of IGRA and the IRA. CC-026847.

That same day, Plaintiffs amended their Complaint to address the unlawful issuance of the ROD. ECF No. 31. Despite having failed to give the National Indian Gaming Commission ("NIGC") the 120-day notice required by 25 C.F.R. § 559.2(a), Coquille opened a casino on the Medford parcel the next day, January 11, 2025; the casino remains fully operational. CC-000480; CC-026466; CC-003729; CC-003929. Today, Coquille owns or controls approximately 45 contiguous acres in total in Medford, including the 2.42-acre trust parcel where Coquille now operates its second casino alongside the Compass by Margaritaville Hotel. CC-025217; CC-025218 (map of Coquille's Medford property holdings).

Plaintiffs will suffer devastating economic, environmental, and social impacts as a direct result of Federal Defendants' unconstitutional and otherwise unlawful issuance of the FEIS and ROD. Plaintiffs will be imperiled by "substitution effects" of Coquille's Medford casino and the "loss of customers at [Plaintiffs'] existing commercial businesses" to Coquille's new casino. CC-026153–55. Cow Creek[4] operates its sole casino, the Seven Feathers Casino ("Cow Creek's Casino"), on trust land within its reservation in Canyonville, Oregon, about 73 miles (or one hour's

[4] Like Coquille, Cow Creek's status as an Indian tribe was terminated by Congress in 1954; then, restored by Congress in 1982. 25 U.S.C. § 691 *et seq.*; Pub. L. No. 97-391, 96 Stat. 1960 (Dec. 29, 1982).

drive) from the Medford site. CC-026154. The FEIS predicts Cow Creek's Casino will lose *at least* 21.3% of its gross gaming revenue to Coquille's new casino. *Id*. Karuk[5] operates its sole casino, the Rain Rock Casino and Hotel ("Karuk's Casino"), on its trust land located about 53 miles (less than one hour's drive) from the Medford site. *Id.* Karuk's Casino draws a significant portion of its patronage, and thus its revenue, from the greater Medford area. *Id.* The FEIS predicts that the Karuk Casino will lose up to *at least* 23.4% of its gross gaming revenue to Coquille's new casino. *Id.* Finally, Tolowa[6] operates its sole casino, Lucky 7 Casino ("Tolowa's Casino") on trust land within its reservation located about 118 miles from Coquille's second casino in Medford. CC-026155. The FEIS predicts that Tolowa's Casino will lose *at least* 5.3% of its gross gaming revenue to Coquille's new casino. *Id*.[7] Economic reports submitted to DOI predict even *higher* substitution effects, including annual gross gaming revenue losses of 28.5% for the Cow Creek Casino and 37% for the Karuk Casino. CC-026938; CC-025086. In addition, these reports show that the Cow Creek Casino will lose up to 52.1% of its annual non-gaming revenue, and the Karuk Casino will lose up to 51.7% of its annual non-gaming revenue. CC-026942; CC-025086.

This dramatic drop in Plaintiffs' gross gaming revenue will inevitably result in significant decreases in total revenue that each Tribal government uses to fund governmental programs and

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[5] Karuk was administratively terminated "for a period between the late 1940s through the 1970s. The Tribe applied to have a parcel of land it had acquired into trust for gaming purposes in 2003. DOI initially denied Karuk's application in 2004, but upon reconsideration, found the land eligible for gaming under the connections-based restored lands exception in 2012. CC-12625-37.

[6] Tolowa's status as an Indian tribe was terminated by Congress in 1958, pursuant to the California Rancheria Act (the Tribe was then known as the Smith River Rancheria), Pub. L. No. 85-671, 72 Stat. 619 (Aug. 18, 1958). Tolowa was restored in 1983 as the result of a stipulated judgment in *Tillie Hardwick et al. v. United States et al.*, No. 79-1710, Dkt. No. 91 (N.D. Cal. Aug. 2, 1983).

[7] "Gross gaming revenue" is not the same as profit. The former consists of the gaming establishment's "win" before deducting operating expenses and debt service, so the reduction in Plaintiffs' actual profits would be substantially greater than these figures. *See* CC-024214 at n.9.

other public services, such as programs protecting and restoring the environment on or near the trust lands upon which many of their citizens depend for their subsistence and maintenance of their culture and traditions. *See, e.g.*, CC-025039 (representing that the Karuk Casino's gaming revenue is the Tribe's "sole source of revenue for providing essential governmental services to [its] people"). Such losses in overall Tribal government revenue will have profound environmental consequences for Plaintiffs and their citizens, including increased greenhouse gas ("GHG") emissions and vulnerability to wildfires, given these Tribes' location in Southern Oregon and Northern California. *See* CC-026091, CC-026055 (wildfire impacts, one of the primary sources of GHG in Medford); CC-026215 (GHG emission impacts)[8]; CC-025059 (showing Karuk's exposure to devastating wildfires); CC-012768–69, CC-024214 (showing the devastating impact Coquille's Medford casino will have on Karuk's ability to meet the immediate and long-term needs of its citizens, including recovery from wildfire damage).

The FEIS concedes that "[a]n adverse economic, fiscal, or social impact would occur" if Coquille's Medford casino "were to negatively alter the ability of" Plaintiffs and other Tribal governments "to perform at existing levels or alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services." CC-026150–51; CC-026311. Yet, the FEIS did not even attempt to quantify the "environmental justice impact" on Plaintiffs' ability to provide governmental and social services because, according to the FEIS, the agency was unable to determine these negative impacts "[w]ithout confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the

[8] The FEIS predicts that establishing Coquille's second casino will result in approximately 120,426 tons of CO_2 emissions and a social cost of $8,978,256 over the course of the project's lifetime. CC-026215. The "social cost" of GHG emissions includes "monetary value of the net harm to society associated with adding an amount of that GHG to the atmosphere." CC-026214.

respective tribal governments and tribal members." CC-026311; *see* CC-026150–51. But the Federal Defendants never asked for that information; had they complied with their obligations to consult with Plaintiffs—including by requesting information about the revenues of their casinos and the amounts distributed to their respective Tribal governments—Federal Defendants could have expressly considered these negative environmental justice impacts on Plaintiffs, among other Tribal nations, *prior* to issuing the FEIS, in compliance with NEPA and other federal law.

III. LEGAL STANDARD

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[I]f the dispute involves the review of agency action," the Court's inquiry is "more nuanced." *Deppenbrook v. Pension Benefit Guar. Corp.*, 778 F.3d 166, 171 (D.C. Cir. 2015). The Court must "review the administrative record directly to determine whether the agency violated the [APA] by taking action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or is 'unsupported by substantial evidence.'" *Forsyth Mem'l Hosp., Inc. v. Sebelius*, 639 F.3d 534, 537 (D.C. Cir. 2011) (citing 5 U.S.C. § 706(2)).

"To survive review under the 'arbitrary and capricious' standard, an agency must 'examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co. ("State Farm")*, 463 U.S. 29, 43 (1983)). The Court may uphold agency action based only on the grounds the agency relied upon when taking that action—not on new grounds raised later in litigation. *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943); *see State Farm*, 463 U.S. at 43 ("The reviewing court should not attempt itself to make up for such deficiencies . . . [and] may not supply a reasoned basis for the agency's action that the agency itself has not given.").

IV. ARGUMENT

A. Plaintiffs Have Standing to Challenge the Final Agency Decision.

Plaintiffs have Article III standing to challenge the validity of the FEIS and ROD because (1) they have suffered a "concrete, particularized, and actual or imminent" injury due to Defendants' issuance of the unconstitutional FEIS and ROD; (2) Plaintiffs' injuries are "fairly traceable" to Federal Defendants' conduct; and (3) a favorable court decision would likely redress Plaintiffs' injuries. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008) (listing Article III standing elements); *see United States v. S.C.R.A.P.*, 412 U.S. 669, 686 n.12 (1973).

"It is settled law that 'an agency's failure to prepare (or adequately prepare) an [EIS] before taking action with adverse environmental consequences' constitutes the 'archetypal procedural injury' redressable under Article III." *Sierra Club v. FERC*, 827 F.3d 36, 43 (D.C. Cir. 2016). The Supreme Court has likewise found Article III standing where a party asserted a "here-and-now injury" from "subjection to an illegitimate proceeding" based on a separation-of-powers violation. *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 191 (2023); *Sidak v. U.S. Int'l Trade Comm'n*, 678 F. Supp. 3d 1, 11 (D.D.C. 2023) (plaintiff asserted a "here-and-now injury" from "subjection to an illegitimate proceeding"); *Elec. Power Supply Assoc. v. FERC*, 391 F.3d 1255, 1261–62 (D.C. Cir. 2004) (plaintiffs have standing based on their "right to participate in contested FERC hearings when their financial interests are at stake").

As this Court has previously explained, in these types of procedural injury cases, "'the primary focus of the standing inquiry is not the imminence or redressability of the injury to the plaintiff, but whether a plaintiff who has suffered personal and particularized injury has sued a defendant who has caused that injury." *Gulf v. Burgum*, 775 F. Supp. 3d 455, 470 (D.D.C. 2025) (quoting *Fla. Audubon Soc'y v. Bensten*, 94 F.3d 658, 664 (D.C. Cir. 1996) (en banc)); *see also WildEarth Guardians v. Jewell*, 738 F.3d 298, 305 (D.C. Cir. 2013) (courts "relax the redressability and imminence requirements for a plaintiff claiming a procedural injury," but not "the requirement of injury in fact").

1. Injury-in-Fact

Plaintiffs easily demonstrate they have suffered injury caused by Federal Defendants' issuance of an unconstitutional FEIS and ROD. The "touchstone" of the injury-in-fact element is whether Federal Defendants' failure to follow NEPA affects Plaintiffs' "concrete interests in a manner distinct from society as a whole"—as opposed to "mere violation[s]" of a procedural requirement or "generalized harm" to the environment. *Gulf*, 775 F. Supp. 3d at 470.

