IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANT-INTERVENOR COQUILLE INDIAN TRIBE'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

On January 10, 2025, the Department of the Interior issued a record of decision ("ROD") approving an application to take a 2.4-acre parcel of land in Medford, Oregon (the "Medford Parcel"), in trust for the benefit of the Coquille Indian Tribe. The ROD marked the culmination of a process that took over a decade, during which Interior determined that the Medford Parcel—then home to a tribally owned bowling alley with State-run video lottery terminals—was eligible for tribal gaming and, following substantial consultation with stakeholders, found that permitting Coquille to conduct gaming there would not risk environmental harm or serious economic consequences to other tribes. Following the issuance of the ROD, the United States took the Medford Parcel into trust, formally rendering it part of Coquille's reservation, and gaming commenced at Coquille's Medford facility.

Now, Plaintiffs—three tribes that operate casinos in Oregon and California—ask this Court to vacate the ROD on various legal grounds, seeking to protect their own gaming facilities from competition. Three of their claims are based on alleged violations of the National Environmental Policy Act ("NEPA"), a procedural statute that requires federal agencies to issue a report addressing the environmental effects of proposed federal actions. Interior fully complied with that requirement. Even so, the Court need not even reach the merits of the NEPA claims because Plaintiffs are invoking *economic* rather than *environmental* harm. They therefore fall outside NEPA's zone of interests and lack a cause of action under the statute.

On the merits, Plaintiffs fare no better. Their arguments were already weak when this Court denied Plaintiffs' motions for preliminary relief—first for lack of final agency action, *see* Order Denying Pls.' Mot. for TRO/PI, ECF No. 27, and then for lack of irreparable harm, *see* Mem. Op. & Order Denying Pls.' Mot. for TRO/PI, ECF No. 59. Since then, in *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025), the Supreme Court reaffirmed the highly deferential nature of arbitrary-and-capricious review under the APA, and the limited, procedural nature of NEPA. And while Plaintiffs do not even seek summary judgment on one of their claims, their other six claims are equally meritless. This Court should deny Plaintiffs' motion for summary judgment in full and grant summary judgment to Defendants on all claims.

STATEMENT OF FACTS

A. The Coquille Indian Tribe and Statutory History

The Coquille Indian Tribe is a sovereign, federally recognized Indian tribe. In the 1850s, lands historically occupied by Coquille were "taken by inducing and coercing [its members] to move from their lands, to which they held original Indian use and occupancy title, . . . upon the promise that" a treaty negotiated between Coquille and the United States "would be ratified and the terms thereof carried out by the United States." *Alcea Band of Tillamooks v. United States*, 59 F. Supp. 934, 951 (Ct. Cl. 1945), *aff'd*, 329 U.S. 40 (1946). But the U.S. Senate never ratified that treaty, no treaty reservation was established for Coquille, and Coquille families were forcibly removed from and dispossessed of the land they had historically occupied. *See id*.

On June 18, 1934, Congress enacted the Indian Reorganization Act ("IRA"), which generally "authorize[s]" the Secretary of the Interior, "in his discretion," to take land into trust "for the purpose of providing land for Indians." Indian Reorganization Act, ch. 576, § 5, 48 Stat. 984, 985 (1934) (codified as amended at 25 U.S.C. § 5108). Following the IRA's enactment, however, no land was taken into trust for Coquille.

Then, in the Western Oregon Termination Act of 1954, Congress terminated "the Federal trust relationship" with the Lower and Upper Coquille Tribes and their members and proclaimed that the IRA "shall not apply" to Coquille. Western Oregon Termination Act of 1954, ch. 733, §§ 2(a), 7(a), 13(a), 68 Stat. 724, 726, 727. Termination left the Coquille people impoverished, and many dispersed to other parts of Oregon in search of jobs—including to Jackson County and its seat, the city of Medford. *See* CC-436, CC-439.

Thirty-five years after termination, on June 28, 1989, Congress reversed course and enacted the Coquille Restoration Act. The Restoration Act extended federal recognition to Coquille, restored the Tribe's rights and privileges, and expressly made the IRA "applicable to the Tribe and its Members." Coquille Restoration Act, Pub. L. No. 101-42, § 3(a), (b), (e), 103 Stat. 91–92 (1989). Section 5 of the Restoration Act required the Secretary to take up to 1,000 acres of land into trust for Coquille in Curry and Coos Counties, Oregon, and expressly authorized the Secretary to "accept any additional acreage in the Tribe's service area pursuant to his authority under the [IRA]." *Id.* § 5(a), 103 Stat. at 92. The Restoration Act defined the Tribe's "service area" as five specific counties, including Jackson County. *Id.* § 2(5), 103 Stat. at 91. Congress selected that service area because more than half the Tribe's members lived in those counties at the time of enactment, *see* CC-436; CC-20071; CC-20105, which remains true today, CC-22995. All lands taken into trust by the Secretary pursuant to Section 5 of the Restoration Act "shall be part" of Coquille's reservation. *See* Coquille Restoration Act, § 5(b), 103 Stat. at 92.

