IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

FEDERAL DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In January 2025, the U.S. Department of the Interior approved the acquisition of a 2.4-acre parcel of land located in Medford, Oregon ("Medford Parcel"), into federal trust for the Coquille Indian Tribe for gaming purposes. Prior to the land-into-trust transaction, Coquille owned the land in fee and operated a bowling alley on it. Interior's decision followed a more than decade-long review of Coquille's application requesting that Interior take the land into trust and issue a determination that the land is eligible for gaming. The gaming facility will generate income for the Coquille Tribal Government, which would allow it to better "provide essential programs and services to its membership." CC-025996.[1]

Interior's decision to approve Coquille's land-into-trust application was informed by a thorough review of potential impacts to the environment under the National Environmental Policy Act ("NEPA"). The review spanned a decade and involved extensive study, multiple rounds of public comment, public hearings, and consultation with interested tribes, including the Plaintiffs here. That review culminated in the Final Environmental Impact Statement ("FEIS") issued in November 2024. The FEIS informed Interior's ultimate decision to grant Coquille's application and take the Medford Parcel into trust. As part of its Record of Decision ("ROD"), Interior relied on the environmental analysis in the FEIS and explained how the Medford Parcel meets the regulatory standards for gaming eligibility.

Plaintiffs are the Cow Creek Band of Umpqua Tribe of Indians, the Karuk Tribe, and the Tolowa Dee-ni' Nation. Plaintiffs each operate their own gaming facilities in neighboring areas. They oppose Coquille's land-into-trust application and Coquille's plan to develop a Class II

[1] This citation convention refers to pages of the Administrative Record filed May 16, 2025, and the Supplemental Administrative Record filed July 16, 2025.

gaming facility because they are concerned that Coquille's facility would compete with their own gaming facilities, leading to reduced revenue for their respective governments.

Plaintiffs sued under the Administrative Procedure Act ("APA"), raising *ulra vires* claims and statutory claims under NEPA, the Indian Reorganization Act ("IRA"), and the Indian Gaming Regulatory Act ("IGRA"). But Plaintiffs have not carried their burden to establish that Interior's decision here was arbitrary and capricious or contrary to law.

First, Plaintiffs' argument that the D.C. Circuit's decision in *Marin Audubon Soc'y v. FAA*, 121 F.4th 902 (D.C. Cir. 2024), requires the Court to find Interior's FEIS and ROD invalid lacks any merit. Plaintiffs misconstrue the holding in *Marin Audubon* and misjudge its impact.

Second, Plaintiffs have not carried their burden to establish that Interior's environmental review violated NEPA. Interior did not arbitrarily or capriciously rely on outdated or stale information to support its analysis. Nor did Interior violate any NEPA-imposed consultation obligations. And Interior did not violate any obligation to analyze environmental justice factors.

Third, Interior balanced state and local concerns with the anticipated benefits of the land-into-trust transaction consistent with the requirements of the IRA. And Interior did not diminish Plaintiffs' privileges or immunities under that Act.

Fourth, Interior reasonably concluded that the Medford Parcel was eligible for gaming under IGRA. Plaintiffs have not established otherwise.

This Court should deny Plaintiffs' motion for summary judgment and enter summary judgment in favor of Federal Defendants.

BACKGROUND

I. Factual Background

A. The Coquille Indian Tribe

The Coquille people were originally known by the name "Mishikhwutmetunne," which means "people living on the stream called Mishi or Misha." CC-026796. Coquille "was one of a group of tribes and bands that occupied permanent villages on the Oregon coast." *Id.* In 1855, the Coquille were party to a treaty with the United States to cede land, receive payment, and to remove themselves and settle on new reservation lands on the coast. CC-026797. The 1855 treaty was never ratified. *Id.*

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

The United States subsequently restored its government-to-government relationship with Coquille in 1989, when Congress enacted the Coquille Restoration Act ("CRA"). Act of June 28, 1989, Pub. L. 101-42, 103 Stat. 91. The CRA restored Coquille's rights and privileges and made Coquille and its citizens eligible for federal services and benefits. *Id.* § 3(b). As the Senate explained, "[r]estoration of the trust relationship and the government-to-government relationship with the Coquille Tribe of Oregon is the last step in the process [of] correcting an historic injustice and restoring to a Federal relationship a tribe whose existence and relationship to the United States was specifically extinguished by an Act of Congress." S. Rep. No. 101-50, at 2.

Coquille is federally recognized and, as of 2019, had a total enrollment of 1,100 members. Approximately 52% of those members live in Coquille's congressionally designated service area covering 15,603 square miles across five counties in southwestern Oregon. Final Environmental Impact Statement, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project ("FEIS") Vol. II, CC-025995–96. Coquille currently operates the Mill Casino, Hotel, and RV Park ("Mill Casino") in North Bend, Oregon, which has historically been Coquille's leading source of revenue.

CC-026802.

B. Coquille's Land-to-Trust Application

In January 2015, the Bureau of Indian Affairs ("BIA") issued a Notice of Intent to prepare an environmental impact statement ("EIS") in connection with Coquille's application requesting that an approximately 2.4-acre parcel of land in Medford, Oregon (the Medford Parcel) be transferred from Coquille's fee ownership to federal trust. CC-025995; CC-006584–86 (Notice of Intent). The Medford Parcel is located within Coquille's service area as defined in the CRA. CRA § 2(5).

Coquille's Medford Parcel includes an existing bowling alley, on which Coquille previously offered gaming in the form of Oregon State Lottery Video Lottery Terminal machines. CC-026796. Coquille intends to renovate and convert that existing bowling alley into an IGRA Class II gaming facility.[2] *Id.* Coquille's planned facility would consist of 650 electronic bingo machines within a 16,700-square-foot gaming floor area. *Id.* The renovated facility would also include a bar and deli and a space devoted to gaming support services. *Id.*

In May 2020, Interior declined Coquille's application to take the Medford Parcel into trust. CC-020049. The agency issued this decision due to unresolved jurisdictional concerns between Coquille and the local government that outweighed the anticipated benefits of the acquisition. *Id.* In September 2020, BIA published a Notice of Cancellation of the EIS in the Federal Register. CC-025997. That Notice of Cancellation was subsequently withdrawn in December 2021. *Id.* Interior concluded that "[t]he 2020 Denial resulted in the Department's cancellation of the environmental review process, which deprived the decision maker of important information

[2] Class II gaming involves the operation of "the game of chance commonly known as bingo," including electronic bingo machines, 25 U.S.C. § 2703(7)(A), and non-banking card games, as detailed under 25 C.F.R. § 503.3.

critical to making a final determination, and pre-empted the Tribe's effort to negotiate inter-governmental agreements with local authorities." CC-020317.

Interior released a Draft EIS for public comment in November 2022. Interior accepted comments on the Draft EIS for ninety days, ending in February 2023. CC-025998. It also held two public hearings in December 2022 and January 2023 to discuss the proposed project, explain the analysis in the Draft EIS, and hear any oral comments from the public. *Id.* Interior later released the FEIS on November 22, 2024. CC-025946. It continued to accept comments on the FEIS for thirty days, which ended on December 23, 2024. CC-025947.

On January 10, 2025, Interior issued its ROD explaining its decision to take the Medford Parcel into trust for Coquille. CC-026811–41. The ROD incorporated a summary of all substantive comments received during the 30-day, post-EIS comment period and provided Interior's responses to any issues not previously raised. CC-026815; *see also* ROD Attach. 3, CC-026909 (providing supplemental responses to FEIS comments). As part of the ROD, Interior thoroughly explained its determination that the Medford Parcel meets the regulatory standard for gaming under IGRA's restored lands exception. *See* Decision Letter attached to ROD (citing 25 C.F.R. §§ 292.7-.12), CC-026817; 026796. That same day, Interior accepted conveyance of the Medford Parcel in trust for Coquille. CC-026875–80. Consistent with the ROD, Interior has completed all the steps necessary to acquire the Medford Parcel in trust, and the Medford Parcel is now part of the Coquille reservation.