Plaintiffs can demonstrate they will suffer concrete and particularized injuries due to Federal Defendants' unconstitutional FEIS and ROD based on the FEIS's uncontested findings of economic harm to their governments and gaming facilities. *See* CC-026154–55; CC-026938; CC-02942; CC-025086. There is no dispute that Plaintiffs will each suffer substantial cuts in gross gaming revenues due to the unconstitutional and incomplete FEIS and ROD approving Coquille's operation of a second casino in an area with which Plaintiffs share a geographic nexus. CC-026154–55; *see, e.g.*, *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 596 (D.C. Cir. 2015) (an agency action that "used incomplete economic analysis that failed rationally to account for [its] impact on the environment would harm [plaintiff's] concrete economic and aesthetic interests").

In addition, Plaintiffs can show these dramatic reductions in gross gaming revenue will inevitably result in significant decreases in total revenue available to their Tribal governments to fund essential governmental services, including environmental programs protecting and restoring the environment on or near the trust lands upon which many of their citizens depend for their subsistence and maintenance of their culture and traditions. *See, e.g.*, CC-025039 (representing the Karuk casino's gaming revenue is the Tribe's "sole source of revenue for providing essential governmental services to [its] people"). Such losses in overall Tribal government revenue will have profound environmental consequences, including increased GHG emissions and vulnerability to wildfires. CC-026215 (GHG emission impacts); CC-026091, CC-026055 (wildfire impacts, one of the primary sources of GHG in Medford); *see, e.g.*, *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972) (holding environmental plaintiffs adequately allege injury in fact when they aver they use the affected area and are persons "for whom the aesthetic and recreational values of the areas will be lessened" by the challenged activity); *WildEarth Guardians*, 738 F.3d at 305–06 (same, where plaintiffs identified "aesthetic interests in the land surrounding" the region impacted by the challenged agency action and "specific plans to visit the area regularly for recreational purposes"); *Gulf*, 775 F. Supp. 3d at 470 (same, where plaintiffs identified "specific wildlife areas" they "use and enjoy, both now and in the future," in the region impacted by the challenged agency action).

2. Causation

Plaintiffs can trace their injuries directly to Federal Defendants' issuance of an FEIS and ROD that violate separation-of-powers principles. "In NEPA procedural-injury cases, an 'adequate causal chain' contains two links: 'one connecting the [deficient] EIS to some substantive government decision that may have been wrongly decided because of the lack of an adequate EIS,' and one connecting that substantive decision to the plaintiff's particularized injury." *Sierra Club*, 827 F.3d at 44 (internal quotation marks and citation omitted). "The first link does not require the plaintiff to show that but for the alleged procedural deficiency the agency would have reached a different substantive result." *WildEarth Guardians*, 738 F.3d at 306. "All that is necessary is to show that the procedural step was connected to the substantive result." *Id.* For the second link, "it is sufficient for standing purposes that the '[injury] follows from an inadequate [EIS] whether or not the inadequacy concerns the same environmental issue that causes their injury.'" *Sierra Club*, 827 F.3d at 44 (citation omitted); *Eagle County v. Surface Transp. Bd.*, 82 F.4th 1152, 1170 (D.C. Cir. 2023) (courts must "assume" the tribe "will prevail on the merits").

Both links are present here. First, Federal Defendants' failure to adequately evaluate the environmental and economic impacts of Coquille's application by basing its hastily issued final agency decision on unconstitutional CEQ regulations is "plainly connected to its decision to approve" Coquille's second casino in Medford. *Gulf*, 775 F. Supp. 3d 455 at 472; *see also Am. Fuel & Petrochemical Mfr. v. EPA ("AFPM")*, 937 F.3d 559, 594 (D.C. Cir. 2019) (concluding agency's "alleged failure to comply with its [statutory] obligations is plainly connected to the setting of standards" in the challenged final rule). Second, there is a causal connection between Federal Defendants' approval of Coquille's second casino and Plaintiffs' economic and asserted injuries; that is, but for Coquille's development and operation of the second casino in Medford, each Plaintiff would not suffer significant declines in gross gaming revenues or declines in overall Tribal government revenue intended for environmental preservation and other public services to their Tribal citizens. *See* CC-026154; *Sierra Club*, 827 F.3d at 67 (causation element is satisfied if the challenged action will cause an "*additional* quantum" of harm); *see Gulf,* 775 F. Supp. 3d at 473 ("[T]he causation element of standing does not require that the challenged action be the sole or even immediate cause of the injury.") (citation omitted).

3. Redressability

Plaintiffs can also show redressability, as Federal Defendants could have reached a different conclusion had they followed the law in issuing the FEIS and ROD. Moreover, "[c]laims for procedural violations . . . receive a 'relaxed redressability requirement' in which the plaintiff need only show that 'correcting the alleged procedural violation could still change the substantive outcome in the [plaintiff's] favor"—not that it "*would* effect such a change." *See Hawkins v. Haaland*, 991 F.3d 216, 225 (D.C. Cir. 2021) (emphasis in original). "In making this determination, the [C]ourt must assume that Plaintiffs will ultimately receive the relief sought." *Gulf,* 775 F. Supp. 3d at 474 (citing *Fla. Audubon*, 94 F.3d at 665).

Vacatur of the FEIS and ROD, which is the "standard remedy" for a NEPA violation or other violations of federal law in agency decision-making, would redress the injuries asserted by Plaintiffs. *Gulf,* 775 F. Supp. 3d at 474; *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 225 F. Supp. 3d 101, 147 (D.D.C. 2017); *WildEarth Guardians*, 738 F.3d at 306 (concluding that if the agency "is required to adequately consider each environmental concern, it could change its mind about authorizing" the final agency action); *AFPM*, 937 F.3d at 595 ("There is at least the possibility that the [agency] could set different standards"). Plaintiffs have constitutional standing.

B. Plaintiffs Are Entitled to Summary Judgment Because Defendants' Issuance of the FEIS and ROD Is *Ultra Vires* (First Claim).

Plaintiffs are entitled to summary judgment because Federal Defendants' issuance of the FEIS and ROD are both, on their face, based on and rely on regulations implementing NEPA that are *ultra vires* under separation of powers principles and therefore must be vacated under the APA.

1. Summary judgment is appropriate where the unconstitutional final agency action cannot stand.

The APA directs that the Court "*shall* decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U.S.C. § 706; *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."). The APA further requires the Court to "hold unlawful and set aside agency action, findings, and conclusions found to be," among other things, "not in accordance with law," "contrary to [a] constitutional right" or "power," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." 5 U.S.C. §§ 706(2)(A)–(D).

If a federal agency, as here, bases its final decision on an unconstitutional statutory or regulatory provision, vacatur is required. *See Marin Audubon*, 121 F.4th at 918 (vacating FAA's final decision because the entire NEPA decision-making framework, based on the *ultra vires* CEQ regulations, was legally invalid); *INS v. Chadha*, 462 U.S. 919, 959 (1983) (affirming Court of Appeal's conclusion that a statutory provision violated the constitutional doctrine of separation of powers and therefore vacating the deportation order).

2. Federal Defendants' issuance of the FEIS and ROD violates separation-of-powers principles and therefore cannot stand.

Because Federal Defendants, in issuing the FEIS and ROD, applied NEPA regulations that the CEQ had no constitutional authority to promulgate as "mandatory" and "binding," both the FEIS and ROD must be vacated as *ultra vires* or otherwise arbitrary and capricious.

Federal agencies, including CEQ and DOI, are creatures of statute and "literally ha[ve] no power to act—including under [their] regulations—unless and until Congress authorizes it to do so by statute." *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 301 (2022). For regulations to be legally binding, there must be an established nexus between the regulations and some delegation by Congress of the requisite legislative authority to issue the regulations. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 304 (1979). A separation of powers issue arises when an executive or independent agency lacks statutory authority from Congress to issue particular regulations. *See Mexichem Fluor v. Env't Prot. Agency*, 866 F.3d 451, 453 (D.C. Cir. 2017).

With respect to the CEQ regulations at issue here, 40 C.F.R. Part 1500, "[t]he provisions of NEPA provide no support for CEQ's authority to issue binding regulations," as "[n]o statutory language states or suggests that Congress empowered CEQ to issue rules binding on the other agencies." *Marin Audubon*, 121 F.4th at 912. Nor does any "statute confer[] rulemaking authority on CEQ." *Id.*[9] Instead, CEQ promulgated its regulations pursuant to Executive Order 11991. But

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[9] While the CEQ's Chairperson was granted some statutory authority, *see, e.g.*, 42 U.S.C. §§ 4372, 4375, it is limited to "assist[ing]" other federal agencies and to "promulgat[ing] regulations" related only to funding to finance CEQ's other projects and research studies. *Marin Audubon*, 121

executive orders are not "judicially enforceable," nor can they result in regulations validly governing the administration of statutes. *See Sierra Club v. U.S. Dep't of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (citing, *inter alia*, *Marin Audubon*, 121 F.4th at 913); *see also California v. EPA*, 72 F.4th 308, 318 (D.C. Cir. 2023) ("[A]n executive order is not 'law' within the meaning of the Constitution."). Thus, Executive Order 11991 did not provide CEQ any lawful exercise of authority to issue regulations binding on other agencies. *Marin Audubon*, 121 F.4th at 912.[10]

Accordingly, the D.C. Circuit unambiguously held "the CEQ regulations, which purport to govern how all federal agencies must comply with [NEPA], are *ultra vires*" and thus invalid under separation of powers principles. *Marin Audubon*, 121 F.4th at 908–915. Federal Defendants do not deny this. *See* ECF No. 51 at 14, 26. Nor could they. After *Marin Audubon* was issued, CEQ removed its regulations from the Code of Federal regulations. *See* 90 Fed. Reg. 10610, 10610–16 (Feb. 25, 2025) (interim final rule removing the CEQ regulations implementing NEPA from the Code of Federal Regulations), *see also* 90 Fed. Reg. 29498, 29498 (July 3, 2025) (DOI's interim final rule partially rescinding DOI's regulations implementing NEPA).