Less than a year before passing the Restoration Act, Congress had enacted the Indian Gaming Regulatory Act ("IGRA") "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 authorizes gaming operations by tribes on "Indian lands," including lands that the United States holds in trust for an Indian tribe. *Id.* §§ 2703(4), 2710(b)(1). IGRA generally bars gaming on lands taken into trust after October 17, 1988, the date IGRA became law. *Id.* § 2719(a). However, as relevant here, that time bar 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). Interior has promulgated regulations detailing the requirements for this "restored lands" exception. *See* 25 C.F.R. §§ 292.7–.12.

B. The Medford Parcel Trust-Acquisition Proceedings

On November 2, 2012, Coquille submitted to Interior an application to take approximately 2.4 acres of Coquille's previously developed land in Medford, Oregon—the Medford Parcel—into trust for gaming purposes pursuant to the authority provided by the Restoration Act and the IRA. CC-11662–68. In January 2015, the Bureau of Indian Affairs ("BIA") announced its intent to prepare a Draft Environmental Impact Statement ("DEIS") for the parcel, as required by NEPA. CC-3499–500. In May 2020, before the NEPA review process was complete, Interior purported to deny Coquille's application, CC-20049–63 (the "2020 Decision"), and the BIA discontinued preparing the DEIS. CC-20065–66. The 2020 Decision purported to find, without the benefit of a full NEPA review process, that the "anticipated benefits" to Coquille did not "outweigh" the "potential" jurisdictional concerns raised by state and local governments. CC-20049. Interior reached that conclusion in part because, although the projected $18.5 million in additional annual revenue from the proposed project would "certainly benefit the Tribe," the added revenue would "only alleviate a small portion of the Tribe's anticipated budget needs." CC-20057.

In December 2021, Interior withdrew the purported 2020 Decision. CC-20338–40. Invoking its inherent authority to reconsider its decisions, Interior reasoned that the 2020 Decision's weighing of potential jurisdictional problems and anticipated benefits was premature, as these very issues "would have been addressed through the NEPA process." CC-20339. By cancelling the ongoing environmental-review process, the 2020 Decision had "deprived the decision maker of important information critical to making a final determination" and had improperly "pre-empted" Coquille's "effort to negotiate inter-governmental agreements with local authorities." CC-20338.

Coquille's application was thus remanded to the BIA to complete its NEPA review. CC-

20315. The BIA issued a notice that it would resume preparing a DEIS for Coquille's application, CC-20347, and on November 25, 2022, published a *Federal Register* notice announcing that the DEIS was available and setting a 45-day comment period, CC-24982–83. The comment period was later extended for another 45 days, CC-24987–88, following requests by various stakeholders, including Plaintiffs, CC-24156–58 (Cow Creek); CC-24163–64 (Karuk); CC-25043 (Tolowa). Public hearings were held on December 15, 2022, and January 31, 2023. CC-24987–88.

During the yearslong NEPA review process, the BIA consulted with Plaintiffs through a series of formal meetings, as well as the notice-and-comment and public-hearing processes. Plaintiffs and Interior personnel met at least 24 times regarding Coquille's application,[1] not to mention a meeting with the White House, *see* CC-26397, and various phone calls between representatives of one or more Plaintiffs and Interior on the same topic.[2] On November 21, 2024, for instance, Interior sent a letter to each Plaintiff inviting them to participate in a virtual meeting 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-26453–55. In addition, as part of the NEPA process, the BIA received four comment letters from Plaintiff Cow Creek, *see* CC-26290–91 (comments T1, T6, T11, and T13), two from Plaintiff Karuk, *see id.* (comments T2 and T10), and two from Plaintiff Tolowa, *see* CC-26290 (comments T4 and T7). Members of each Plaintiff tribe also spoke out against the proposed action at the two public hearings on the DEIS. *See* CC-25704–07 (Cow Creek 2022); CC-25847–52 (Cow Creek 2023); CC-25882–88 (Karuk 2023); CC-25724–28 (Tolowa 2022); CC-25860–62, CC-25866–68 (Tolowa 2023).

[1] *See* CC-2685; CC-3501; CC-27635; CC-27655; CC-27659; CC-5349 & CC-6305; CC-27668; CC-27704; CC-27708; CC-8184; CC-28236; CC-28238; CC-28247; CC-28249; CC-27482; CC-28250; CC-28254; CC-9015; CC-20350; CC-28269; CC-27021; CC-26453–55; CC-26473; CC-28248.

[2] *See, e.g.*, CC-27692; CC-27718; CC-28244; CC-28258.

In September 2023, Coquille and the City of Medford entered into an agreement under which the City of Medford would continue to provide municipal services—including law enforcement, fire protection, and emergency medical services—on the Medford Parcel, once taken into trust, in exchange for service payments from the Tribe. *See* CC-26807. This agreement resolved the "potential" jurisdictional concerns that Interior had raised in its 2020 Decision. CC-20049.

On November 22, 2024, the BIA issued its 1500-plus-page Final Environmental Impact Statement ("FEIS"). CC-25946–6261 (FEIS text); CC-24788–977 (appendices); CC-24980–5927 (attachments); CC-26284–348 (responses to comments). The FEIS concluded that "substitution effects" from the proposed action would cause revenue declines at Plaintiffs' competing casinos as customers take their business to the Medford facility, but that these effects would "diminish" after the first year of each phase of operations, would not cause Plaintiffs' facilities to close, and therefore would not eliminate revenue streams that fund Plaintiffs' governmental services. CC-26153–55. Indeed, the record before the agency demonstrated that Plaintiff Cow Creek can fund *all* its governmental services *and* distribute regular per-capita payments to its members by using only 15% of its net gaming revenues. CC-25428.