II. Legal Background

A. Indian Reorganization Act

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

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

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

B. <u>The Coquille Restoration Act</u>

As explained above, the CRA restored Coquille's federal recognition. *See* Coquille Restoration Act, Pub. L. 101-42, 103 Stat. 91. In addition, the CRA expressly makes all provisions of the IRA applicable to Coquille and its members. *Id.* § 3(e). The CRA also designates a five-county service area for Coquille in Coos, Curry, Douglas, Jackson, and Lane Counties in Oregon. *Id.* § 2(5). And, as relevant here, the CRA provides the Secretary with both mandatory and discretionary trust land acquisition authority within that service area. *Id.* § 5.

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

C. Indian Gaming Regulatory Act

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

Generally, IGRA bars gaming on lands taken into trust after October 17, 1988. *Id.* § 2719(a). But there are limited exceptions to this prohibition. As relevant to Coquille's application, IGRA's time limitation does not apply to lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." *Id.* § 2719(b)(1)(B)(iii); FEIS Vol. II, CC-026008. In 2008, Interior promulgated regulations implementing IGRA. Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354 (May 20, 2008) ("Part 292"). These regulations articulate the standards Interior follows

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

when implementing exceptions to IGRA's prohibition on gaming, including the restored lands exception. 25 C.F.R. §§ 292.7-.12.

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

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

NEPA requires preparation of an environmental impact statement for "major [f]ederal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). NEPA is a "procedural cross-check" designed "to inform agency decisionmaking." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.,* 145 S. Ct. 1497, 1507 (2025). It mandates procedures—not results. *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004). When reviewing an agency's NEPA analysis, "[c]ourts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness." *Seven Cnty.*, 145 S. Ct. at 1513.

NEPA also established the Council on Environmental Quality. 42 U.S.C. §§ 4342, 4344(3), (4). In a 1977 Executive Order, President Carter directed CEQ to promulgate regulations implementing NEPA and directed all agencies to comply with those regulations. Exec. Ord. No. 11991, 42 Fed. Reg. 26967. On January 20, 2025, (after the ROD issued here) President Trump issued an Executive Order revoking Executive Order 11991, issued by Present Carter in 1977. *See* White House, Presidential Actions, Unleashing American Energy, Executive Order, *available at* https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/ (issued Jan. 20, 2025).

In February 2025, after President Trump's Executive Order, CEQ rescinded its NEPA regulations. *See Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10610 (Feb. 25, 2025). CEQ's interim final rule advised that "agencies should, in defending actions they have taken, continue to rely on the version of CEQ's regulations that was in effect at the time that the agency action under challenge was completed." *Id.* at 10614. "CEQ contemporaneously published guidance endorsing that approach." *Healthy Gulf v. Burgum*, 775 F. Supp. 3d 455, 467 n.5 (D.D.C. 2025) (citing *Memorandum for Heads of Departments and Agencies: Implementation of the National Environmental Policy Act* at 1 (Feb. 19, 2025), *available at* https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf ("[A]lthough CEQ is rescinding its NEPA implementing regulations at 40 C.F.R. parts 1500–1508, agencies should consider voluntarily relying on those regulations in completing ongoing NEPA reviews or defending against challenges to reviews completed while those regulations were in effect.")).

STANDARD OF REVIEW

Review here is governed by the APA's "deferential standard of review." *Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017). Under the APA, a court may set aside agency action if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §§ 702, 706(2)(A). This standard of review is "narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The reviewing court determines whether the agency "considered the factors relevant to its decision and articulated a rational connection between the facts found and the choice made." *Keating v. FERC*, 569 F.3d 427, 433 (D.C. Cir. 2009).

Rule 56 does not apply "[w]hen evaluating cross-motions for summary judgment under the APA." *Healthy Gulf*, 775 F. Supp. 3d at 468. Instead, the court's review is"limited to 'deciding, as a matter of law, whether the agency action is supported by the administrative record and otherwise consistent with the APA standard of review.'" *Id.* (quoting *Ipsen Biopharmaceuticals, Inc. v. Becerra*, 678 F. Supp. 3d 20, 29 (D.D.C. 2023), *aff'd*, 108 F.4th 836 (D.C. Cir. 2024)). As the parties challenging the administrative decision, Plaintiffs bear the burden to demonstrate that an agency has violated the APA. *Banner Health v. Sebelius*, 715 F. Supp. 2d 142, 153 (D.D.C. 2010).

ARGUMENT

Plaintiffs have failed to meet their burden on all their claims. Interior is entitled to summary judgment on each of Plaintiffs' claims because (1) Plaintiffs misconstrue the holding in *Marin Audubon* and that opinion does not invalidate Interior's decision; (2) Interior undertook a thorough environmental review, and Plaintiffs fail to establish that Interior's FEIS and ROD were arbitrary or capricious or otherwise not in accordance with law; (3) Interior considered all relevant factors under the IRA and its implementing regulations, as articulated in the record; and (4) Interior reasonably determined that the Medford Parcel is eligible for gaming under IGRA, and Plaintiffs do not establish that the agency's decisions were arbitrary. Therefore, the Court should deny

Plaintiffs' motion for summary judgment, and grant summary judgment in favor of Federal Defendants on all of Plaintiffs' claims.[4]

I. Plaintiffs' claims under *Marin Audubon* lack merit.

Plaintiffs' lead argument is that Interior's "issuance of the FEIS and ROD is *ultra vires*" because Interior cited and relied upon CEQ regulations that a divided panel of the D.C. Circuit held were *ultra vires* and that CEQ has since rescinded. Pls.' Mem. of P. & A. in Supp. of Mot. for Summ. J. ("Pls.' Mot.") 13-21, Dkt. No. 77.

Plaintiffs' reliance on *Marin Audubon* fails for at least three reasons. *First*, Plaintiffs misread *Marin Audubon* and misconstrue its holding. *Second*, Plaintiffs misapprehend the basis for Interior's NEPA review, suggesting (incorrectly) that Interior's NEPA process was dependent on or derived from CEQ's authority to issue binding regulations rather than from Interior's independent statutory obligation to comply with NEPA. *Third*, Interior complied with its own NEPA regulations, and Plaintiffs fail to show otherwise.

A. Plaintiffs misread *Marin Audubon*.

In *Marin Audubon*, the D.C. Circuit held that the FAA and National Park Service utilized an improper baseline for evaluating the environmental effects of their proposed Air Tour Management Plan to regulate tour flights over national parks. 121 F.4th at 905, 915-18. On that basis, the panel majority vacated the agencies' plan and remanded for further NEPA review. *Id.* at 918. In addition, in a separate part of the opinion, "the panel majority opined that CEQ lacks authority to issue binding NEPA regulations." *Marin Audubon Soc'y v. FAA*, No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025) (Srinivasan, C.J., concurring in the denial of rehearing en

[4] Plaintiffs acknowledge that they did not move for summary judgment on Claim 6. Pls.' Mot. 1 n.1. Plaintiffs therefore have not carried their burden to show they are entitled to relief on Claim 6, so the Court should enter summary judgment in favor of Federal Defendants on that Claim.

banc). In denying the petition for rehearing en banc, a majority of the D.C. Circuit stated that "the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition" because it was based "on an entirely separate ground," *id.*, —the agencies' selection of the environmental baseline, which the panel unanimously found arbitrary and capricious, *Marin Audubon*, 121 F. 4th at 915.

In arguing that *Marin Audubon* compels this Court to find the FEIS and ROD *ultra vires*, Plaintiffs misconstrue *Marin Audubon*'s holding. According to Plaintiffs, the panel in *Marin Audubon* "vacat[ed] FAA's final decision because the entire NEPA decision-making framework, based on the *ultra vires* CEQ regulations, was legally invalid." Pls.' Mot. 13-14. But that is incorrect.