Although Federal Defendants were on notice of *Marin Audubon*'s holding before they issued the FEIS, they nevertheless proceeded to apply the unconstitutional CEQ regulations as binding and mandatory. Throughout the FEIS, Defendants failed to acknowledge *Marin Audubon* and relied on and cited the invalid CEQ regulations at least *52 times*: 34 times in Volume I and at

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F.4th at 913.

[10] Although the Supreme Court, in *Andrus v. Sierra Club*, 442 U.S. 347 (1979), stated CEQ's regulations are "entitled to substantial deference," "that *Chevron*-like statement did not result from an examination of CEQ's authority to issue judicially enforceable regulations and cannot be credited in light of the Supreme Court's ruling in" *Loper Bright,* 603 U.S. 369. *See Marin Audubon*, 121 F.4th at 913.

least 18 times in Volume II. *See, e.g.*, CC-026289–91, CC-026297, CC-026309, CC-026313, CC-026316, CC-026327–30, CC-026335–36; CC-025997–98, CC-026000, CC-026025, CC-026028, CC-026030–31, CC-026032, CC-026133, CC-026202, CC-026235, CC-026239–40.

Then, when Plaintiffs presented DOI with *Marin Audubon* and requested pre-decisional consultation before issuing the ROD, Federal Defendants ignored them, and issued the ROD without any amendment of the FEIS's great many references to the unconstitutional CEQ regulations. CC-026870. Moreover, the ROD expressly announces DOI's decision to apply an unconstitutional NEPA regulatory process, despite the D.C. Circuit's recent finding that the CEQ regulations are *ultra* vires. *Id*.

Yet, the ROD did not alter or amend the FEIS's invalid reliance upon the CEQ regulation at least 52 times, notwithstanding this Circuit's decision in *Marin Audubon*. Instead of supplementing the FEIS, the FEIS and ROD continue to rely on the invalid CEQ regulations as "require[d]," at least 13 times, and announce the agency will continue to knowingly rely on *ultra vires* CEQ regulations, ignoring the constitutional rights of the millions of Americans who are subject to its decisionmaking. CC-026868–70; CC-026870 n.1; CC-026918; CC-026896 (ROD's Mitigation Monitoring and Compliance Plan "has been prepared consistent with the *requirements* of 40 CFR § 1501.6(d) and 1505.3(c)"); CC-026900 (for compliance with 40 C.F.R. § 1508.27(b)(10), "the following mitigation measures *shall* be implemented").[11]

Put another way, Federal Defendants' *entire* NEPA process—both procedurally and

[11] The ROD asserts the Mitigation Monitoring and Compliance Plan ("MMCP") cures the FEIS's and ROD's improper reliance on the CEQ regulations because "the MMCP identifies mitigation enforcement through compliance with federal laws . . . and as a matter of tribal law." CC-026918. Yet the MMCP itself states it "has been prepared consistent with the requirements of 40 CFR § 1501.6(d) and 1505.3(c)" and will only look to other federal and Tribal law for enforcement of the MMCP—again, which is based exclusively on the invalid CEQ regulations. CC-026896.

substantively—was "completed in accordance with . . . the [CEQ] Regulations for Implementing NEPA." CC-025997. From 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—DOI's process was conducted "in reliance on" the CEQ's unconstitutional regulations.

3. Federal Defendants did not apply DOI's own NEPA regulations.

In relying extensively on the *ultra vires* CEQ regulations, Federal Defendants did not apply DOI's own regulations implementing NEPA, 43 C.F.R. Part 46, which they *do* have statutory authority to establish. Instead, the FEIS makes one fleeting reference to 43 C.F.R. § 46.30 in Volume I; and the ROD refers to 43 C.F.R. § 415(c) twice. CC-026330; CC-026915–16. Notably, Federal Defendants neither represented in the FEIS that they were "required" to rely on their own NEPA-implementing regulations, nor did they cite those regulations anywhere in the FEIS. 43 C.F.R. Part 46; *see* CC-026284–348; CC-025946–026261.

Even if Federal Defendants had relied on their own Part 46 regulations or guidance throughout the FEIS and ROD, the *Marin Audubon* court concluded that DOI's NEPA regulations did not constitute a "permissible exercise of [DOI's] own rulemaking authority" because the agency "obeyed CEQ's command" by "confin[ing]" itself to issuing implementing procedures that merely "compl[ied] with" or "supplement[ed]" the CEQ regulations; and DOI did not otherwise adopt the content of the CEQ regulations, or incorporate them by reference. *Marin Audubon*, 121 F.4th at 914–15 (citing 40 C.F.R. § 1507.3(a)–(b) (1978)); *see* 43 C.F.R. §§ 46.10(a)(2), 46.20(a), 46.415 (providing DOI regulations were issued to "compl[y] with" and "supplement" CEQ regulations). The *Marin Audubon* court noted that although DOI once stated it was incorporating certain CEQ *guidance* documents, it never said the same of CEQ's actual *regulations*. *Marin*

Audubon, 121 F.4th at 915 (citing 73 Fed. Reg. 61292, 61298 (Oct. 15, 2008)) (emphasis added).[12]

Federal Defendants now acknowledge that DOI's NEPA regulations are not a permissible exercise of the agency's rulemaking authority because they merely "supplement" the now-rescinded CEQ regulations. National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29498, 29498 (July 3, 2025). Accordingly, DOI is in the process of "updating and partially rescinding its [NEPA] regulations" and "will now maintain the majority of its NEPA procedures in a handbook separate from the Code of Federal Regulations." *Id.*

4. Vacatur is the only available remedy.

Because Federal Defendants' issuance of the FEIS and ROD—embodying their determination Coquille's second casino would have no relative environmental or economic impact under NEPA—was *ultra vires,* vacatur pursuant to 5 U.S.C. § 706(2) is necessary. In deciding *Marin Audubon*, this Circuit was explicit in its rationale for its chosen remedy: vacatur of the final agency action *because* the agency's "actions were *ultra vires* when they determined that [the agency action] would have no environmental impact." *Marin Audubon*, 121 F.4th at 918.

Courts have previously exercised their power to vacate trust decisions that are *ultra vires*, as the Court should do here. *See, e.g., Chadra*, 462 U.S. at 959 (affirming Court of Appeal's conclusion that a statutory provision violated the constitutional doctrine of separation of powers and therefore vacating the deportation order); *Crawford-Hall v. United States*, 394 F. Supp. 3d 1122, 1153–54 (C.D. Cal. 2019) (concluding that DOI's Notice of Decision taking land into trust

[12] The *Marin Audubon* court further noted that even if DOI had incorporated CEQ's regulations as its own, it did so only for the original 1978 version of the CEQ rules, given that DOI's current NEPA rules (43 C.F.R. Part 46) went into effect in 2007 and CEQ amended its rules at least twice between then 2023, when the Plan at issue in that case was published. *Marin Audubon*, 121 F.4th at 915. According to the court, DOI could not have adopted or incorporated the operative version of the CEQ rules, which were cited throughout the Plan, because they "did not exist" in 2007. *Id.*

for Santa Ynez Band of Mission Indians was *ultra vires* and vacating opinion).

To avoid vacatur, Federal Defendants would have to demonstrate "at least a serious possibility that they will be able to reach the same outcome on remand." *Marin Audubon*, 121 F.4th at 918. Federal Defendants cannot make this showing because DOI has already conceded its FEIS and ROD failed to sufficiently consider the economic impacts of its proposed actions. For example, the FEIS admits that "[a]n adverse economic, fiscal, or social impact would occur" if Coquille's Medford casino "disproportionately affected an identified minority or low-income community or Native American tribe," including "negatively alter[ing] the ability of [Tribal] governments to perform at existing levels or alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services." CC-026150–51. But the FEIS stopped short of determining these economic, socio-economic, or "environmental justice" impacts, such as reduced "governmental and social services" to Plaintiffs' citizens—allegedly because Federal Defendants did not have Plaintiffs' "confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members." CC-026311. Federal Defendants did not have this information because they never asked for it, instead relying on a Coquille consultant's uninformed speculation. *See id.*

Had DOI followed NEPA's mandate to identify and develop regulations accounting for these environmental justice or economic considerations—as opposed to blindly following unconstitutional CEQ regulations that do not sufficiently consider these factors—the agency would have been *required* to analyze the "environmental justice impact on governmental and social services" provided by Plaintiffs to their citizens before issuing the FEIS. *See* 42 U.S.C. § 4332(B) (requiring federal agencies to "identify and develop methods and procedures" to ensure unquantifiable environmental impacts are considered, as well as "economic and technical considerations"); *see also* DOI NEPA Handbook, 516 DM 1, §6.1(v), p. 25 (the ROD must "discuss[] any preferences among alternatives based on relevant factors including *economic* and technical considerations").[13]

Further, while some federal agencies have complied with NEPA's statutory mandate to identify and develop methods to analyze environmental, economic, and other considerations (e.g., FERC), *see* 18 C.F.R. § 380.1,[14] DOI has not. *See Marin Audubon*, 121 F.4th at 914–15 (concluding that DOI's NEPA regulations did not constitute a "permissible exercise of [DOI's] own rulemaking authority" because the agency "obeyed CEQ's command" by "confin[ing]" itself to issuing implementing procedures that merely "compl[ied] with" or "supplement[ed]" the CEQ regulations, and DOI did not otherwise adopt the content of the CEQ regulations or incorporate them by reference). Given DOI's complete failure to comply with NEPA's mandate to "identify and develop methods and procedures" to assess both the environmental *and* economic impacts in issuing the FEIS, 42 U.S.C. § 4332(B)—as well as the FEIS's own admission that it failed to consider "the environmental justice impact on governmental and social services" provided by Plaintiffs—Federal Defendants cannot show "at least a serious possibility" they would reach the same outcome on remand. *Marin Audubon*, 121 F.4th at 918.