Interior issued the ROD on January 10, 2025, CC-26842–72, announcing that the Department "will acquire the 2.4-acre Medford Site in trust for the Tribe for gaming purposes," CC-26843. The ROD recorded Interior's determination that the Medford Parcel "is eligible for gaming under the 'restored lands' exception in IGRA Section 20, 25 U.S.C. § 2719(b)(1)(B)(iii), such that [Coquille] may game on the Site once it is acquired in trust." CC-26848. Interior further noted that it was "aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*" and explained that "[t]o the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the [agency] ha[d] nonetheless elected to follow those regulations . . . to meet the agency's obligations under NEPA." CC-26870 n.1. The ROD was accompanied by a letter from the Assistant Secretary for Indian Affairs ("AS-IA") that assessed Coquille's application under the regulatory criteria and decided, based on the AS-IA's review of the entire Administrative Record, to grant the Tribe's application to acquire the Medford Parcel in trust (the "Decision Letter"). *See* CC-26796–810.

On January 10, 2025, BIA's Acting Regional Director accepted conveyance of the Deed for the Medford Parcel, to be held in trust for Coquille; that Deed was recorded in Jackson County on the next business day, January 13, 2025. CC-26881–85. Notice of Interior's decision was published in the *Federal Register*. CC-26892–93. Gaming commenced at Coquille's Medford Parcel facility on January 11, 2025.

C. This Action

On December 23, 2024, prior to Interior's issuance of the ROD, Plaintiffs filed the original complaint in this action, challenging the FEIS under the Administrative Procedure Act, *see* ECF No. 1, as well as a motion for a temporary restraining order and a preliminary injunction that would have stayed the FEIS and enjoined Interior from issuing a ROD pending this Court's review of the FEIS, *see* ECF No. 2. On January 2, 2025, this Court denied Plaintiffs' motion because "the FEIS is not a final agency action," so Plaintiffs were "not likely to succeed on the merits of their APA claims." Order Denying Pls.' Mot. for TRO/PI at 1, 3, ECF No. 27.

After Interior issued the ROD, Plaintiffs filed an amended complaint challenging the ROD on various grounds under the APA, *see* ECF No. 31 ("Am. Compl."), followed on January 13, 2025, by a renewed emergency motion for a TRO and PI, *see* ECF No. 32. This Court then granted Coquille's motion to intervene, Minute Order (Jan. 22, 2025), and on February 19, 2025, denied Plaintiffs' renewed emergency motion because Plaintiffs "failed to establish irreparable harm."

Mem. Op. & Order Denying Pls.' Mot. for TRO/PI at 1, ECF No. 59.[3] Defendants answered the amended complaint on March 17, 2025, *see* ECF Nos. 62, 63, and the case has proceeded under the Court's schedule for dispositive motions, *see* Briefing Schedule Orders, ECF Nos. 68, 79.

LEGAL STANDARD

It is "well established" that, in cases involving review of a final agency action, the default summary-judgment standard set forth in Rule 56 "does not apply because of the limited role of the court in reviewing the administrative record." *Otay Mesa Prop., L.P. v. U.S. Dep't of the Interior*, 344 F. Supp. 3d 355, 363 (D.D.C. 2018) (internal quotation marks and alteration omitted). Rather than assessing whether there are disputed material facts, the district court's role in this context is simply "to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did." *Id.* (quotation marks omitted). And "when an agency exercises discretion granted by a statute," this limited "judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard." *Seven Cnty.*, 145 S. Ct. at 1511. "Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained." *Id.*

ARGUMENT

The ROD and the rest of the administrative record provide ample support for Interior's trust-acquisition decision, which was both reasonable and reasonably explained. And Interior's

[3] Plaintiffs appealed to the D.C. Circuit and moved for an injunction pending appeal; but they dismissed their appeal after the D.C. Circuit denied their motion. *See* Order, *Cow Creek v. U.S. Dep't of the Interior*, No. 25-5034 (D.C. Cir. Mar. 7, 2025), Doc. No. 2104551; Appellants' Mot. for Voluntary Dismissal of Appeal, *Cow Creek v. U.S. Dep't of the Interior*, No. 25-5034 (D.C. Cir. Mar. 11, 2025), Doc. No. 2105137; *see also* Order, *Cow Creek v. U.S. Dep't of the Interior*, No. 25-5034 (D.C. Cir. Mar. 24, 2025), Doc. No. 2107423.

interpretations of every relevant source of law were correct. Each of Plaintiffs' contrary arguments falls flat, and Defendants are therefore entitled to summary judgment on all seven claims.

I. Defendants Are Entitled to Summary Judgment on Each of Plaintiffs' NEPA Claims (Counts I, II, and VII).

Plaintiffs raise three claims under NEPA. Each fails for several independent reasons. At the outset, Plaintiffs are not within NEPA's zone of interests, so they lack a cause of action under the statute. Even if Plaintiffs could invoke NEPA, each claim fails on the merits, particularly given the Supreme Court's recent decision in *Seven County*.