Marin Audubon's holding was based on its assessment of the agencies' environmental baseline, not the agencies' reliance on CEQ regulations. That is true notwithstanding the panel majority's statement—which Plaintiffs' selectively quote—that "the Agencies' actions were *ultra vires* when they determined [that their Plan] would have no environmental impact as compared with the existing tour flights permitted on an interim basis." Pls.' Mot. 18 (quoting *Marin Audubon*, 121 F.4th at 918). Adding back the language that Plaintiffs selectively omit makes clear that the court's holding was based on the deficiency of the agencies' environmental baseline, not CEQ's lack of rulemaking authority. It states in full: "*As discussed in Part III above*, the Agencies' actions were *ultra vires* when they determined that their Plan would have no environmental impact as compared with the existing tour flights permitted on an interim basis." 121 F.4th at 918 (emphasis added). Part III addressed the arguments petitioners made "without invoking CEQ regulations," including their argument (that the Court agreed with) that the agencies had utilized the wrong environmental baseline. *Id.* at 915-18. By contrast, the panel majority's discussion of CEQ's regulatory authority was contained in Part II of the decision. *Id.* at 908-15. Even though the panel used the term "ultra vires" to describe the deficiency in the agencies' environmental analysis, the opinion is clear that the panel's vacatur of the agencies' plan was based on the agencies' environmental baseline analysis, not any issue related to CEQ's regulations.

That interpretation is confirmed by the D.C. Circuit's denial of rehearing *en banc*—a development Plaintiffs fail to acknowledge. There, seven of the twelve judges concurred on the basis that the *Marin Audubon* "panel unanimously ruled in favor of the challenge in [that] case on an entirely separate ground," such that "the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition." 2025 WL 374897 at *1. Despite Plaintiffs' arguments to the contrary, *Marin Audubon* did not invalidate the agencies' decision because the agencies relied on CEQ regulations in their NEPA review. It did so on the "entirely separate ground" that the agencies failed to comply with NEPA's statutory requirements.

B. Interior's NEPA review was conducted pursuant to its statutory obligations, not CEQ's rulemaking authority.

In addition to misreading *Marin Audubon*, Plaintiffs' theory for invalidating the FEIS and ROD here also appears to be based on the contention that Interior's NEPA review was *ultra vires* because it was "conducted 'in reliance on' the CEQ's unconstitutional regulations." Pls.' Mot. 17. That theory conflates the question of CEQ's regulatory authority with Interior's separate and independent statutory obligation to comply with NEPA, not to mention the fact that Interior's authority to act on Coquille's application arises under the IRA, not NEPA.

Taking that latter point first, Plaintiffs' *ultra vires* claim focuses on the wrong thing. To demonstrate *ultra vires* action, Plaintiffs must "show a 'patent violation of agency authority.'" *Am. Clinical Lab'y Ass'n v. Azar*, 931 F.3d 1195, 1208 (D.C. Cir. 2019) (quoting *Indep. Cosm. Mfrs. & Distribs., Inc. v. U.S. Dep't of Health, Educ. & Welfare*, 574 F.2d 553, 555 (D.C. Cir.

1978)). But NEPA did not provide Interior the authority to act on Colquille's application—that authority arises under the IRA, 25 U.S.C. § 5108. NEPA, however, is "*purely procedural*." *Seven Cnty.,* 145 S. Ct. at 1507 (emphasis added). Yet Plaintiffs have not argued Interior lacked the authority under the IRA to act upon the application.

Nor did Interior lack statutory authority to undertake its EIS. NEPA—even without CEQ's implementing regulations—requires federal agencies to assess the environmental impacts of all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C); *see also id.* § 4336(b)(1) (2023 NEPA amendment referencing "an environmental impact statement"). Interior complied with NEPA, including the 2023 NEPA amendments, by preparing an EIS consistent with NEPA. 42 U.S.C. § 4336(b)(1). With respect to CEQ's regulations, Interior acknowledged the panel decision in *Marin Audubon* in the ROD, stating, "[t]o the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations … in addition to the Department of Interior's procedures/regulations implementing NEPA … and the BIA NEPA Guidebook … to meet the agency's obligations under NEPA." CC-026839 n.1. Thus, Interior "elected" to undertake a NEPA review consistent with then-promulgated CEQ regulations. That voluntary decision does not strip Interior of its authority (and obligation) to follow NEPA's statutory directives.

Marin Audubon is not to the contrary. When the panel majority analyzed CEQ's authority in that case, it did so in response to the challengers' argument that the agencies violated NEPA by failing to comply with the CEQ regulations. 121 F.4th at 908 ("As the parties argue the case, it centers on whether the Agencies complied with the regulations of [CEQ]."). The panel did not ultimately address that argument, however, because it concluded that CEQ lacked the authority to issue regulations that "govern how all federal agencies must comply with [NEPA]." *Id.* In other words, the question the panel was considering was whether CEQ had authority to issue regulations that bind agency NEPA compliance and, thus, whether an agency's alleged *failure* to comply with CEQ's regulations would violate NEPA.

But the *Marin Audubon* panel did not address the argument Plaintiffs press here: that an agency's *voluntary compliance* with allegedly invalid CEQ regulations would somehow render the agency's action *ultra vires* by association. And nothing in *Marin Audubon* supports Plaintiffs' theory. The panel majority never suggested that an agency's voluntary decision to follow CEQ's regulations would violate NEPA. Nor did the panel deem the agencies' NEPA review arbitrary and capricious for relying on CEQ regulations. In fact, as the judges concurring in the denial of rehearing *en banc* explained, the panel majority's conclusion with respect to CEQ's authority "could not independently support the panel's disposition to set aside the agencies' challenged action" because "any conclusion that the CEQ lacks authority to issue binding regulations would leave unaffected the agencies' challenged *choice* [t]here to make use of a categorical exclusion." *Marin Audubon*, 2025 WL 374897 at *1. Thus, nothing in *Marin Audubon* prevented the agencies there—or Interior here—from voluntarily complying with CEQ regulations.

Plaintiffs fail to point to any other post-*Marin Audubon* decision that has adopted their proposed interpretation. That is telling: If Plaintiffs' interpretation were correct, then *Marin Audubon* would have sweeping consequences for any NEPA review that cited CEQ's regulations—every one of the agency actions at issue would have to be deemed *ultra vires*. But Plaintiffs fail to cite a single case since the D.C. Circuit issued *Marin Audubon* nearly eleven months ago that invalidates an agency's action or NEPA review on that basis.

To the contrary, cases decided after *Marin Audubon* have generally proceeded to review agencies' environmental analyses for compliance with NEPA, even where those agencies relied on CEQ's regulations. For example, when this Court analyzed post-*Marin Audubon* NEPA claims in *Healthy Gulf v. Burgum*, it did not conclude that reliance on CEQ regulations would render an agency's NEPA review *ultra vires*. *Healthy Gulf*, 775 F. Supp. 3d at 467 3d at 467 n.5.

Similarly, in *Healthy Gulf v. FERC*, the D.C. Circuit rejected NEPA challenges to FERC's EIS, concluding that, because "each of petitioners' NEPA challenges fails on its own terms, we need not and do not resolve the impact of the *Marin Audubon* decision or [CEQ's subsequent rescission of its NEPA regulations] on this case." 132 F.4th 544, 549 n.1 (D.C. Cir. 2025). Like the FEIS here, the EIS in that case was prepared "according to the requirements" of then-in-force CEQ regulations.[5] 132 F.4th at 549 n.1. Other post-*Marin Audubon* cases similarly have concluded that reliance on then-promulgated CEQ regulations does not render an entire agency action or NEPA review *ultra vires*. *See Citizens Action Coal. of Indiana v. FERC*, 125 F.4th 229, 240 n.3 (D.C. Cir. 2025) (concluding that, "[b]ecause FERC complied with CEQ guidance, we need not consider the effect of [the *Marin Audubon*] decision on FERC's NEPA obligations."); *Am. Whitewater v. FERC*, 125 F.4th 1139, 1148 n.2 (D.C. Cir. 2025) (observing that, under *Marin Audubon*, "FERC arguably had no obligation to issue an environmental assessment" but nevertheless reviewing the environmental assessment for compliance with NEPA because FERC relied on it in taking the action at issue).

Nothing in *Marin Audubon* itself, its subsequent history, nor the cases applying it supports Plaintiffs' novel and sweeping assertion that an agency's voluntary reliance on CEQ regulations render its NEPA review or underlying agency action *ultra vires*. Plaintiffs' argument lacks merit

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[5] FERC, Driftwood LNG Project Final Environmental Impact Statement at 1-4, *available at* https://www.ferc.gov/sites/default/files/2020-05/01-18-19-FEIS.pdf.

and should be rejected.