In short, Federal Defendants exceeded their legal authority by issuing a FEIS and ROD based on unconstitutional CEQ regulations they treated as binding, while ignoring *Marin Audubon*. The Court must now declare Federal Defendants' issuance of the FEIS and ROD *ultra vires* (or otherwise arbitrary and capricious) and set aside Federal Defendants' final decision under the

[13] The DOI NEPA Handbook, 516 DM 1, is available at https://www.doi.gov/media/document/doi-nepa-handbook.

[14] For example, FERC's NEPA regulations provide that FERC will comply with CEQ regulations *to the extent they are not inconsistent* with the agency's NEPA requirements. 18 C.F.R. § 380.1; *see Power Auth. of N.Y.*, 189 FERC P 61217, 2024 WL 5183200, at *2 n.14 (FERC Dec. 19, 2024).

APA. 5 U.S.C. § 706(2). Because Federal Defendants cannot show "at least a serious possibility" that they could reach the same outcome on remand, they "will now need to take a completely different tack to complete their . . . review." *Marin Audubon*, 121 F.4th at 918.

C. Plaintiffs Are Entitled to Summary Judgment Because Federal Defendants' Issuance of the ROD Violates the IRA (Fourth Claim).

Because the CRA makes the IRA applicable to Coquille, Federal Defendants were required to follow the IRA and its implementing regulations set forth in 25 C.F.R. Part 151 ("Part 151").[15] Federal Defendants, however, entirely failed to consider certain Part 151 requirements for "off-reservation" acquisitions, despite concluding in 2020 that Coquille's application failed to satisfy those same requirements. Nor did Federal Defendants explain why the agency changed its position on whether Part 151's requirements were satisfied.

Part 151 "sets forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes." 25 C.F.R. § 151.1 (2015). For discretionary acquisitions "not mandated" by law, the Secretary must consider whether to accept land in trust under 25 C.F.R. §§ 151.10 and 151.11. "[W]hen the land is located outside of and noncontiguous to the tribe's reservation," as here, the Secretary must consider a number of factors when reviewing an application to acquire land in trust, including the land's "distance from the boundaries of the tribe's reservation," the "need of the individual Indian . . . tribe for additional land," and "anticipated economic benefits associated with the [land's] proposed use." 25 C.F.R. § 151.11(b)–(c) (1995); *see id.* § 151.11(a) (incorporating 25 C.F.R. § 151.10(a)–(b) (1995)); *see* CC-026803–04.

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[15] Part 151 was amended in 2024, but those amendments do not apply to Coquille's application. *See* 25 C.F.R § 151.17(a) (2024); *see* CC-026802. Accordingly, all citations to Part 151 reference the year in which the applicable regulation was effective.

Critically, under § 151.11(b), "as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give *greater scrutiny* to the tribe's justification of anticipated benefits from the acquisition" and "shall give *greater weight* to the concerns raised" by state and local governments. *Id*. § 151.11(b) (1995) (emphases added). Federal Defendants failed to give any scrutiny or weight to either requirement when issuing its final decision.

Under the APA, it is arbitrary and capricious to "[m]erely describe[e] an impact and stat[e] a conclusion of nonimpairment . . . for this merely sets forth 'the facts found' and 'the choice made,' without revealing the 'rational connection'—the agency's rationale for finding that the impact described is not impairment." *Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 100 (D.D.C. 2006) (concluding National Park Service failed to adequately explain its conclusion that impacts from nearby surface drilling would not result in an impairment of park resources and remanding decision to agency for reconsideration); *Tourus Records, Inc. v. DEA*, 259 F.3d 731, 737 (D.C. Cir. 2001) (concluding DEA's denial of a petition violated APA by failing to provide "a statement of reasoning" or to "articulate a satisfactory explanation").

Likewise, it is arbitrary and capricious for an agency to "chang[e] its course by rescinding" a prior rule, policy, or decision without "supply[ing] a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." *State Farm*, 463 U.S. at 42 (adopting a presumption "against changes in current policy that are not justified by the rulemaking record"). *Id.*; *see, e.g.*, *Sierra Club v. EPA*, 294 F.3d 155, 163 (D.C. Cir. 2002) (concluding EPA's subsequent omission of certain emission-reducing (or similar) measures it previously endorsed, "whether the result of inadvertence or of an unexplained change of course," rendered "EPA's decision arbitrary and capricious"); *see also Airmark Corp. v. FAA*, 758 F.2d 685, 692 (D.C. Cir. 1985) ("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from tolerably terse to intolerably mute.").

On May 27, 2020, DOI denied Coquille's fee-to-trust application for failure to meet Part 151's requirements, citing the following grounds: (1) there were "[j]urisdictional problems and potential conflicts of land use" raised by the Governor of Oregon, the City of Medford, and Jackson County (§ 151.10(f)); (2) the Tribe's 170-mile distance (or three-hour drive) to the Medford parcel (§ 1511(b)); (3) the Tribe's 2013 Business Plan showed only "modest" anticipated economic benefits where $18.5 million annual revenue after seven years of operation would "only alleviate a small portion of the Tribe's anticipated budget needs" (projected to be $300 million by 2022) and that the overall benefits to Coquille and its members would be "muted," given the Medford's 170-mile distance from Coquille's reservation (§ 151.11(b)–(c)); (4) the "considerable" impact to the Oregon Lottery, resulting in "a significant source of revenue for the State" and the "provision of services" to the County (as the Oregon Lottery generated $742.7 million in 2014) (§ 151.10(e)); (5) that the Medford parcel "lies outside the Tribe's historical territory and faces opposition from other Tribes and tribal members in the area" (§ 151.10(f)); and (6) the State's "concerns about the expansion of gaming throughout the state" (§ 151.10(f)). CC-020044–CC-020045. DOI also concluded Coquille's application failed to satisfy § 151.11(b)'s balancing test:

> [G]overnments having regulatory jurisdiction are uniformly opposed to the acquisition. Not only must the Secretary give greater weight to these concerns pursuant to 151.11(b), as a practical consideration, the further the tribal political base is from the concerned governments, there becomes greater difficulty in achieving resolution of these issues.
>
> When compared to the significant jurisdictional concerns identified by elected officials, the disruption of the well-established balance of the number of casinos in Oregon, and the potential for expansion of gaming against the wishes of the State and its elected officials, the Tribe has not made a convincing case that its projected benefits outweigh these significant concerns.

CC-020047.

By December 22, 2021, however, DOI withdrew its denial decision dated May 27, 2020, but disregarded that decision's detailed Part 151 analysis. CC-020315; CC-020343–45. Nor did DOI's 2021 decision explain how Coquille could now satisfy Part 151 requirements, let alone § 151.11(b)'s balancing test. CC-020315; CC-020343–45; *see* 86 Fed. Reg. 73313, 73313 (Dec. 27, 2021).[16]

Likewise, when the ROD was issued on January 10, 2025, DOI again disregarded its prior detailed Part 151 analysis in the May 27, 2020 decision and again failed to cite § 151.11's requirements. *See* CC-026816. The ROD instead referenced the Part 151 regulations just once, citing the need for the agency to act on the Coquille's application as "established by . . . 25 CFR 151.10(h) and 151.12." *Id*. Although the ROD incorporates by reference an attached cover letter issued on January 10, 2025 ("Decision Letter"), that Decision Letter likewise fails to meaningfully consider the relevant criteria under §§ 151.10 and 151.11. CC-026848. Notably, the Decision Letter entirely ignores the agency's findings in the May 27, 2020 decision:

- The significant jurisdictional and land use concerns raised by Oregon, Jackson County, and the City of Medford (§ 151.10(f)). *Compare* CC-026806, *with* CC-020038–39, CC-020043–46;
- That the State's loss of even 1% of revenue from the Oregon Lottery would be "significant" to the State and County, considering the Lottery generated $742.7 million in 2014 (§ 151.10(e)). *Compare* CC-026806, *with* CC-020043;
- The significant community impact or any consideration that the Medford parcel lies outside the Coquille's historical territory (nearly 170 miles away) and is today opposed by Oregon, Jackson County, and several other Tribes in the region (§ 151.10(f)). *Compare* CC-026807, *with* CC-020043–44;

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[16] DOI's 2021 decision acknowledged the agency's prior "determination that potential jurisdictional problems from the proposed acquisition outweighed its anticipated benefits" but claimed the NEPA process would address such concerns. CC-020344. Once the NEPA process was completed, however, neither the FEIS nor the ROD explained why Coquille's anticipated benefits outweighed the state and local governments' significant concerns, or otherwise acknowledged § 151.11(b)'s balancing test, as discussed in this Section IV(C).

- The "modest" anticipated economic benefits associated with the Medford casino based on Coquille's 2013 Business Plan, recognizing any economic benefits would not impact Tribal members residing 170 miles away (§ 151.11(c)). *Compare* CC-026809, *with* CC-020041–42; and

- Whether Coquille's application met § 151.11(b)'s balancing test ***at all***. *Compare* CC-026809, *with* CC-020047.

The Decision Letter simply glosses over the Part 151 criteria showing any negative impacts of Coquille's proposed casino in Medford, and it entirely disregards § 151.11(b)'s required balancing test. CC-026848. The Decision Letter's failure to give "greater scrutiny" to Coquille's anticipated economic benefits associated with the Medford casino was obvious, as it exclusively relies on a 2013 Business Plan, issued nearly *twelve years* before the ROD and Decision Letter were issued. CC-026809; 25 C.F.R. § 151.11(b) (1995). Accordingly, the Decision Letter failed to assess, for example, (1) whether Coquille needed additional land, acknowledging that by 2025, Coquille had amassed more than *6,400* acres of trust land, including waterfront and income-generating timberland, within or near its ancestral lands (§ 151.10(b)), CC-026027; (2) whether Coquille's primary Mill Casino continued a "trend of declining revenue" by 2025 or whether the Tribe had actually incurred a $74 million deficit by 2022 (as projected in 2013), (§§ 151.3(a)(3), 151.11(b)–(c)), CC-025996[17]; or (3) whether Coquille's timber revenue or other economic enterprises, such as Tribal One—which had successfully secured *hundreds of millions* of dollars in federal contracts from 2016 to 2024—otherwise allowed Coquille to facilitate "tribal self-

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[17] Curiously, the agency's final decision fails to address whether Coquille experienced a $74 million deficit in 2022; instead, the FEIS speculates that the Tribe will require an additional $300 million dollars through 2035 (the precise amount Coquille's 2013 Business Plan projected the Tribe would need through 2022, notwithstanding inflation and the "aging nature" of Coquille's membership). CC-025996; CC-020041–42. Federal Defendants' speculative economic projections and fuzzy math only demonstrate why Coquille should have been required to supplement its 2013 Business Plan to satisfy Part 151's and NEPA's requirements.

determination" or "economic development" by 2025 (§§ 151.3(a)(3), 151.11(b)–(c)). *See* CC-025216–17.