A. Plaintiffs Are Not Within NEPA's Zone of Interests, So They Lack a Cause of Action Under the Statute.

Plaintiffs "must have a valid cause of action for the court to proceed to the merits of [their] claim[s]." *Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 273 (D.C. Cir. 2015). Thus, to the extent Plaintiffs invoke NEPA as a basis for invalidating Interior's decision, they must fall within NEPA's "zone of interests." *Id.* at 274; *see Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014) (zone-of-interests principle is a "limitation on the cause of action for judicial review conferred by the [APA]"). And because "economic interests simply do not fall within [NEPA's] zone," Plaintiffs "must assert an environmental harm." *Gunpowder Riverkeeper*, 807 F.3d at 274. They fail to do so.

To fall within NEPA's zone of interests, Plaintiffs must show they have "personally suffered a nuisance, aesthetic, or other environmental injury" from Interior's decision. *Viasat, Inc. v. FCC*, 47 F.4th 769, 780 (D.C. Cir. 2022). But, by Plaintiffs' own representations, the alleged harm giving rise to this suit is *economic*, not environmental. Plaintiffs' amended complaint focuses on the alleged loss of *revenue* to Plaintiffs based on the effects to business at their own casinos. Am. Compl. ¶¶ 127–139. Plaintiffs gesture in general terms at certain services they allegedly provide—like "ocean protection," *id.* ¶ 137(b)—and make the drastic and unsupported allegation that lost revenue from Plaintiffs' gaming facilities will lead to "wildfires," *id.* ¶ 139; ("MSJ Br.") at 7, ECF No. 77. But these tacked-on predictions are conclusory and speculative, as this Court recognized in denying Plaintiffs' motion for preliminary relief. *See* Mem. Op. & Order, ECF No. 59, at 11.

Plaintiffs' summary-judgment brief fares no better. Like the complaint, it primarily invokes "economic harm to [Plaintiffs'] governments and gaming facilities," MSJ Br. 10—not environmental harm. And Plaintiffs' effort to show environmental injury is feeble.

First, Plaintiffs claim that a "drop" in their gaming revenue will lead to reductions in "programs protecting and restoring the environment." MSJ Br. 6–7. This vague allegation is not sufficient to support a NEPA-based claim because there is no allegation that Interior's decision would uniquely affect any specific environmental services. In fact, the single page of the administrative record that Plaintiffs rely on for this perfunctory theory of environmental harm states merely that loss of gaming revenue might lead to reduced funding for one Plaintiff's "governmental services." CC-25039. Plaintiffs at the very least must identify a "specific project or activity that will not be undertaken" because of Interior's decision. *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 417 F.3d 1272, 1289 (D.C. Cir. 2005). Plaintiffs conspicuously fail to do so, even after this Court denied preliminary relief due to an insufficient showing of harm.

Even if Plaintiffs' quintessentially economic injury had some attenuated, downstream effect on the environment, that would not put Plaintiffs within NEPA's zone of interests because they have not "connected [their] claimed economic injury to any environmental effects *caused by* the allegedly defective" agency action. *Town of Stratford v. FAA*, 285 F.3d 84, 89 (D.C. Cir. 2002) (emphasis added). Plaintiffs here identify *no* direct environmental effect from Interior's decision. And it is clear that their alleged economic injury would be at most a *cause of*, not a result from, any alleged environmental harms. MSJ Br. 10–11. Under Plaintiffs' theory, any entity with expenditures related to the environment—say, a company that funds an office recycling program—could raise NEPA claims to vindicate its economic interests. That cannot be.

In a last gasp, Plaintiffs claim that losses in gaming revenue "will have profound environmental consequences for Plaintiffs and their citizens," MSJ Br. 7, but that assertion is baseless and irrelevant. Plaintiffs offer two purported environmental harms: "increased greenhouse gas ('GHG') emissions" and "vulnerability to wildfires." *Id.* With respect to GHG emissions, Plaintiffs nowhere explain how they suffer any individualized harm from increased GHG emissions. And besides, the FEIS squarely addresses greenhouse-gas emissions from the Medford project, concluding that projected "[d]irect and indirect GHG emissions," which would mostly come from automotive traffic, "are not substantial." CC-26215. As for wildfires, the evidence Plaintiffs cite merely suggests (at most) that one Plaintiff has experienced wildfire-related harm in the past and that the *Medford Parcel* is in an area of wildfire risk; none of this evidence shows that upgrading a bowling alley in Medford somehow will create a risk of wildfires on Plaintiffs' reservations many miles away.

In short, Plaintiffs' "only concern is with suppressing competition . . . , and that economic interest is not within the zone of interests protected by NEPA." *ANR Pipeline Co. v. FERC*, 205 F.3d 403, 408 (D.C. Cir. 2000). That should end the matter for Counts I, II, and VII.

B. Plaintiffs' NEPA Claims Fail on the Merits.

Even if Plaintiffs had a cause of action under NEPA, each of their claims would fail on the merits. That was clear when Plaintiffs filed this suit, *see* Coquille's Opp. to Plaintiffs' Emergency Motion for TRO/PI, ECF No. 52, at 11–17, 24–30, and is even clearer under the Supreme Court's intervening decision in *Seven County*, a seminal NEPA case that Plaintiffs nowhere acknowledge.