C. Interior complied with its own NEPA regulations.

Plaintiffs next argue both that (a) Interior failed to follow its own NEPA regulations "which they *do* have statutory authority to establish," and (b) that "DOI's NEPA regulations did not constitute 'a permissible exercise of [DOI's] own rulemaking authority." Pls' Mot. 17 (quoting *Marin Audubon*, 121 F.4th at 914-15 (emphasis in original)). Those arguments are plainly contradictory, and Plaintiffs are in any event wrong on both counts.

In the ROD, Interior explained the regulations, policies, and procedures that BIA followed in conducting its NEPA review. As explained above, Interior "elected to follow" CEQ's regulations to the extent they were deemed non-binding, "in addition to the Department of Interior's procedures/regulations implementing NEPA … and the BIA NEPA Guidebook." CC-026839 n.1. Thus, Interior voluntarily elected to follow CEQ's regulations, in addition to its own implementing regulations and procedures.

As to their first point, the only evidence Plaintiffs offer to show that Interior allegedly failed to apply its NEPA regulations is the claim that Interior did not provide sufficient citations to those regulations, and that Interior did not expressly state that it was "'required' to rely on [its] own NEPA-implementing regulations." Pls.' Mot. 17. But Plaintiffs do not point to any legal requirement that an agency cite its regulations a specific number of times. And Interior did reference its regulations in both the FEIS and the ROD. *See* CC-025995; CC-025997; CC-026030; CC-026839. More fundamentally, Plaintiffs fail to identify any provision of Interior's NEPA regulations with which the FEIS supposedly failed to comply. Plaintiffs offer the Court no substantive basis on which it could find that Interior failed to follow its own regulations.

Turning to their second point, Plaintiffs rely again on a distorted interpretation of *Marin Audubon*. Plaintiffs contend that *Marin Audubon* "concluded that DOI's NEPA regulations did not constitute a 'permissible exercise of [DOI's] own rulemaking authority'" because the agency "did not otherwise adopt the content of the CEQ regulations, or incorporate them by reference." Pls.' Mot. 17 (quoting *Marin Audubon*, 121 F.4th at 914-15).

As an initial matter, Plaintiffs appear to be arguing that Interior erred by failing to adopt or incorporate by reference CEQ's regulations, while simultaneously arguing that Interior's FEIS was *ultra vires* because it cited those same CEQ regulations. Plaintiffs do not attempt to reconcile those contradictory assertions. Nor does Plaintiffs' complaint directly challenge Interior's regulations.

Regardless, Plaintiffs' argument again misreads *Marin Audubon*. That case never held that Interior's NEPA regulations were not a permissible use of its rulemaking authority. Instead, the panel majority posed the rhetorical question, "[i]f an agency adopts CEQ's rules or incorporates them by reference into its NEPA regulations, would that be a permissible exercise of its own rulemaking authority?" 121 F.4th at 914. But *Marin Audubon* did not answer that question because it concluded that the agencies "ha[d] neither adopted the content of the CEQ regulations nor incorporated those rules by reference." *Id.* In other words, the panel majority did not rule out the possibility that the requirements in CEQ's then-regulations could become binding if an agency adopted them in the agency's own regulations. It did not find that Interior's regulations were themselves invalid for failing to adopt CEQ's regulations.

Plaintiffs are also wrong that Interior has "acknowledge[d]" that its regulations are not a permissible exercise of rulemaking authority. Pls' Mot. 18. As Interior explained in its interim final rule on July 3, 2025, Interior is in the process of "partially rescind[ing] and mak[ing] other needed, targeted updates" to its NEPA regulations following CEQ's rescission of its regulations, and Executive Order 14151, which "directed agencies to revise their NEPA implementing procedures; and Congress's enactment of the Fiscal Responsibility Act of 2023, Pub. L. 118-5

(June 3, 2023). 90 Fed. Reg. 29498, 29498-99 (July 3, 2025). Interior never stated in that Federal Register Notice that its prior regulations were impermissible.

* * * *

Each of Plaintiffs' arguments based on *Marin Audubon* fails. Plaintiffs' theories rest on misinterpretations of that case and its implications that are unsupported by the case itself and by subsequent cases interpreting it. The Court should enter summary judgment in favor of Federal Defendants on Claim 1.

II. Interior complied with NEPA.

Interior also complied with NEPA when implementing the statute. "The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference." *Seven Cnty.*, 145 S. Ct. at 1515. As the Supreme Court "doubly underscore[d]," a "rule of reason" applies in NEPA cases to the agency's decisions about the scope and contents of the EIS. *Id.* at 1513; *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 555 (1978) (federal court's role "in reviewing the sufficiency of an agency's consideration of environmental factors is … limited").

Plaintiffs' substantive NEPA arguments fail against these principles of deference. Interior's NEPA review was thorough. It includes extensive environmental and economic study, multiple rounds of public comment, and substantial consultation with affected parties including Plaintiffs. And Plaintiffs have not established that any aspect of Interior's analysis violates NEPA or is arbitrary or capricious under the APA. *First*, Plaintiffs fail to show that the FEIS relied on stale or outdated information. The FEIS demonstrates Interior's evaluation of relevant data and analysis as to whether the changed circumstances warranted updates from the Draft EIS to the FEIS. *Second*, Plaintiffs do not establish that Interior failed to meaningfully consult with them. And *third*, Plaintiffs do not show that Interior failed to consider any required environmental justice factors.

A. <u>Plaintiffs fail to show that any aspect of Interior's NEPA analysis was arbitrary or capricious for relying on stale or outdated information.</u>

Plaintiffs contend that the FEIS violates NEPA because it "relies on stale and outdated reports." Pls' Mot. 42-45. In particular, Plaintiffs point to Coquille's 2013 business plan and cherry-pick two data sources from 2015 and 2016 cited in the updated air quality analysis that Interior prepared for the 2024 FEIS. *Id.* at 43. Plaintiffs then point to allegedly changed circumstances that they claim render Interior's reliance on those documents arbitrary and capricious: (1) an executive order by the Governor of Oregon concerning greenhouse gas emissions that applies to state agencies; (2) population growth in Jackson County, and (3) alleged changes to Coquille's gross revenue between 2012 and 2025.

Plaintiffs do not draw a clear connection between the supposedly out of date documents and allegedly changed circumstances they identify, much less show how the FEIS's analysis was arbitrary and capricious. Regardless, the FEIS demonstrates that Interior considered changed circumstances between the Draft EIS and FEIS, identified aspects of its Draft EIS that should be updated, and then revised its analysis accordingly. CC-026297. Interior responded at length to comments that the lapse in time between the 2015 scoping process and the DEIS in 2022 caused "deficiencies in the NEPA process." CC-026296. As Interior explained:

> Since the publication of the scoping report, substantial changes relevant to environmental concerns related to the Proposed Action have not been made, nor has a new alternative been introduced as the Proposed Action. Similarly, there are no significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Action or its impacts. In response to comments received on the Draft EIS, text and analyses contained in the EIS have been supplemented, modified, and improved; and factual corrections have been made. While new information has been presented, the information has not resulted in substantial changes in the EIS's conclusions regarding the environmental impacts of the Proposed Action.

CC-026297. That conclusion is entitled to significant deference. *Seven Cnty.*, 145 S. Ct. at 1512 ("[w]hen an agency makes … speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its 'most deferential.'" (quoting *Baltimore Gas & Elec. Co. v. Nat'l Res. Defense Council, Inc.*, 462 U.S. 87, 103 (1983)); *Vill. of Bensenville v. FAA*, 457 F.3d 52, 71 (D.C. Cir. 2006) (upholding FAA's "professional judgment" in determining that more recent data would not alter its conclusions).