Although agency officials were aware of Tribal One, *see, e.g.*, CC-025215–16, the Decision Letter nevertheless ignored Tribal One's existence altogether (failing to give it "greater scrutiny" under § 151.11(b)), which directly rebuts the ROD's conclusion that transferring the Medford parcel into trust was necessary to support Coquille's unmet economic needs or goal of self-determination in 2025. CC-026809; 25 U.S.C. §§ 151.3(a)(3), 151.11(b)–(c). The agency's refusal "to consider evidence bearing on the issue[s]" in its final decision (the FEIS, ROD, and Decision Letter), as required by 25 C.F.R. §§ 151.10 and 151.11, was arbitrary and capricious. *See* *Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010).

The agency's final decision further disregarded the Secretary's obligation to "give greater weight to the [related] concerns raised" by the state and local governments that have regulatory jurisdiction over the Medford parcel. 25 C.F.R. § 151.11(b) (1995). After DOI notified Oregon, Jackson County, and the City of Medford of Coquille's proposed second casino in 2012, these state and local governments vehemently opposed Coquille's proposed gaming establishment until just before the FEIS and ROD were issued. *See, e.g.*, CC-018285–86; CC-001301–14; CC-007544–48; CC-008300–02; CC-025019; CC-025928–33.[18] These governments cited, among other things, Coquille's failure to address their concerns regarding (1) potential reductions of state and local tax revenue and public services, (2) potential increases in calls for police, fire, and criminal justice services, and (3) gambling and substance addiction issues. CC-025929; *see* CC-018285–86; CC-

[18] In addition, there has been broad bipartisan opposition to Coquille's Medford project from state, federal, local, and tribal legislators and leaders since 2012. *See, e.g.*, CC-025119–205; CC-024566–67; CC-024684–85; CC-024692–94; CC-024753; CC-024436; CC-026791–92; CC-026574–79; CC-026582–85; CC-026619–20; CC-026623; CC-026625; CC-024303.

001301–14; CC-007544–48; CC-008300–02; CC-025019; CC-025928–33; *see also* 25 C.F.R. §§ 151.10(e)–(f), 151.11(b) (1995); *Butte County*, 613 F.3d at 194 ("[A]n agency cannot ignore evidence contradicting its position.").

Even assuming the agency's final decision, namely the Decision Letter, implicitly addressed § 151.11(b)'s balancing test by considering Coquille's anticipated economic benefits and (to a much lesser extent) the local and state governments' opposition to the Medford project, the agency did not explain its rationale for reaching the apparent conclusion that Coquille's anticipated economic benefits (based on 2013 data) expressly outweigh the substantial concerns recently raised by Oregon, Jackson County, and the City of Medford. CC-026809; *see* 25 C.F.R. § 151.11(b) (1995). This omission constitutes arbitrary agency action in violation of the APA. *See, e.g.*, *Mainella*, 459 F. Supp 2d at 100; *State Farm*, 463 U.S. at 42.

Nor does the agency's final decision (again, the FEIS, ROD, or Decision Letter) explain why the agency changed its position that Coquille's application now satisfied the Part 151 criteria, after unambiguously and expressly concluding that Coquille did *not* meet those same criteria on May 27, 2020. CC-026796–810, CC-020047. The agency's final decision is arbitrary and capricious based on that omission as well. *See Sierra Club*, 294 F.3d at 163–64 (vacating agency decision and remanding to agency where EPA failed to mention, "whether the result of inadvertence or an unexplained change of course," why it disapproved emission-reducing measures it previously endorsed); *see also State Farm*, 463 U.S. at 57.

Because Federal Defendants' final decision failed to meaningfully consider Part 151 criteria showing any negative impacts of Coquille's proposed casino in Medford—including altogether ignoring whether the second casino's anticipated economic benefits outweighed the significant concerns identified by the state and local governments under 25 C.F.R. § 151.11(b)—Federal Defendants acted contrary to those regulations. Federal Defendants' additional failure to explain why the agency decided to reverse course since May 27, 2020, was likewise arbitrary and capricious. The agency's decision must thus be set aside under 5 U.S.C. § 706(2).

D. Plaintiffs Are Entitled to Summary Judgment Because Federal Defendants' Issuance of the FEIS and ROD Violates IGRA (Third Claim).

DOI's unprecedented conclusion that Coquille meets the criteria of IGRA's "restored lands" exception, 25 U.S.C. § 2719(a), on the ground that the CRA provides the Secretary both "mandatory and discretionary trust land acquisition authority within [Coquille's] Service Area" is a misapplication of IGRA, IGRA's implementing regulations, and the CRA itself. CC-026801. DOI's new interpretation of IGRA's restored lands exception is also inconsistent with Court precedent and the agency's prior position on restored lands. 5 U.S.C. § 706(2)(A).

IGRA prohibits gaming on "lands acquired by the Secretary [of the Interior] in trust for the benefit of an Indian tribe after October 17, 1988, unless" one of three exceptions applies. 25 U.S.C. § 2719(a). Federal Defendants rely on IGRA's restored lands exception in this case, which provides that the after-acquired gaming prohibition "will not apply when . . . lands are 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).[19]

The purpose of the restored lands exception is to provide an avenue for gaming for Tribes that were either recently or not yet federally recognized when IGRA was enacted in 1988. "A 'restoration of lands' compensates the Tribe not only for what it lost by the act of termination, but

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[19] If none of IGRA's exceptions apply, the land may still be used for gaming purposes, but only after the agency conducts a "two-part determination," whereby the Secretary, after consultation with other local governments (including Tribal governments) (1) "determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community," and (2) "if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." *Id.* § 2719(b)(1)(A).

also for opportunities lost in the interim." *City of Roseville v. Norton*, 348 F.3d 1020, 1029 (D.D.C. 2003), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003). However, "[t]he restored lands exception was not intended to give restored tribes an open-ended license to game on newly acquired lands. Rather, its purpose was to promote parity between established tribes, which had substantial land holdings at the time of IGRA's passage, and restored tribes, which did not." *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015). As one court put it, the term "restoration may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S Att'y for W.D. Mich.*, 198 F. Supp. 2d, 920, 935 (W.D. Mich. 2002).

Under IGRA's regulations, 25 C.F.R. Part 292, there are two ways for a restored Tribe to establish that newly acquired lands are "restored" for purposes of IGRA.[20] Pursuant to 25 C.F.R. § 292.11(a)(1), or the "statute-based" restored lands exception, land is considered "restored" if "[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." *Id.* If, however, "the legislation does not provide a specific geographic area for the restoration of lands," or the lands are not within the specified geographic area, the Tribe must meet the requirements of § 292.12, or the "connections-based" restored lands exception. *See* 25 C.F.R. § 292.11(a)(2). Section 292.12 requires an applicant Tribe to demonstrate modern, significant

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[20] First, a tribe must establish it is a "restored tribe," by demonstrating it was once recognized, had its recognition terminated, and then had its recognition restored through a number of available mechanisms. 25 C.F.R. § 292.7. Those issues are not addressed here because it is undisputed that Coquille is a restored tribe.

historical, and temporal connections to the land. *Id.*[21] Importantly, § 292.12(c) limits connections-based restored lands to one casino per restored Tribe. *Id.* To qualify, the application must be the Tribe's "first request for newly acquired lands since" it was restored or the application was submitted within 25 years after the Tribe was restored and "is not gaming on other lands." *Id.* § 292.12(c)(1)–(2).

1. The Coquille Restoration Act and other post-IGRA restoration acts.

Numerous tribes across the country had their federal recognition terminated throughout the 19th and first half of the 20th centuries. The so-called "termination era" ended in the 1960s, after which numerous tribal communities worked to regain federal recognition through administrative, judicial, and legislative actions. By IGRA's passage in 1988, many, but by no means all, previously terminated Tribal nations had been restored to federal recognition.[22] Coquille was the first post-IGRA Tribe to be restored through legislation. Like Cow Creek, their recognition by and trust relationship with the federal government had been terminated in 1954. *See* Pub. L. No. 101-42.[23] In 1989—just eight months after passing IGRA—Congress passed the CRA, restoring Coquille's

[21] For example, the Ponca Tribe of Nebraska's 1990 restoration act includes the same language as Coquille's, providing "[t]he Secretary shall accept not more than 1,500 acres of any real property located in Knox or Boyd Counties, Nebraska" for the Tribe and that "[t]he Secretary may accept any additional acreage in Knox or Boyd Counties pursuant to his authority under the" IRA. 25 U.S.C. § 983b(c) (omitted). When the Ponca Tribe sought to have land taken into trust for gaming purposes outside of Knox or Boyd Counties, Nebraska, DOI required it to demonstrate connections under the rubric that was subsequently reduced to 25 C.F.R. § 292.12. *Nebraska ex rel. Bruning v. U.S. Dep't of Interior*, 625 F.3d 501 (8th Cir. 2010); *City of Council Bluffs, Iowa v. U.S. Dept. of Interior*, 11 F.4th 852 (8th Cir. 2021).