Seven County provides the framework for analyzing each of Plaintiffs' NEPA claims.

There, in reversing a decision by the D.C. Circuit that had vacated an agency decision under NEPA, the Supreme Court clarified that "NEPA is a *purely procedural statute*" that "imposes no *substantive* constraints on the agency's ultimate decision." *Seven Cnty.*, 145 S. Ct. at 1511. The Court explained that "[u]nder NEPA, an agency's only obligation is to prepare an adequate report." *Id.* In assessing a report's adequacy, "'the only role for a court' is to confirm that the agency has addressed environmental consequences and feasible alternatives." *Id.* (quoting *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227 (1980)). Because an agency conducting an environmental assessment "will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry," reviewing courts must "afford substantial deference to the agency." *Id.* at 1511–13. Indeed, "[t]he bedrock principle of judicial review in NEPA cases can be stated in a word: Deference." *Id.* at 1515. For the reasons discussed below, each of Plaintiffs' NEPA claims fails under this circumscribed and deferential review.

1. *Plaintiffs' claim of a NEPA procedural violation (Count I) is meritless.*

Plaintiffs first argue that the ROD must be vacated because the BIA's environmental-review process was conducted "in reliance on" NEPA procedural regulations issued by the Council on Environmental Quality ("CEQ"), rather than Interior's own NEPA regulations. MSJ Br. 13–21. Citing the D.C. Circuit's divided panel opinion in *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024), Plaintiffs claim that this supposed error renders the FEIS and the ROD invalid under "separation-of-powers principles" or "otherwise arbitrary and capricious," requiring vacatur. MSJ Br. 14.

This argument misconstrues the law and the record. First, it is premised on a fundamental mischaracterization of *Marin Audubon*, which provides no basis for the relief Plaintiffs seek. Second, it erroneously presupposes that NEPA requires Interior to have had and applied a comprehensive set of binding regulations governing the environmental-review process. Third, the record shows that even had there been a procedural error, it was harmless, so vacatur is not warranted.

a. *Marin Audubon* does not provide a basis for relief, as the decision *took away* a means to challenge agency action.

Plaintiffs do not identify any violation of NEPA or of Interior's NEPA rules. (Plaintiffs' distinct failure-to-consult claim is addressed below. *See* pp. 17–22, *infra*.) Their claim instead hinges on the premise that, under *Marin Audubon*, agency action based on a NEPA review in which CEQ regulations were treated as binding is automatically invalid. That premise is wrong.

The challengers to the agency action in *Marin Audubon* argued that the agencies misapplied CEQ regulations when they invoked a "categorical exclusion" to avoid preparing either an environmental assessment or an environmental impact statement. 121 F.4th at 908, 911. The D.C. Circuit held that because CEQ regulations are not binding on agencies, a court could *not* invalidate agency action based on a failure to comply with CEQ regulations. *Id.* at 908. Put differently, any violations of the CEQ regulations are not "enforceable by courts," because those regulations lack the force of law. *Id.* at 913. *Marin Audubon* thus *took away* a tool from challengers of agency action; it did not provide a new tool for invalidating an agency's work. *See Appalachian Voices v. FERC*, 139 F.4th 903, 926 (D.C. Cir. 2025) (Henderson, J., concurring) (noting that *Marin Audubon* "rein[ed] in NEPA"). Plaintiffs seem unwilling to accept this basic point.

To advance their misguided reading of *Marin Audubon*, Plaintiffs repeatedly contend that the D.C. Circuit invalidated the agency action at issue there *because* the agency had relied upon the *ultra vires* CEQ regulations. *See, e.g.*, MSJ Br. 13–14, 18. That is false. The D.C. Circuit invalidated the agency action there for entirely different reasons, after *declining* to reach the challengers' arguments based on the alleged misapplication of CEQ regulations. *See Marin Audubon*, 121 F.4th at 915–18 (FAA acted arbitrarily by measuring environmental impacts against an improper baseline); *see also id.* at 921 (Srinivasan, C.J., dissenting with respect to Parts II and IV) (noting that the court's judgment did not rest on its holding about CEQ regulations). Indeed, seven judges expressly concurred in the denial of rehearing en banc precisely *because* the conclusion that the CEQ regulations are *ultra vires* "was unnecessary to the panel's disposition"—*i.e.*, was dictum—and "in fact could not independently support the panel's disposition to set aside the agencies' challenged action." *Marin Audubon Soc'y v. FAA*, No. 23-1067, 2025 WL 374897, at *1 (D.C. Cir. Jan. 31, 2025) (Srinivasan, C.J., concurring in the denial of rehearing en banc).