Interior also responded to each of the specific topics that Plaintiffs identify. *First*, Interior undertook extensive air quality analysis including by considering Oregon's state regulatory requirements. Plaintiffs fail to explain the import of the Governor of Oregon's executive order (which applied to state entities) and the subsequent Climate Friendly and Equitable Communities rulemaking to Interior's analysis and legal obligations, except to state (incorrectly) that the FEIS did not "cite[] this source of law." Pls.' Mot. 44. In fact, Volume II of the FEIS includes Oregon's Climate-Friendly and Equitable Communities Rules in Table 3.4-1, Summary of Key Regulations Regarding Air Quality. CC-026052. And the FEIS explains in Section 4.15 that the project would "provid[e] 20 percent of parking spaces with electric service capacity to enable future installation of EV charging stations, consistent with Oregon's Climate-Friendly and Equitable Communities Rules." CC-026216. It also explained that any "proposed parking lots that would be developed outside of the proposed trust land would be developed with the City of Medford's development regulations and applicable Climate-Friendly and Equitable Communities Rules." *Id.* Interior also identified the relevant updates to the FEIS's analysis in Volume I's response to comments, which explained that "[a]dditional information and discussion have been provided in the Final EIS, Volume II to address Oregon's Climate-Friendly and Equitable Communities Rules adopted on March 10, 2020." CC-026302.

Second, apart from noting Jackson County's population growth in a single sentence, Plaintiffs fail to explain how that population growth relates to Interior's NEPA analysis. Pls.' Mot. 44. Plaintiffs do not attempt to show that the county's population growth rendered any aspect of Interior's NEPA analysis arbitrary; indeed, the record citation that Plaintiffs include is to Appendix O of the FEIS, in which Interior did discuss population growth as part of its economic substitution analysis. *Id.* (citing CC-024798).

Third, Plaintiffs also fail to show that any aspect of Interior's analysis of Coquille's financial needs violated NEPA. Pls.' Mot. 44. As Interior explained in its response to Plaintiffs' comments on this topic, "the Coquille Tribe's unmet needs" is a "non-environmental factor that will be considered by the Secretary" but that is "outside the scope of NEPA and, therefore, not described in detail in the EIS." CC-026336, row T 13-4. That makes sense: while Coquille's financial needs were relevant to Interior's overall decision on the land-to-trust application, those considerations are not among the environmental effects of the proposed action that Interior needed to analyze under NEPA. *See* 42 U.S.C. § 4332(C) (requiring analysis of "environmental effects of the proposed agency action"). And even if it were, as explained *infra* Section III, Interior's updated analysis found that Coquille's unmet needs have only increased since 2013.[6] Plaintiffs therefore fail to establish that any aspect of Interior's NEPA analysis was arbitrary or capricious due to an alleged reliance on outdated information.

B. <u>Interior consulted with Plaintiffs concerning Coquille's application and Plaintiffs have not established any consultation-related NEPA violation.</u>

Plaintiffs also fail to demonstrate that Interior violated any obligation to consult with them concerning Coquille's land-to-trust application. As an initial matter, Plaintiffs misconstrue

[6] Apart from identifying a 2015 traffic impact analysis and 2016 AES report, Plaintiffs never explain how Interior's reliance on those studies rendered any aspect of its NEPA analysis arbitrary or capricious. Plaintiffs also neglect to note that those studies were among several others included in FEIS Appendix S, which *provides updated air quality output* analysis. CC-024966-74.

applicable consultation obligations. Plaintiffs contend that "NEPA expressly requires Federal Defendants to assess environmental impact[s] 'in cooperation with State and local governments[]' including Tribal governments." Pls.' Mot. 39. But the provision of NEPA that Plaintiffs cite is the Congressional declaration of national environmental policy, 42 U.S.C. § 4331(a). That provision "is a 'non-operative statement of policy' and does not impose 'an enforceable mandate for some additional procedural step.'" *Phoenix Herpetological Soc'y, Inc. v. U.S. Fish & Wildlife Serv.*, No. 17-CV-02584 (APM), 2020 WL 3035037, at *9 (D.C. Cir. June 5, 2020), *aff'd,* 998 F.3d 999 (D.C. Cir. 2021) (quoting *Bear Valley Mut. Water Co. v. Jewell*, 790 F.3d 977, 987 (9th Cir. 2015)). "Such declarations of purpose and policy 'do not create substantive or enforceable rights.'" *Id.* (holding that Endangered Species Act statement of policy did not establish any mandatory duty). Plaintiffs thus fail to identify any NEPA provision that obligates Interior to undertake particular procedures or actions with respect to Tribal consultation.[7]

Plaintiffs next point to Interior's NEPA regulations, arguing that Interior "failed . . . to make a reasonable or good faith effort to consult with Plaintiffs before issuing the FEIS or the ROD" in violation of 43 C.F.R. Part 46.[8] Pls.' Mot. 40; *see also id.* at 41 ("Federal Defendants violated NEPA's consultation requirements because they failed to follow their own regulations, policies, and procedures."). Those regulations state that Interior "must whenever possible consult,

[7] *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 365 (D.C. Cir. 1981), does not hold otherwise. The portion of that case that Plaintiffs cite discussed the general purpose of environmental impact statements to facilitate public participation, not the standalone Tribal consultation obligation that Plaintiffs allege. *Id.* at 365 (observing that "NEPA establishes *the environmental impact statement requirement for proposals for legislation* in part to ensure that the public has an opportunity to participate meaningfully in decisionmaking at the administrative and legislative levels.").

[8] Plaintiffs do not attempt to reconcile their argument that the ROD should be set aside for allegedly failing to comply with Interior's NEPA regulations concerning consultation, with their earlier argument that Interior's NEPA regulations "did not constitute a 'permissible exercise of [Interior's] own rulemaking authority,'" Pls.' Mot. 17.

coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities." 43 C.F.R. § 46.155. Plaintiffs have not established any violation of that regulation here.

To start, the plain language of the regulation directs Interior officials to consult with tribal governments about "the environmental effects of any Federal action." *Id.* The subject matter of any required consultation therefore relates specifically to environmental effects. Plaintiffs do not allege that Interior's decision to take the Medford Parcel into trust, and Coquille's development of an existing bowling alley into a Class II gaming facility, will cause any environmental harm at all, much less environmental harm within Plaintiffs' jurisdictions or related to Plaintiffs' interests. It follows, then, that Plaintiffs have not shown any deficiency in Interior's consultation efforts concerning environmental effects.[9]

Even setting that aside, the record before the Court demonstrates that Interior consulted with Plaintiffs about Coquille's land-to-trust application. Indeed, Interior officials met with representatives from Cow Creek, Karuk, and Tolowa Dee-ni' numerous times to discuss each Tribes' concerns.[10] Thus, Plaintiffs' claim that Interior did not "make a reasonable or good faith

[9] Plaintiffs also contend that Interior failed to follow guidance in its NEPA Guidebook and Department Manual. Pls.' Mot. 40 & nn.29-30. But Interior's Guidebook and Manual are not enforceable rules; they merely "'clarif[y]' the agency's interpretation of the legal landscape" and do not "bind the agency." *Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30, 66 (D.D.C. 2020). As the Guidebook in particular, it makes clear that it "is strictly advisory" and "does not create policy, add to, delete from nor otherwise modify any legal requirement." Dkt. No. 2-2, Ex. 11 at PDF p. 458. That statement confirms its nonbinding, interpretive nature. *See Friends of Animals v. Pendley*, 523 F. Supp. 3d 39, 54 (D.D.C. 2021). Regardless, as discussed above, Interior did engage in extensive consultation here, consistent with the guidance in both the Guidebook and Manual.