[22] The first restoration act appears to have been Pub. L. No. 93-197, 87 Stat. 770 (Jan. 3, 1973), an Act repealing the termination of the Menominee Indian Tribe of Wisconsin and restoring the Tribe to federal recognition.

[23] In 2016, the CRA and similar acts not of general application were omitted from the U.S. Code for organizational purposes. No statutory text was repealed or amended. *See* https://uscode.house.gov/editorialreclassification/t25/index.html.

trust relationship with the federal government, including all rights and services appurtenant thereto, and providing for the creation of a Coquille reservation. *Id*. It states, in pertinent part:

> SEC. 5. TRANSFER OF LAND TO BE HELD IN TRUST.
> (a) LANDS TO BE TAKEN IN TRUST.--The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: ... The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the [Indian Reorganization] Act of June 18, 1934.

25 U.S.C. § 715c(a) (omitted). The "'service area' means the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon." 25 U.S.C. § 715(5) (omitted).

The legislative history of the CRA makes it clear that Congress intended only for the 1,000 acres in Coos and Curry Counties to constitute restored lands. As originally introduced, § 5 of the CRA contained a blanket land acquisition clause: "The Secretary shall accept real property within the service area for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary." CC-024721. The bill was immediately referred to the Committee on Interior and Insular Affairs—the same House committee that had convened hearings on IGRA during the previous three Congresses—which reported favorably and recommended it pass, albeit with a significant change to § 5. *See* CC-024732–41. Rather than providing for a blanket, mandatory acquisition of land throughout Coquille's service area, the Committee amended § 5 to its present form, explaining:

> Subsection (a) provides that the Secretary shall accept in trust for the benefit of the Tribe, not to exceed 1000 acres of land located in Coos and Curry Counties if such land is conveyed to the Secretary for such purposes. Such land has to be free of adverse legal claim at the time of such conveyance. This section also provides that the Secretary may accept any additional acreage located in the Tribe's service area pursuant to his authority under the Indian Reorganization Act of 1934.
>
> It is the Committee's intent that if the first 1000 acres transferred under this section meet the requirement of this section, such acreage shall be transferred in trust for the benefit of the tribe expeditiously and without undue delays.

CC-024735–36. The House passed the bill as amended by the Committee. CC-024730–31.

In the Senate, the Senate Committee on Indian Affairs—the same Senate committee that had convened hearings on and proposed amendments to the IGRA during the previous two Congresses—issued S. Rept. 101-50, recommending that the bill pass without further amendment. CC-024742–52. In the words of the Senate Committee:

> The purpose of H.R. 881 is to restore the Federal trust relationship with the Coquille Tribe of Indians in the State of Oregon, to provide for the development of an economic development plan for the tribe, *and to provide for the transfer of certain lands within Coos and Curry Counties to the Secretary of the Interior in trust for the benefit for the Coquille Tribe.*

CC-024742 (emphasis added). The bill passed both houses of Congress and was signed by the President on June 28, 1989. CC-014730–31. This reading of the legislative history of the CRA has been endorsed by members of the Oregon delegation who actually drafted and sponsored the legislation in 1989. CC-024719–20. Moreover, this information was provided to Secretary Haaland before the ROD was issued. CC-024714–52.

Five of the seven Tribal restoration acts passed by Congress since 1988 have incorporated the CRA's § 5 language, providing the Secretary either "shall," (or, in one case "may") take land in a specific area into trust for the benefit of the Tribe and that the "Secretary may accept any additional acreage in" either the Tribe's service area or specifically named counties "pursuant to his authority" under the IRA.[24] The former provision is referred to hereinafter as the "restored land language," and the latter provision is referred to hereinafter as the "IRA affirmation language."

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[24] *See* Ponca Restoration Act, Pub. L. No. 101-484, 104 Stat. 1167 (Oct. 31, 1990), § 4(c) (codified as 25 U.S.C. § 938b(c) (omitted)); Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, Pub. L. No. 103-324, 108 Stat. 2156 (Sep. 21, 1994), § 6(a)–(c) (codified as 25 U.S.C. § 1300k-4(a)-(c) (omitted)); Auburn Indian Restoration Act, Pub. L. No. 103-434, 108 Stat. 4533 (Oct. 31, 1994), *amended by* Pub. L. No. 104-122 (Mar. 29, 1996), § 204(a) (codified as 25 U.S.C. § 1300l-2(a) (omitted)); Paskenta Band Restoration Act, Pub. L. No. 103-454, 108 Stat. 4793 (Nov. 2, 1994), § 305(a) (codified as 25 U.S.C. § 1300m-3(a)).

These five restoration acts restore six Tribal nations to federal recognition across the states of Oregon, Nebraska, Michigan, and California. *See supra,* n.24.

Five of these six restored Tribes, including Coquille, currently operate gaming facilities on restored lands pursuant to their restoration act's "restored land" language under the statute-based restored lands exception, 25 C.F.R. § 292.11(a)(1). Until now, none of them have argued that they may open additional gaming facilities on land transferred into trust for them pursuant to their IRA affirmation language. Coquille's restored land language includes up to 1,000 acres in Coos and Curry Counties, Oregon, the former of which is where Coquille's primary Mill Casino and Resort is located. 25 U.S.C. § 715c(a) (omitted); CC-00494–95.

Likewise, the Little Traverse Bay Band's restored lands language includes unlimited acreage in Emmet and Charlevoix Counties, Michigan, which is where its gaming facilities are located. 25 U.S.C. § 1300k-4(a) (omitted); CC-012642–46. The Little River Band's restored lands language includes unlimited acreage in Manistee and Mason Counties, Michigan, the former of which is where its gaming facility is located. 25 U.S.C. § 1300k-4(b) (omitted); CC-027427–30. The United Auburn Indian Community's restored lands language includes unlimited acreage in Placer County, California, which is where its gaming facility is located. 25 U.S.C. § 1300*l*-2(a) (omitted); *City of Roseville,* 348 F.3d at 1029. Finally, the Paskenta Band of Nomlaki Indians' restored lands language includes unlimited acreage in Tehama County, California, which is (again) where its gaming facility is located. 25 U.S.C. § 1300m-3(a) (omitted); CC-027413–18.

That is, Coquille is the very first of these Tribes to attempt to have land within their IRA affirmation language geographic area, but outside of the area listed in the CRA's restored lands language, taken into trust under IGRA's statute-based restored lands exception. 25 C.F.R. § 292.11(a)(1). In adopting Coquille's misreading of its CRA, DOI is allowing it, and the five other Tribes with the same language in their restoration acts, to franchise casinos throughout their service areas, providing an "open-ended license to game on newly acquired lands" in direct contravention of IGRA. *Redding Rancheria*, 776 F.3d at 711.

2. The "may" in 25 C.F.R. § 292.11(a)(1) does not, and cannot, refer to the IRA affirmation language.

After IGRA was passed, two cases established that land taken into trust pursuant to the restored lands language in the Tribe's restoration act qualified for gaming under IGRA's restored lands exception, 25 U.S.C. § 2719(a). *See Sault Ste. Marie Tribe of Lake Superior Chippawa Indians v. Babbitt*, 78 F. Supp. 2d 699, 702 (W.D. Mich. 1999); *City of Roseville*, 219 F. Supp. 2d 130. The *Sault Ste. Marie* court determined that land taken into trust in Emmet County, pursuant to the restored lands language in the Little Traverse Bay Band's restoration act,[25] constituted restored lands for purposes of IGRA. *Sault Ste. Marie*, 78 F. Supp. 2d at 705.

This Court made a similar finding under the Auburn Indian Restoration Act ("AIRA"), after DOI took a parcel of land in Placer County, California into trust for the United Auburn Indian Community ("Community") in 2002,[26] determining it qualified for gaming under IGRA's restored lands exception. *City of Roseville*, 219 F. Supp. 2d at 161. The AIRA originally mirrored the CRA, stating in its restored lands language, "[t]he Secretary *shall* accept any real property located in Placer County, California, for the benefit of the Tribe . . . ." 25 U.S.C. § 1300l-2 (1994) (emphasis added). The AIRA was subsequently amended to state, "[t]he Secretary *may* accept any real property located in Placer County, California, for the benefit of the Tribe . . ." 25 U.S.C. § 1300*l*-

[25] "[T]he Secretary shall acquire real property in Emmet and Charlevoix Counties for the benefit of the Little Traverse Bay Bands." 25 U.S.C. § 1300k-4(a) (omitted).

[26] Because the AIRA made the Secretary's authority discretionary, DOI processed the application under 25 C.F.R. Part 151. *City of Roseville*, 219 F. Supp. 2d at 1023; *cf.* 25 C.F.R. §§ 151.10 & 151.11 (excepting consideration of certain Part 151 criteria when acquiring land into trust either on-reservation or off-reservation when the "acquisition is mandated by legislation").

2 (1996) (omitted) (emphasis added). The AIRA also contains the IRA affirmation language, like the CRA, providing "[t]he Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the" IRA. *Id.* § 1300*l*-6(7) (omitted) (providing the Community's "'service area' means the counties of Placer, Nevada, Yuba, Sutter, El Dorado, and Sacramento, in the State of California").

In response to DOI's Placer County trust acquisition for the Community, local cities and a nonprofit organization challenged DOI's determination, taking the position land acquired pursuant to the AIRA should not qualify for the restored lands exception for a number of reasons, including that if the AIRA's land acquisition section was interpreted as a "'restoration' clause, the restoration would necessarily encompass land throughout the service area of the Tribe." *City of Roseville*, 219 F. Supp. 2d at 161.[27]

This Court, in *City of Roseville*, flatly rejected that argument, adopting the Community's "logical and persuasive" argument "that the second clause of the subsection, which provides that the Secretary may take additional acreage in the Tribe's service area pursuant to the [IRA], simply emphasizes that the section should not be read to limit the Secretary's more general authority under the Indian Restoration Act."[28] *Id.* The Court expressly found that, under the AIRA, "the Secretary's ability to accept acreage into trust that lies outside of Placer County, but within the Tribe's service area, *is limited by the provisions of the [IRA]*." *Id.* at 155 (emphasis added). In other words, this

[27] Notably, citizens throughout Coquille's service area, who stand to see an unlimited number of Coquille gaming facilities sited in their communities should DOI's decision not be set aside, have the same fear in regards to Coquille's ability to franchise its gaming facilities. CC-0277734, CC-027736.