If any doubt remained, the D.C. Circuit has since confirmed on multiple occasions that where, as here, an agency affirmatively *complied* with CEQ regulations in performing its NEPA review (rather than allegedly violating the regulations, as in *Marin Audubon*), *Marin Audubon* does *not* call the resulting agency action into question. *See Healthy Gulf v. FERC*, 132 F.4th 544, 549 n.1 (D.C. Cir. 2025) ("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."); *Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 240 n.3 (D.C. Cir. 2025) ("Because FERC complied with CEQ guidance, we need not consider the effect of [*Marin Audubon*] on FERC's NEPA obligations."). Plaintiffs' reliance on *Marin Audubon* is thus entirely misplaced.[4]

b. <u>NEPA does not require Interior to conduct its environmental reviews pursuant to any particular set of regulations.</u>

Plaintiffs next criticize Interior's failure to have promulgated and relied upon its own set of comprehensive NEPA regulations. *See* MSJ Br. 17–18. This argument gets Plaintiffs nowhere,

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[4] Plaintiffs repeatedly refer to CEQ's regulations as "unconstitutional." *E.g.*, MSJ Br. 2, 16, 17, 19, 20. However, as explained, there is nothing invalid about the regulatory provisions themselves; *Marin Audubon* merely held that separation-of-powers principles would be implicated to the extent these regulations express *mandates* rather than *guidance*. Nothing in *Marin Audubon* suggests that an agency's reliance on the CEQ regulations renders the agency's underlying decision unconstitutional such that it gives rise to an APA claim. Accordingly, Plaintiffs' assertion that Interior's voluntary reliance on CEQ's nonbinding regulations violates "the constitutional rights of the millions of Americans who are subject to [Interior's] decisionmaking," *id.* at 16, is absurd.

as Interior *did* have its own NEPA regulations, and, for the purposes of this argument, there is no claim that Interior violated them. *See* CC-26330, CC-26915–16. As the Supreme Court clarified in *Seven County*, NEPA "simply requires an agency to prepare an EIS—in essence, a report." 145 S. Ct. at 1507. The statute "does not require the agency to weigh environmental consequences in any particular way"—*i.e.*, pursuant to a set of comprehensive, binding regulations. *Id.* "Rather, an agency may weigh environmental consequences as the agency reasonably sees fit." *Id.* Interior enjoys significant leeway in how it prepares the required report—it need not maintain more exhaustive regulations or follow a particular course in preparing the report. Interior satisfied all requirements here.

Plaintiffs point to *Marin Audubon*'s discussion of the relationship between the CEQ regulations and Interior's own NEPA regulations. *See* MSJ Br. 17–18. But that argument repeats Plaintiffs' misunderstanding of *Marin Audubon*. The D.C. Circuit there analyzed whether Interior had incorporated CEQ's regulations and therefore made them binding; if so, Interior's failure to follow those regulations might be a basis for invalidating its NEPA review. Since Interior voluntarily adhered to the CEQ regulations here, it is immaterial whether those regulations bind Interior.

Plaintiffs also claim that Interior's recent rulemaking in response to the rescission of the CEQ regulations is a supposed concession that Interior must maintain and apply its own binding regulations governing NEPA review. *See* MSJ Br. 18. In fact, the agency took the exact opposite view, explaining that "NEPA does not require Federal agencies to issue regulations implementing NEPA." National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498, 29,498 (July 3, 2025).

c. <u>The record belies any claimed procedural error in BIA's NEPA review, let alone one that was prejudicial.</u>

Beyond the legal flaws, Plaintiffs' claim fails because the administrative record establishes that (1) there was no procedural error and (2) even if there were, it would have been harmless.

As an initial matter, Plaintiffs' claimed procedural error is not supported by the record. Plaintiffs' theory is that the BIA erred by impermissibly treating the CEQ regulations as binding. MSJ Br. 20–21. But the ROD—the final agency action under review—made clear that the BIA understood the CEQ regulations not to be binding and explained that the agency had "*nonetheless elected* to follow those regulations" in addition to Interior's own NEPA regulations and Interior's NEPA Guidebook. CC-26870 n.1 (emphasis added). Plaintiffs do not (and could not) dispute that CEQ has authority to issue what other agencies may treat as *guidance*—and thus may voluntarily follow, though they are not required to do so. *See Marin Audubon*, 121 F.4th at 910. Plaintiffs' claim therefore lacks merit.

Even assuming, contrary to the ROD's express statement, that the FEIS treated CEQ's NEPA regulations as binding, this supposed procedural error was harmless and so cannot justify vacating the ROD. The D.C. Circuit has consistently "applied the prejudicial error rule in the NEPA context where the proposing agency engaged in significant environmental analysis before reaching a decision but failed to comply precisely with NEPA procedures." *Nevada v. Dep't of Energy*, 457 F.3d 78, 90 (D.C. Cir. 2006); *see, e.g.*, *Oglala Sioux Tribe v. U.S. NRC*, 45 F.4th 291, 299–300 (D.C. Cir. 2022). The court has observed that remanding to the agency for failure to adhere to procedural requirements "would be a meaningless gesture" that is "not necessary to guarantee that the [agency] will consider environmental concerns." *Ill. Com. Comm'n v. ICC*, 848 F.2d 1246, 1257 (D.C. Cir. 1988) (*per curiam*); *see, e.g.*, *Citizens Action Coal.*, 125 F.4th at 242. "Remanding for a differently named assessment, where the project's negative consequences have already been analyzed and found to be absent and the findings have been disclosed to interested parties, is a waste of time." *Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 62 (1st Cir. 2001).