[10] *See e.g.*, CC-002685 (Email scheduling Oct. 31, 2013 meeting between Interior staff and Cow Creek leaders); CC-028239 (letter scheduling March 19, 2015, consultation with Cow Creek); CC-028232 (Invite to Dec. 1, 2016, meeting with Assistant Secretary – Indian Affairs and other BIA

effort to consult with Plaintiffs before issuing the FEIS or ROD," Pls.' Mot. 40, is plainly contradicted by the record. Plaintiffs also actively participated in the NEPA process, submitting numerous comment letters, which Interior responded to in the FEIS. *See, e.g.*, CC-026323–24; CC-026335–42 (responses to comments submitted by Cow Creek and members);[11] CC-026324; CC-026326–35 (responses to comments submitted by Karuk and members);[12] CC-026324 (responses to comments submitted by Tolowa Dee-ni' and members).[13]

The record also disproves Plaintiffs' argument that Interior never responded to Plaintiffs' requests for consultation—made in late 2024—before issuing the FEIS and ROD. On November 21, 2024, Interior sent a letter to each of Plaintiffs on behalf of the Office of the Assistant Secretary – Indian Affairs, inviting them to participate in a virtual meeting on November 26 with the then-Principal Deputy Assistant Secretary – Indian Affairs to discuss "the Coquille Indian Tribe's application for trust acquisition of land in Medford, Oregon." CC-026455; *see also* CC-026473. Plaintiffs therefore are incorrect that Interior failed to respond to their requests or to engage in

and Interior staff); CC-028233 (January 11, 2017, scheduled call with representative of Cow Creek); CC-028234 (January 13, 2017, scheduled call with representatives for Cow Creek); CC-028243 (Feb. 7, 2017, meeting between Associate Deputy Secretary and representative for Cow Creek); CC-028245 (Aug. 17, 2017, meeting invite for Cow Creek representatives and Interior); CC-027478 (Nov. 1, 2017, meeting between Interior and representative of Cow Creek); CC-028246 (Nov. 9, 2017, meeting between Interior and representative of Cow Creek); CC-028250 (Feb. 13, 2018, meeting between Interior and representative of Cow Creek); CC-028255 (June 13, 2018, meeting between Interior and representative of Cow Creek); CC-028256 (June 18, 2018, meeting between Interior and representative of Cow Creek); CC-028261 (Dec. 21, 2021, meeting between Interior and representative of Cow Creek)CC-020379 (Feb. 7, 2022, letter from ASIA Newland to Cow Creek Chairman); CC-028265 (April 15, 2022, meeting between Interior and Cow Creek); CC-026453 (Nov. 26, 2024 – Invitation to meeting); CC-026473 (Dec. 5, 2024, invitation to meeting).

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

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

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

good faith consultation.

In addition, the FEIS references Interior consultations with Plaintiffs and evaluation of impacts to surrounding communities. *See, e.g.*, CC-026029–30 (comparing the different impacts of the proposed project and the possible alternatives in "Comparison of Environmental and Economic Consequences"); *see also* CC-026076–80 (considering the socioeconomic conditions of the affected community); CC-026150–70 (evaluating the different impacts of each alternative on the affected community in more detail). The FEIS further observes that "'competition … is not sufficient, in and of itself, to conclude [there would be] a detrimental impact on' a tribe." CC-026155 (quoting *Citizens for a Better Way v. U.S. Dep't of the Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925, at *9 (E.D. Cal. Sept. 24, 2015)); *see also Stand up for Cal. v. U.S. Dep't of the Interior*, 919 F. Supp. 2d 51, 76 (D.D.C. 2013). Thus, the FEIS contradicts Plaintiffs' argument that they were not consulted during Interior's NEPA process.

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

In arguing that Interior violated consultation obligations, Plaintiffs cite two cases, both of which are inapposite. Pls.' Mot. 42 (citing *Quechan Tribe of Fort Yuma Indian Rsvr. v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) and *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 205 F. Supp. 3d 4, 7 (D.D.C. 2016)). *Quechan* dealt primarily with the

National Historic Preservation Act, which imposes altogether different consultation requirements on federal agencies than anything in Interior's NEPA regulations. *Quechan*'s discussion of NEPA was limited to two sentences in which it observed that "[t]he substance of the NEPA claim is less clear," but nevertheless concluded without analysis that tribal plaintiff in that case "was entitled to be consulted under NEPA as under the NHPA." 755 F. Supp. 2d at 1120. *Quechan* provides no basis for crediting Plaintiffs' consultation claims here. And in *Standing Rock Sioux*, the plaintiffs' consultation claims arose under the NHPA, and the court nevertheless *rejected* them because the federal agency had met its NHPA consultations. 205 F. Supp. 3d at 32-33. As in *Standing Rock Sioux*, "this is not a case about empty gestures." *Id.* The record before the Court demonstrates consultation between Interior and Plaintiffs. Thus, Plaintiffs have not established that Interior violated any obligations under NEPA or Interior's NEPA regulations and policies, and this Court should enter summary judgment in favor of Federal Defendants on Claim 2.

C. Plaintiffs remaining NEPA arguments also fail.

Plaintiffs make two more NEPA-related arguments, both of which lack merit. *First*, Plaintiffs argue in a footnote in their NEPA argument and in a subsection of their arguments under *Marin Audubon* that Interior "failed to assess 'environmental justice' impacts." Pls.' Mot. 19-20; 44 n.31. That argument fails, both because Plaintiffs fail to show that NEPA requires environmental justice analysis, and because Interior did analyze environmental justice impacts. *Id.* at 19.

Plaintiffs also contend that Interior violated "NEPA's mandate to identify and develop regulations accounting for these environmental justice or economic considerations," and that—had Interior not "blindly follow[ed] 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.'" *Id.* at 19 (emphasis in original). For support, Plaintiffs cite the NEPA provision that directs agencies to "identify and develop methods and procedures, in consultation with [CEQ], which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. § 4332(B). But that NEPA provision does not include the phrase "environmental justice" nor does it require environmental or economic justice analysis, despite Plaintiffs' statement to the contrary. Thus, Plaintiffs do not show that any failure to assess those issues violated NEPA or otherwise rendered Interior's analysis arbitrary or capricious.

Nevertheless, Interior analyzed the environmental justice impacts of the proposed land-to-trust transaction. In fact, the FEIS discussed environmental justice issues at length, both in Section 3.7.4 (*see* CC-026080 - CC-026092) and in Section 4.7 (*see* CC-026151; CC-026163; CC-026166-67; CC-026170). Without engaging with (or even acknowledging) that extensive analysis, Plaintiffs seize on one sentence in a response to comments in which Interior stated that, "[w]ithout confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined." Pls.' Mot. 19 (citing CC-026311).[14] But Plaintiffs do not establish that Interior had any obligation to study environmental justice effects specifically on each potentially affected Tribe's "governmental and

[14] Plaintiffs also attempt to construe that single sentence in one comment response as demonstrating that Interior "has already conceded its FEIS and ROD failed to sufficiently consider the economic impacts of its proposed actions." Pls.' Mot. 19. But that is wrong. NEPA requires analysis of environmental impacts, not economic ones. Regardless, Interior's statement merely explained one limit to the scope of the environmental and economic justice analysis it undertook. As explained *infra*, Interior is entitled to significant deference in drawing the line for scope of its analysis, *Seven Cnty*., 145 S. Ct. at 1513, and Plaintiffs fail to show that Interior acted arbitrarily here.

social services," nor do they show that its conclusions regarding the environmental justice effects of the proposed land-to-trust transaction were arbitrary or capricious. As *Seven County* recently emphasized, "[w]hen assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS." 145 S. Ct. at 1513. Those decisions are entitled to "substantial deference" "so long as they fall within a broad zone of reasonableness." *Id.* Interior's analysis of environmental justice—even if one assumes NEPA requires Interior to consider it at all—falls comfortably within that zone of reasonableness here, and Plaintiffs have not shown otherwise.

Finally, Plaintiffs argue that Interior has "failed to comply with NEPA's mandate to 'identify and develop methods and procedures'" for its NEPA review. Pls.' Mot. 44-45. That is false. Interior followed Congress's directive to develop procedures for analyzing environmental considerations, both by promulgating its NEPA regulations and developing non-binding guidance such as its NEPA Handbook, which Plaintiffs cite several times. *See, e.g.*, Pls.' Mot. at 20 & n.13. Plaintiffs therefore cannot succeed in showing that Interior failed to follow NEPA's directive.

In sum, Plaintiffs have failed to carry their burden to show that any aspect of Interior's environmental analysis or its consultation with the Plaintiffs violated NEPA. This Court should enter summary judgment in favor of Federal Defendants on Claims 2 and 7.

III. Interior complied with the IRA.

Plaintiffs have also not established that Interior failed to comply with any aspect of the IRA or Interior's implementing regulations. Plaintiffs make two arguments under the IRA: (1) Interior did not balance the anticipated benefits to Coquille of taking the land into trust with state and local government concerns (Plaintiffs' Fourth Claim), and (2) the decision wrongfully enhances

Coquille's privileges and immunities relative to other federally recognized tribes (Plaintiffs' Fifth Claim). Both arguments fail. As evident in the record, Interior fully evaluated Coquille's need for the Medford Parcel, and the agency determined that state and local concerns were adequately addressed. And there is no evidence to suggest that Interior's decision diminished Plaintiffs' privileges and immunities under the IRA.