[28] This logical conclusion is underscored by the House Committee's significant amendment to § 5 of the CRA as proposed, discussed *infra*, whereby Congress confirmed that the limitation of restored lands to Coos and Curry Counties did not alter the Secretary's authority to take land in the Tribe's service area into trust pursuant to the IRA. CC-024735–36.

Court already once determined that any land taken into trust pursuant to the IRA affirmation language in a Tribe's restoration act would *not* qualify under IGRA's statute-based restored lands exception. *Id.* at 155, 162; *see also id.* at 161 (The AIRA "clearly contemplates the creation of a land base for the Tribe. However, the challenge remains of identifying the contemplated land base that should be considered restored lands.").

Consistent with this case law, DOI later adopted 25 C.F.R. § 292.11(a)(1), which provides that after-acquired land constitutes restored lands if the legislation restoring the Tribe "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." *Id.* Use of the word "authorizes" in this context refers to the "may" in the AIRA's Restored Lands Language. It does *not* refer to the IRA affirmation language in any of the five subject restoration acts.

"It is a basic tenet that 'regulations, in order to be valid, must be consistent with the statute under which they are promulgated.'" *Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 597, 609 (2013) (quoting *United States v. Larionoff,* 431 U.S. 864, 873 (1977)). This "Court must reject an agency's interpretation of its own regulation if that interpretation is inconsistent with Congress's statutory directives." *Ark. Dep't of Hum. Servs. v. Sebelius*, 818 F. Supp. 2d 107, 115 (D.D.C. 2011). DOI's interpretation of 25 C.F.R. § 292.11(a)(1), which as applied to the "may" in the AIRA accords with Congressional intent, runs afoul of IGRA and Congressional intent when it is interpreted broadly to encompass all counties in Coquille's service area. *See Koi Nation of N. Cal. V. U.S. Dep't of Interior*, 361 F. Supp. 3d 14, 42, 59 (D.D.C. 2019) (concluding "DOI's gaps in reasoning for the agency's interpretation of [IGRA's] restored lands exception . . . renders the agency's explanation for 25 C.F.R. § 292.10(b) arbitrary and capricious and the challenged regulation itself invalid.").

Nor is DOI's determination—that a parcel taken into trust under the CRA's IRA affirmation language qualifies for *gaming* under the statute-based restored lands exception—entitled to any judicial deference. *See Loper Bright,* 603 U.S. 369, 412; *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1265 (10th Cir. 2001) (concluding because "neither the Secretary nor the Department of the Interior in general is charged with administering IGRA," their interpretation of IGRA's terms are "owe[d] no deference.").

DOI's misreading of the CRA and misapplication of 25 C.F.R. § 292.11(a)(1), which are inconsistent with IGRA's terms and purpose, must therefore be set aside.

E. Plaintiffs Are Entitled to Summary Judgment Because Federal Defendants' Issuance of the FEIS and ROD Violates the IRA's Privileges and Immunities Clause (Fifth Claim).

The agency's new interpretation of IGRA's restored lands exception likewise violates the IRA's privileges and immunities clause, 25 U.S.C. § 5132(f), by enhancing Coquille's privileges at the expense of diminishing Plaintiffs' privileges.

In 1994, Congress amended the IRA to add § 16, providing:

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

25 U.S.C. § 5123(f). The purpose of the clause is to prohibit "disparate treatment between similarly situated recognized tribes." *Koi Nation of N. Cal.,* 361 F. Supp. 3d at 54. It applies to DOI's decisions under both the IRA and IGRA, as "gaming activities on Indian lands under IGRA's restored lands exception certainly are 'privileges . . . available to the Indian tribe' by virtue of a tribe's status as a recognized Indian tribe." *Id.* at 52 (quoting 25 U.S.C. § 5123(f)). Relatedly, "[i]n administering the restored lands exception, the Secretary needs to ensure that tribes do not take

advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations." *Redding Rancheria*, 776 F.3d at 711.

Plaintiffs are similarly situated to Coquille. All four Tribes are located on the West Coast. *See* CC-026154–55. All four Tribal nation parties share nearly identical political histories, as each of the Tribes' recognition status was "terminated" but later "restored," for purposes of IGRA, by an Act of Congress or litigation. *See* 25 U.S.C. § 715, *et seq*. (omitted); 25 U.S.C. § 712 (omitted). Today, all four Tribes are federally recognized by DOI. 89 Fed. Reg. 944, 945–46 (Jan. 8, 2024). And, prior to Federal Defendants' issuance of the ROD, each of the four Tribes operated one casino within or near their reservations.

As discussed above, until as recently as May 27, 2020, DOI did not interpret IGRA's restored lands exception, the Part 292 regulations, or the CRA to allow Coquille to bypass the connections-based requirements under 25 C.F.R. § 292.12. CC-020062. Nevertheless, DOI concluded that Coquille could still potentially pursue gaming on the Medford parcel through IGRA's "two-part determination" process, 25 U.S.C. § 2719(b)(1)(A), which would "provide a process whereby concerns of the state [could] be addressed." CC-020062.

Yet, Federal Defendants' final approval of Coquille's application to take the Medford parcel into trust for gaming activity on or near the ancestral lands of Plaintiffs—based on the DOI's new interpretation of IGRA's restored lands exception, the Part 292 regulations, and the CRA (*see* Section IV(D) above)—violates the IRA's privileges and immunities clause by enhancing Coquille's privileges at the expense of diminishing those of Plaintiffs. *See* 25 U.S.C. § 5123(f).

As this Court in explained in *Koi Nation*, DOI cannot "implement [a new] interpretation of IGRA's restored lands exception in a manner that violates § 5123(f), which prohibits the agency from promulgating 'any' regulation or making 'any' decision 'with respect to a federally recognized Indian tribe' that diminishes the tribe's privileges 'relative to other federally recognized tribes.'" *Id.* at 56; *see also Redding Rancheria*, 776 F.3d at 711.

The final agency decision diminishing the relative privileges of Plaintiffs is particularly problematic, recognizing that Coquille cannot demonstrate significant historical, modern, or temporal connections to the Medford region (as its ancestral lands are located 170 miles from the Medford parcel)—unlike Plaintiffs. CC-020035; CC-024274–75 (showing Karuk's connections to the Medford area); *see also* 25 C.F.R. § 292.12; 25 U.S.C. § 2719(b)(1)(B)(iii). Federal Defendants' novel and unprecedented application of IGRA's restored lands exception to diminish Plaintiffs' relative privileges is invalid under § 5123(f) and must be vacated.

F. Plaintiffs Are Entitled to Summary Judgment Because Federal Defendants Failed to Meaningfully Consult Other Tribal Nations (Second Claim).

Summary judgment is also appropriate because Federal Defendants failed to meaningfully consult Plaintiffs, which DOI knew would be adversely affected (among other Tribal nations), in violation of NEPA and its implementing regulations.

NEPA expressly requires Federal Defendants to assess environmental impact "in cooperation with State and local governments[]," including Tribal governments. 42 U.S.C. § 4331(a) (emphasis added); *see* 43 C.F.R. § 46.155. NEPA establishes this consultation requirement as part of the environmental review process "in part to ensure that the public has an opportunity to participate meaningfully in decisionmaking at the administrative and legislative levels." *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 365 (D.C. Cir. 1981).

DOI's regulations implementing NEPA, 43 C.F.R. Part 46, expressly require Federal Defendants, "whenever possible," to "consult, coordinate, and cooperate with . . . tribal governments . . . concerning the environmental effects of any Federal action within the jurisdiction or related to the interests of these entities." 43 C.F.R. § 46.155. The Bureau of Indian Affairs ("BIA") NEPA Guidebook likewise mandates that "Tribal governments . . . should not only be consulted but should be partners with the BIA in the NEPA process, and invited to serve as cooperating agencies." Indian Affairs National Environmental Policy Act (NEPA) Guidebook, 59 IAM 3-H (Aug. 2012), § 2.3, p. 6.[29] More generally, DOI has adopted an agency policy requiring "robust, interactive, pre-decisional, informative, and transparent consultation" with affected Tribal nations "whenever there is a Department action with Tribal implications." DOI Department Manual, 512 DM 4 at § 4.4.[30]

Notwithstanding these consultation mandates, Federal Defendants failed—indeed, refused—to make a reasonable or good faith effort to consult with Plaintiffs before issuing the FEIS or the ROD. Defendants' consultation failures are evidenced by the numerous comment letters submitted by Tribal nations in Oregon, California, and beyond, beginning in 2013. *See, e.g.*, CC-020298; CC-024203; CC-024783; CC-024785; CC-026397; CC-026439; CC-026442; CC-026460; CC-026967; CC-027718. Plaintiffs each raised objections to Federal Defendants' inadequate consultations, citing the federal authority that obliged them to engage in such consultation, but each objection was ignored. *See id*. As late as 2024, just prior to issuing the FEIS, Federal Defendants failed to consult with Cow Creek despite direction from the White House to do so. *See* CC-026397. On August 2, 2024, Cow Creek followed the White House's direction and wrote Interior Secretary Deb Haaland asking for consultation and information regarding the DEIS, and requesting a response before DOI published the FEIS. *Id.* ("We hope for your earliest response to our questions so we can ascertain if a consultation meeting is needed with DOI in the near term,

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[29] The BIA NEPA Guidebook, 59 IAM 3-H, is available at https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf.

[30] The DOI Department Manual, 512 DM 4, is available at https://www.bia.gov/sites/default/files/dup/tcinfo/512-dm-4-final_508.pdf.

particularly if the Assistant Secretary of Indian Affairs is readying [an FEIS] decision on that project."). DOI never responded to that request. *See* CC-026442; CC-026439.