Plaintiffs bear the burden to show that Interior's alleged procedural errors were prejudicial. *See Prohibition Juice Co. v. U.S. FDA*, 45 F.4th 8, 24–25 (D.C. Cir. 2022). Plaintiffs catalogue the BIA's citations to CEQ regulations, MSJ Br. 15–16, but nowhere identify any point at which, or any reason that, the BIA would have reached a *different* result if those regulations had been entirely ignored. Just the opposite: The BIA stated that whether those regulations were binding had no effect whatsoever on the content of the FEIS or the issuance of the ROD. CC-26870 n.1.[5]

The only hint of prejudice that Plaintiffs identify is speculation that had Interior not "blindly" relied on CEQ's regulations, MSJ Br. 19, it might have differently operationalized NEPA's mandate to "identify and develop methods and procedures" to quantify various environmental and economic considerations, 42 U.S.C. § 4332(B). But, again, Interior has already said that it would have adhered to CEQ's procedures here regardless of their binding force. And Section 4332(B) instructs agencies to develop their NEPA methods and procedures "*in consultation with*" CEQ, *id.* (emphasis added), making it even more farfetched to think that the alleged observance of CEQ's guidance here had any effect on the ultimate decision.

2. Seven County *forecloses Plaintiffs' failure-to-consult claim (Count II).*

Plaintiffs assert that Interior failed to comply with its duty under NEPA and its implementing regulations to consult with Plaintiffs "just before issuing the FEIS and ROD." MSJ Br. 42. But as with each aspect of its environmental review, *Seven County* dictates that Interior enjoys significant discretion in how it satisfies any consultation requirement imposed by NEPA. *See* 145 S. Ct. at 1513. And the record here makes clear that Federal Defendants engaged in substantial

[5] Addressing the appropriate remedy for invalid agency action, Plaintiffs assert that vacatur is warranted because Federal Defendants cannot "demonstrate 'at least a serious possibility that they will be able to reach the same outcome on remand.'" MSJ Br. 19 (quoting *Marin Audubon*, 121 F.4th at 918). For all the reasons given above, this is wrong—the agency has already told us that it *actually would* reach the same outcome. CC-26870 n.1.

consultation with appropriate tribal, state, and local officials, including Plaintiffs. Plaintiffs' true grievance is not really about consultation at all, but that the agency ultimately did not do what Plaintiffs advocated. Plus, even if the consultation here were somehow insufficient (it was not), Plaintiffs, fatally, fail to show that more consultation would have changed the outcome.

a. Interior engaged in substantial consultation with Plaintiffs and other stakeholders, far exceeding any NEPA consultation obligation.

The record demonstrates that Interior more than satisfied any consultation requirement under NEPA. When the FEIS, ROD, and Decision Letter were issued, Interior's then-applicable NEPA regulations required Interior to "whenever possible consult, coordinate, and cooperate with relevant . . . tribal governments . . . concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities." 43 C.F.R. § 46.155, *rescinded by interim final rulemaking*, 90 Fed. Reg. 29,498, 29,504 (July 3, 2025). As the FEIS states, the BIA "consulted extensively with the Coquille Indian Tribe . . . and the Cow Creek Band of Umpqua Tribe of Indians." CC-26075.

Beyond the statement in the FEIS, the administrative record is replete with evidence of extensive consultation across years of formal meetings and notice-and-comment and public-hearing processes. To begin, early in the BIA's scoping process, the agency "alert[ed] the governments of Cow Creek Band of Umpqua Tribe of Indians . . . and Karuk Tribe." CC-26327. "The input received from these tribal governments and others, including tribal members in non-governmental capacities, were considered in the scope of the [DEIS]." *Id.* Following the scoping process, the BIA consulted with Cow Creek pursuant to the National Historic Preservation Act. CC-26075. As part of its DEIS, the BIA also conducted an environmental-justice analysis that "recognize[d] the Cow Creek Band of Umpqua Indians [and the] Karuk Tribe … as minority populations that would be impacted by substitution effects." CC-26329.

During the public-notice periods for the DEIS (in 2022 and 2023), the BIA received four comment letters from Cow Creek, *see* CC-26290–91 (comments T1, T6, T11, and T13); two from Karuk, *see id.* (comments T2 and T10); and two from Tolowa, *see* CC-26290 (comments T4 and T7). Members of each Plaintiff tribe also participated by objecting to the proposed action at public hearings in December 2022 and January 2023. *See* CC-25704–07 (Cow Creek 2022); CC-25847–52 (Cow Creek 2023); CC-25882–88 (Karuk 2023); CC-25724–28 (Tolowa 2022); CC-25860–62, CC-25866–68 (Tolowa 2023). The BIA responded to Plaintiffs' comments. *See* CC-26296–348. The substantive issues raised by Plaintiffs—including those related to anticipated economic impacts from any substitution effects created by a gaming facility on the Medford Parcel—were fully heard, considered, and responded to during the BIA's public-comment and hearing processes for the DEIS. *Id.*

Based on feedback from Plaintiffs and other tribes through the scoping process, as well as during consultation, the BIA's environmental-justice analysis, and the public-comment and hearing processes, the BIA evaluated the proposed action's impact on Plaintiffs and documented its findings in the FEIS. For instance, Section 4.7.1 of the FEIS discusses at length the potential economic effects of the proposed action, including any impacts on Plaintiffs' existing casinos, the primary concern Plaintiffs now raise. *See* CC-26151–56.