A. Interior considered state and local concerns with the anticipated benefits of the land-to-trust transaction under the IRA.

Plaintiffs argue that Interior "failed to give any scrutiny or weight" to the anticipated benefits of Coquille's acquisition of the Medford Parcel relative the concerns raised by state and local governments. 25 C.F.R. § 151.11(b), (d) (1995).[15] This is effectively an argument that Interior failed to consider a relevant factor in its decision-making, which is part of the APA standard of review. *See Scotts Valley Band of Pomo Indians v. U.S. Dep't of Interior*, 633 F. Supp. 3d 132, 156 (D.D.C. 2022) ("[A]gency action will be upheld if the agency has considered the relevant factors and articulated a rational connection between the facts found and the choice made." (citing *Nat'l Ass'n of Clean Air Agencies v. EPA*, 489 F. 3d 1221, 1228 (D.C. Cir. 2007) (internal quotations omitted))). But Plaintiffs' assertions are cursory and lack merit.

When considering a Tribe's application for acquisition of off-reservation trust land, the applicable regulations required that Interior consider, among other things, the "need of the individual Indian or the tribe for additional land" and the "purpose for which the land will be used." 25 C.F.R. § 151.10(b) and (c) (1995); *id.* § 151.11(a) (making the considerations applicable to off-reservation acquisitions). The agency "shall give greater scrutiny to the tribe's justification of

[15] Interior updated its regulations implementing the IRA in January 2024, but Coquille opted to continue the application process under the prior regulations as allowed by 25 C.F.R. § 151.17(a). CC-026802. Therefore, Interior's analysis of Coquille's application relied upon the regulations issued in 1995, cited here.

anticipated benefits from the acquisition" as the distance between the land and the tribe's reservation increases. 25 C.F.R. § 151.11(b).

Here, the record clearly demonstrates Interior's evaluation of the purpose and need for acquisition of the Medford Parcel. Interior identified that Coquille's government "is responsible for providing programs and services to its membership that will help address their health needs, overcome education and employment obstacles, remedy deficiencies in housing and health care, and perpetuate their cultural identity." CC-025995. Approximately 52% of the Tribe's membership live in the Coquille's "service area," *id.*, the geographical area described in the CRA. Pub. L. No. 101-42, § 5(a). Coquille's Unmet Needs Report found that, in 2011, over 40% of tribal households had incomes of less than $34.000, greater than the state average of 35.3% of households with incomes less than $34,999 statewide. CC-007553. Coquille provided that "the annual supplemental income needed by [Coquille's government] to fund existing programs and services is estimated to exceed $13 million by 2022, at which time the [tribal government] would have a cumulative deficit in excess of $74 million. As of 2023, the budgetary needs to support existing expenditures of the [tribal government] continue to exceed incoming revenue." CC-025996.

Plaintiffs argue that the information in Coquille's Unmet Needs Report is outdated and therefore inadequate. Pls.' Mot. 25. But in fact, evidence suggests that the 2013 report underestimated Coquille's needs. CC-025996. Gaming revenues at Coquille's Mill Casino have been unable to keep pace with Coquille's "growing Tribal population with an increasing need for support services, and the general inflation of program costs." *Id.* Increased tribal gaming competition in the Mill Casino's limited market and recent declines in the local economy and job market have only worsened those prospects. *Id.* All of these factors contribute to Coquille's need for more land, and recent tsunami and wildfire threats to the area indicate that it would be beneficial for Coquille to acquire land off-reservation. CC-025996-97. Revenues at the Medford Parcel are intended to "provide economic diversification and redundancy" and "long-term, sustainable revenue" to fund government services for Coquille's members. CC-025997. Thus, Interior gave great scrutiny to Coquille's need for the agency to take the Medford Parcel into trust and found that need sufficient. And Interior gave greater scrutiny to Coquille's request for land to be taken into trust 167 miles away from its current reservation lands, as required under 25 C.F.R. § 151.11(b). Indeed, Interior concluded that there was a particular need for land to be taken into trust off-reservation to provide Coquille with greater economic stability in the face of growing tsunami and wildfire threats near its reservation and Mill Casino location. *See* CC-025996-97; CC-026804 (noting that the acquisition "will offer economic resiliency should the Mill Casino be forced to shut down due to a tsunami or other similar natural disaster").

Interior also considered state and local concerns, as required under Section 151.11(d), and gave great scrutiny to these factors in accordance with 25 C.F.R. § 151.11(b). *See* CC-026312-22 (responding to comments from state and local governments and representatives); CC-026827-29 (considering impacts to local traffic, land use, public services, and noise), and CC-026803-CC-026809 (detailing communication with state and local governments, and analysis of concerns). After considering Coquille's need for the Medford Parcel to be taken into trust and resolving state and local concerns, Interior concluded that Coquille's application met all regulatory requirements under Section 115.11. *See* CC-026803-CC-026809; CC-026809.

Plaintiffs argue that Interior did not adequately balance Coquille's need for the parcel against state and local concerns because the agency did not explain its departure from Interior's decision in 2020. Pls.' Mot. 27. In 2020, Interior denied Coquille's application to take the Medford Parcel into trust because the agency found Coquille did not satisfy the IRA's Section 151.11

requirements. CC-020063. According to Plaintiffs, Interior did not explain how Coquille now satisfied Section 151.11. But to the contrary, Interior found that all of the concerns raised in the 2020 decision had been resolved.

The 2020 decision identified two primary state and local government concerns: (1) increased demand for local services, and (2) removal of the parcel from the tax base. Interior concluded in 2020 that "[t]he absence of an agreement to address these jurisdictional issues weighs heavily against approval." CC-020055. Thus, while Coquille had also there demonstrated need for the project and positive anticipated benefits, CC-020056, Interior balanced the 151.11 factors and decided against taking the Medford Parcel into trust.

But the present facts are not the same. Coquille entered into an agreement with the City of Medford in September 2023, agreeing to make service payments to the City in exchange for continued services. CC-026807. This agreement resolved Interior's 2020 decision concerns that the City would continue to provide services to the site without benefiting from its tax revenue. CC-020053. And Interior considered the tax revenue impacts of taking the Medford Parcel into trust as well. As a bowling alley and bar and grill, the Medford Parcel generated a local property tax of $25,189 in 2021. CC-026806. The total tax base for Jackson County that year was $368,647,212.04, meaning that Jackson County would lose approximately 0.006832819% of its total revenue. *Id.* Interior also notes that any loss of revenue is expected to be offset by revenue from increased activity from the project. *Id.* Contrary to Plaintiff's assertions, Interior did not "merely describe and impact and state a conclusion of nonimpairment." Pls.' Mot. 22 (citing *Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 100 (D.D.C. 2006)). Rather, Interior considered the potential impacts to state and local governments and identified logical reasons to conclude that any impacts would be offset or entirely resolved. In fact, Congress anticipated the loss of property tax revenues to state and local governments. *See* CC-000598, Report on H.R. 881, Coquille Restoration Act ("This bill could result in some loss of property tax revenues to state and local governments.").

And having resolved the concerns from the 2020 decision, Interior concluded that balancing the 151.11 factors now weighed in Coquille's favor. The 2020 decision already recognized positive anticipated benefits to Coquille, and the 2024 decision further confirmed Coquille's need for the project. CC-026804 (finding that acquisition of the site would provide Coquille with a long-term, stable source of revenue to strengthen self-determination, economic development, and government services). Therefore, Interior determined that Coquille had demonstrated a clear need for the Project, and these needs outweighed any impact to state and local governments where those impacts had already been addressed and resolved. While Plaintiffs may disagree with Interior's conclusion, they provide no evidence that, in making this decision, Interior failed to consider the relevant factors in the 151.11 regulations.