After Cow Creek emailed Secretary Haaland (on September 4, and October 2 and 21, 2024), in search of a response to her request, the Secretary's Chief of Staff finally replied on October 23, 2024, "apologiz[ing] for the delay in responding," explaining that AS-IA was "preparing a response on behalf of the Department to [Cow Creek's] inquiry," and promising that DOI Principal Deputy AS-IA would "be in touch with [Cow Creek's Chair] directly." CC-026442. But neither Secretary Haaland nor her Principal Deputy AS-IA ever responded to Cow Creek—despite both the White House's direction and Secretary Haaland's Chief of Staff's promise. *Id*. Cow Creek detrimentally relied on Secretary Haaland's Chief of Staff's promise and expected some form of consultation regarding the FEIS prior to its issuance. *See id.* But Cow Creek never got what they were owed and promised—Federal Defendants published the FEIS the next week without consultation or a response. CC-026439; CC-026442; CC-026460; CC-026967 (documenting Cow Creek's failed efforts to obtain consultation or information from DOI between October 2, 2024, and January 3, 2025).

Federal Defendants violated NEPA's consultation requirements because they failed to follow their own regulations, policies, and procedures requiring Defendants to "consult, coordinate, and cooperate" with Plaintiffs, which will suffer devastating environmental justice consequences due to the proposed action. 43 C.F.R. § 46.155; *see* 42 U.S.C. § 4331(a); 59 IAM 3-H, § 2.3, p .6; 512 DM 4 at § 4.4. Federal courts have long concluded that "[i]n mandating compliance with NEPA's procedural requirements as a means of safeguarding against environmental harms, Congress has presumptively determined that the failure to comply with NEPA has detrimental consequences for the environment." *Davis v. Mineta*, 302 F.3d 1104, 1114 (10th Cir. 2002), *abrogated on other grounds by Diné Citizens Against Ruining Our Env't v.*

Jewell, 839 F.3d 1276 (10th Cir. 2016); *Comm. to Save the Rio Hondo v. Lucero*, 102 F.3d 445, 448–49 (10th Cir. 1996) ("The injury of an increased risk of harm due to an agency's uninformed decision is precisely the type of injury [NEPA] was designed to prevent."); *Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1989) (concluding the harm NEPA seeks to prevent is complete when agency makes a decision without considering information NEPA seeks to place before the decisionmaker and public); *see also* 42 U.S.C. § 4321 (congressional declaration of purpose); *see also Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) (concluding the "Tribe was entitled to be consulted under NEPA").

Here, too, Plaintiffs were entitled to be consulted under NEPA and DOI's implementing regulations and policies. 43 C.F.R. § 46.155; *see* 42 U.S.C. § 4331(a); 59 IAM 3-H, § 2.3, p. 6; 512 DM 4 at § 4.4. Because Federal Defendants failed to adequately consult Plaintiffs just before issuing the FEIS and ROD, they acted contrary to NEPA, and their final decision must be set aside under the APA. *See, e.g.*, *Quechan Tribe*, 755 F. Supp. 2d at 1120; 5 U.S.C. § 706(2).

The FEIS asserts, in a conclusory fashion, that Federal Defendants provided notice and adequate consultation to each of the three Plaintiffs based on certain meetings with Plaintiffs since 2022. *See, e.g.*, CC-026328. But "[c]ontact, of course, is not consultation." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 205 F. Supp. 3d 4, 32 (D.D.C. 2016). Notices, and meetings without "answer to any questions or . . . any information about the status of the project," are contact without consultation—and unlawful under applicable federal laws and policies. *Id.* Plaintiffs were entitled to pre-decisional consultation about the FEIS and ROD under NEPA.

G. Plaintiffs Are Entitled to Summary Judgment Because Federal Defendants' Issuance of the FEIS Violates NEPA (Seventh Claim).

Finally, Federal Defendants acted arbitrarily and capriciously by issuing an FEIS that relies on stale and outdated reports in contravention of NEPA. NEPA requires agencies to take a "hard look" at a proposed action's environmental impacts, including issuing a detailed statement, known as an EIS, that addresses the extent to which mitigation measures can minimize adverse environmental or environmental justice impacts. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *accord Izaak Walton League of Am.*, 655 F.2d at 365 (NEPA establishes the EIS requirement "in part to ensure that the public has an opportunity to participate meaningfully in decisionmaking at the administrative and legislative levels").

To satisfy NEPA's "hard look" requirement, "an agency must consider the cumulative impacts of a proposed action . . . and generally cannot rely on an outdated analysis to support its actions." *W. Org. of Res. Councils v. Zinke*, 892 F.3d 1234, 1238, 1244 (D.C. Cir. 2018) (acknowledging an agency may not rely on reports or data that "are too outdated to support new federal action"); *see, e.g.*, *Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) (finding that six-year-old data, without updated habitat surveys, was too stale). As the Supreme Court has explained, "[i]t would be incongruous with . . . [NEPA's] manifest concern with preventing uninformed action, for the blinders of environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989); *see, e.g.*, *Lemon v. McHugh*, 668 F. Supp. 2d 133, 142 (D.D.C. 2009) (vacating final agency decision and remanding to either issue a supplemental EIS addressing significant impacts or otherwise "mak[ing] a convincing case why [the changed circumstances] present[] no significant impacts above and beyond those determined in the EIS").

In issuing the FEIS here, clearing the path for Coquille to establish a second casino in Medford, DOI barreled full steam ahead with its "blinders" on. *Marsh*, 490 U.S. at 371. As discussed in Section IV(C) above, in assessing the environmental justice impacts of Coquille's proposed casino in Medford, the FEIS relied on Coquille's 2013 Business Plan, a report issued nearly *12 years* earlier. *See* CC-026809. In addition, the FEIS relies on outdated environmental reports, such as a traffic impact analysis from 2015 and an AES report from 2016, both of which are about 10 years old. CC-024967–74.

Since these reports were issued, however, much has changed. The Oregon Governor, for example, has signed into effect Executive Order No. 20-04, directing state agencies to promulgate new administrative rules designed to reduce and regulate GHG emissions, resulting in Climate Friendly and Equitable Communities rulemaking. CC-025019 (citing OAR 660-012-045–660-012-0445; OAR 660-012-0410; ORS § 455.417). Neither the DEIS nor the FEIS cited this source of law, as the City of Medford recognized in February 2023. *Id.* At the same time, Jackson County has experienced significant population growth, as its population grew from 209,629 in 2015 to 225,798 in 2022 (and is projected to grow to 240,551 in 2029). CC-011350; CC-024798.

Likewise, from 2012 to 2025, Coquille's gross revenues have grown substantially, including revenues from Coquille's Tribal One enterprises, which have secured hundreds of millions of dollars in federal contracts since 2016, CC-025216–17, or Coquille's newly constructed hotel in Medford, which has been operating since 2022. CC-026923–24. Such data directly contradict DOI's conclusion that a second casino in Medford is "necessary to facilitate tribal self-sufficiency, self-determination, and economic development." CC-026847.[31]

The FEIS's reliance on such stale data is even more problematic, recognizing that DOI has to date failed to comply with NEPA's mandate to "identify and develop methods and procedures"

[31] Relatedly, as discussed *supra*, the FEIS failed to assess "environmental justice" impacts to other Tribes (e.g., reduced "governmental and social services" to Plaintiffs' citizens) allegedly because Federal Defendants did not have Plaintiffs' "confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members." CC-026311. Federal Defendants did not have this information because they never asked for it, instead relying on a Coquille consultant's uninformed speculation. *See id.*

to ensure unquantifiable environmental impacts are considered, as well as "*economic* and technical considerations." 42 U.S.C. § 4332(B) (emphasis added); *see Marin Audubon*, 121 F.4th at 914–15 (concluding DOI's NEPA regulations did not constitute a "permissible exercise of [DOI's] own rulemaking authority" because the agency merely "obeyed CEQ's command").[32]

Nevertheless, the FEIS concludes that "since the publication of the scoping report [in 2015], substantial changes relevant to environmental concerns related to" the proposed action to take land into trust for Coquille's second casino in Medford "have not been made" and "there are no significant new circumstances or information relevant to environmental concerns and bearing on the [p]roposed [a]ction or its impacts." CC-026297. The FEIS's conclusion simply cannot be squared with the record, which unambiguously demonstrates that significant new circumstances required DOI to supplement its EIS with up-to-date studies and data—e.g., Oregon's new, robust GHG regulations in the face of a rapidly growing population in Jackson County since 2015. *See* CC-025019; *Lands Council*, 395 F.3d at 1031 (finding that six-year-old data, without updated habitat surveys, was too stale). By failing to adequately update these outdated, material reports, the agency failed to take the requisite hard look at Coquille's proposed second casino in Medford. The FEIS should be set aside for this reason as well. 5 U.S.C. § 706(2).

V. CONCLUSION

For these reasons, the Court should grant Plaintiffs' motion for summary judgment on six of their claims and vacate the FEIS and ROD.

[32] That Coquille immediately started operating its Medford casino on January 11, 2025, without providing NIGC 120-day notice required by 25 C.F.R. § 559.2(a), also demonstrates DOI's failure to take a "hard look" at Coquille's application—as there is no indication in the FEIS that the agency understood Coquille's operational readiness or that Coquille understood that it must satisfy *additional* requirements, like § 559.2(a), before commencing gaming at the Medford site.

DATED this 23rd day of July, 2025.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

This brief complies with the applicable word-count limitation under Local Rule 7(e) because it contains 45 pages, excluding the caption, tables of contents and authorities, signature block, declarations, exhibits, and any certificates of counsel.

DATED this 23rd day of July, 2025.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that this document will be served on the Defendants in accordance with Federal Rule of Civil Procedure 5(a).

DATED this 23rd day of July, 2025.

Respectfully submitted,

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