B. Plaintiffs' privileges and immunities are not diminished under the IRA

There is also no basis for Plaintiffs' assertion that Interior's decision to take the Medford Parcel into trust diminishes Plaintiffs' privileges and immunities under the IRA, or enhances Coquille's privileges and immunities relative to other federally recognized tribes. Pls.' Mot. 37. The IRA, as amended, states that:

> [A]gencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the [IRA] … 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). This provision "require[s] only that Interior apply the same legal rule in the same manner, not that Interior necessarily reach the same outcome." *Native Vill. Of Eklutna v. U.S. Dep't of Interior,* No. 19-cv-2388 (DLF), 2021 WL 4306110, *6 (D.D.C. Sept. 22, 2021). Plaintiffs

fail to identify any instance in which Interior denied a similar application under IGRA's restored lands exception, nor do they provide any evidence to suggest that Interior changed its interpretation of its own regulations. Plaintiffs cite Interior's 2020 decision, appearing to argue that Interior previously interpreted its regulations as preventing Coquille from applying for acquisition under the restored lands exception. Pls.' Mot. 38. Instead, Plaintiffs seem to assert that Interior concluded that Coquille may only pursue acquisition of the Medford Parcel under IGRA's two-part determination process. *Id.* But this argument is baseless. Interior's 2020 decision never addressed the question of whether the Medford Parcel qualified as "restored lands," and the agency has not changed its interpretations of its own regulations.

Instead, as discussed above, Interior concluded in 2020 for purposes of the IRA (not IGRA) that Coquille lacked an agreement to resolve state and local concerns but suggested that Coquille could pursue an application under IGRA's "two-part determination process." CC-020055, CC-020062; 25 U.S.C. § 2719(b)(1)(A). The "two-part determination" process requires that a state Governor approve Interior's decision to take a parcel into trust for gaming, *id*, which would address the IRA concerns that led Interior to deny Coquille's application. But the two-part determination process was ultimately unnecessary because Coquille resolved state and local concerns by agreement with the City of Medford. CC-020053. And Interior's 2024 decision could proceed with an analysis of the Medford Parcel's eligibility for the restored lands exception under 25 C.F.R. § 292.11. Interior did not apply any new interpretation of its IGRA regulations, and Plaintiffs provide no other evidence to suggest that Interior's decision "enhance[d], or diminish[ed] the privileges and immunities" of Plaintiffs relative to others. 25 U.S.C. § 5123(f).

In sum, Plaintiffs fail to establish any violation of the IRA or Interior's implementing regulations. The Court should enter summary judgment for Federal Defendants on Claims 4 and

5.

IV. Interior reasonably concluded that the Medford Parcel satisfies IGRA's "restored lands" exception.

Plaintiffs also argue that Interior improperly analyzed Coquille's application under IGRA's restored lands exception, Pls.' Mot. 28, but this argument fails as well. Generally, IGRA prohibits gaming on lands acquired by a tribe after the statute's enactment in 1988. 25 U.S.C. § 2719(a). But there are exceptions, including where "lands are taken into trust as part of … (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). The exception "helps ensure 'that tribes lacking reservations when [the statute] was enacted are not disadvantaged relative to more established ones.'" *Butte Cnty. v. Chaudhuri*, 887 F.3d 501, 503 (D.C. Cir. 2018) (quoting *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003)). Under Interior's regulations implementing IGRA, to game on newly acquired lands under the restored lands exception, a tribe must meet four conditions: (1) the tribe was federally recognized at one time; (2) the tribe lost that recognition as described within the regulations; (3) the tribe "was [later] restored to Federal recognition;" and (4) "the newly acquired lands meet the criteria of 'restored lands' in § 292.11." 25 C.F.R. §§ 292.7(a)-(d). Coquille is a tribe once removed from, and later restored to, federal recognition and is eligible for the restored lands exception so long as the Medford Parcel itself qualifies as "restored lands." CC-025800-01.

To determine whether a property qualifies as "restored lands," Interior's regulations require the agency to examine the authority used to restore the tribe to federal recognition. 25 C.F.R. § 292.11(a)-(c). Subsection (a) applies where, as here, "the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe." *Id.* § 292.11(a). Under § 292.11(a), "the tribe must show that either (1) [t]he legislation requires or authorizes the

Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area," or (2) "must meet the requirements of § 292.12." (emphasis added). Section 292.12, in turn, requires a tribe to demonstrate a modern, historical, and temporal connection to the newly acquired lands.

The CRA restored Coquille to federal recognition and provided that "[t]he Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe." Pub. L. No. 101-42, § 5(a). In addition, "[t]he Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the [IRA]." *Id.* Coquille's "service area" includes "Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon." *Id.* § 2(5). The Medford Parcel is located in Jackson County. CC-025801. The CRA thus provides the Secretary with discretionary authority to take land within Jackson County into trust for Coquille, and therefore "authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area" as required under Section 292.11(a). Accordingly, as land within the specific geographic area defined under Coquille's restoration legislation, Interior did not act contrary to IGRA or its regulations in concluding that the Medford Parcel qualifies as "restored lands." CC-026801-02.

Plaintiffs argue against this analysis, primarily by citing to the *City of Roseville* decision to argue the CRA's "service area" cannot qualify as restored lands. Pls.' Mot. 35-36. There are at least two issues with this argument. First, *City of Roseville* does not hold that lands within a tribe's congressionally defined "service area" are not restored lands under IGRA. The lands in *City of Roseville* were not within the "service area," but were within Placer County, in what Plaintiffs refer to as "the restoration clause." *City of Roseville v. Norton,* 219 F. Supp. 2d 130, 163-164 (D.D.C. 2002), *aff'd,* 348 F.3d 1020 (D.C. Cir. 2003); Pls.' Mot. 35. *City of Roseville* did not need to address the question whether land within the service area qualified as restored lands for purposes of resolving that case. *Id.*

Second, *City of Roseville* predates Interior's regulations defining "restored lands" and outlining the necessary requirements. This Court decided *City of Roseville* in 2002, and Interior issued its IGRA implementing regulations in 2008. *City of Roseville* does not contain any discussion of Interior's IGRA regulations, nor is there any evidence to support Plaintiffs' claim that Interior's regulation "does *not* refer to the IRA affirmation language." Pls.' Mot. 36. On the contrary, this Court has been reluctant to read IGRA's implementing regulations too strictly. *See E. Band of Cherokee Indians v. Department of Interior*, 534 F. Supp. 3d 86, 106 (D.D.C. 2021) (rejecting argument that only lands specifically identified in the tribe's restoring legislation may qualify as restored lands); *Koi Nation of N. Cal. v. U.S. Dep't of Interior*, 361 F. Supp. 3d 14, 47 (D.D.C. 2019) ("Congress intended for the restored lands exception 'to be read broadly,' in service of IGRA's overall goal of 'promoting tribal economic development and self-sufficiency.'"). This undercuts Plaintiffs' argument that only land in Coos and Curry could be eligible for gaming under IGRA's restored lands exception.

Instead, the distinction in the CRA between Coos and Curry counties and the remaining service area counties is the difference between the Secretary's mandatory and discretionary authority. Pub. L. No. 101-42, § 5(a); *see City of Council Bluffs v. U.S. Dep't of Interior,* 11 F. 4th 852, 859 (8th Cir. 2921) ("Congress has shown that it knows how to limit a tribe's ability to conduct gaming on its land when it wishes to do so."). The Secretary "shall accept" up to 1,000 acres in Coos and Curry counties into trust. Pub. L. No. 101-42, § 5(a). But the Secretary still "may accept" other lands within the service area (including Jackson County) into trust. *Id.* Thus, in plain terms, the CRA "authorizes" Interior to take land into trust within the geographical area of Coquille's service area. 25 C.F.R. § 292.11(a)(1); Pub. L. No. 101-42, § 5(a). Therefore, as a parcel of land within Coquille's service area, the Medford Parcel qualifies as restored lands under Section 292.11(a)(1). The Court should enter summary judgment for Federal Defendants on Claim 3.

CONCLUSION

Plaintiffs have failed to meet their burden to show that Interior's FEIS and ROD were arbitrary or capricious or otherwise not in accordance with law. Interior undertook an extensive environmental review pursuant to its statutory authority, and the FEIS complied with NEPA's requirements. The record also shows that Interior considered all the relevant factors under its IRA regulations and reasonably found the Medford Parcel eligible for gaming under IGRA. This Court should deny Plaintiffs' motion for summary judgment and grant summary judgment in favor of Federal Defendants on all of Plaintiffs' claims.

Respectfully submitted this 1st day of October, 2025.

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