In short, Plaintiffs and Interior have been in regular communication regarding Coquille's application—including *at least 24 meetings* between one or more Plaintiffs and Interior. *See* p. 5 n.1, *supra*. At least one Plaintiff even met with White House staff regarding the Medford property. *See* CC-26397. Remarkably, it appears that Cow Creek, just one of the three Plaintiffs, had at least as many consultation sessions with the federal government as did Coquille itself. *See* p. 5 n.1, *supra*. (To a large extent, Plaintiffs have already achieved their aim by delaying gaming competition from Coquille for over a decade.) Given this record, it is impossible to conclude that Interior fell so far short of any NEPA consultation obligation that its action must be vacated.

Despite all this engagement, Plaintiffs still contend that the BIA "failed to follow [its] own regulations, policies, and procedures." MSJ Br. 41. But under *Seven County*, agencies "must have broad latitude to draw a 'manageable line,'" defining the extent of consultation that will be useful in each decisionmaking process; and reviewing courts should not "micromanage those agency choices so long as they fall within a broad zone of reasonableness." 145 S. Ct. at 1513 (citations omitted). Here, the then-governing regulation required only that the agency "*whenever possible* consult, coordinate, and cooperate with relevant . . . tribal governments." 43 C.F.R. § 46.155 (emphasis added). Plaintiffs do not explain in any meaningful way which of these requirements went unsatisfied, much less how the agency's approach to tribal consultation fell outside a "broad zone of reasonableness." *Seven Cnty.*, 145 S. Ct. at 1513.[6]

Unable to dispute the administrative record, Plaintiffs concoct a new legal standard, arguing that the consultation here was not sufficiently "meaningful[]." MSJ Br. 39. But that claim cannot be squared with the just-discussed record, which evinces extensive and deep engagement.

[6] Plaintiffs rely on *Quechan Tribe of the Fort Yuma Indian Reservation v. United States Department of the Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010), *see* MSJ Br. 42, but the case is readily distinguishable. For one, it focused on consultation obligations under the National Historic Preservation Act, which are distinct from NEPA's consultation requirement. (Plaintiffs never even mention the NHPA in their brief.) Moreover, the extent of consultation here far exceeded that in *Quechan Tribe*, where the federal agency refused to meet for nearly three years. *Quechan Tribe*, 755 F. Supp. 2d at 1118. "This is not a case like *Quechan Tribe*, where a tribe entitled to consultation actively sought to consult with an agency and was not afforded the opportunity." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 205 F. Supp. 3d 4, 33 (D.D.C. 2016) (quoting *Wilderness Soc'y v. Bureau of Land Mgmt.*, 526 F. App'x 790, 793 (9th Cir. 2013) (per curiam)).

In any event, the concept of "meaningful" engagement—what that subjective term means, Plaintiffs do not say—appears nowhere in NEPA, Interior's NEPA regulations, or Interior's NEPA guidebook, and it provides no "concrete standard by which to judge [Interior's] efforts." *United Keetoowah Band of Cherokee Indians in Okla. v. FCC*, 933 F.3d 728, 750 (D.C. Cir. 2019).

In reality, Plaintiffs have nothing to complain about when it comes to the agency's process. They just disagree with the outcome. That is not enough to establish a NEPA claim.

b. <u>Any consultation error was not prejudicial.</u>

Even assuming *arguendo* that the consultation fell short in some slight respect, vacatur of the ROD would not be warranted "absent reason to believe" that Interior would "disapprove the project" upon correcting the error. *Seven Cnty.*, 145 S. Ct. at 1514. As with Plaintiffs' APA claim regarding the treatment of CEQ regulations, Plaintiffs bear the burden to show that the alleged error was prejudicial. *See Prohibition Juice*, 45 F.4th at 24–25. Given the agency's substantial, yearslong consultation with Plaintiffs and other stakeholders, it strains credulity to think that if the agency went back and took *one more* phone call or read *one more* letter, it would reach a different conclusion. *See Idaho Wool Growers Ass'n v. Vilsack*, 816 F.3d 1095, 1104–05 (9th Cir. 2016) (agency's failure to consult was harmless because relevant information was before it).

For their part, Plaintiffs focus so singularly on the failure to do more, or more "meaningful," consultation that they mostly neglect to explain why any additional consultation would have made a whit of difference. In a footnote, Plaintiffs observe that "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,'" and they posit that perhaps additional consultation would have yielded this information. MSJ Br. 44 n.31 (quoting CC-26311). But it beggars belief that Plaintiffs lacked an adequate opportunity to put this information—which in their view was the most critical information for the agency to have—

before the agency. Indeed, the agency repeatedly *solicited* economic analysis from Plaintiffs, CC-27745–46, and Plaintiffs failed to provide this information even after the informational gap was identified in direct correspondence from the agency, *id.* The only reasonable inference is that Plaintiffs withheld this information because it was harmful to their cause. In any event, Plaintiffs' speculation that this undisclosed material might have moved the needle is far too little and too late to show prejudice.

3. *Plaintiffs' challenge to the adequacy of the FEIS under NEPA is likewise foreclosed by* Seven County *(Count VII).*

Plaintiffs nitpick the extent to which Interior analyzed various impacts before issuing the ROD, arguing that the FEIS's reliance on "stale and outdated" reports means the agency cannot have taken the requisite "'hard look'" at the environmental impacts assessed in the FEIS. MSJ Br. 42–43 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). But as with Plaintiffs' other NEPA-based claims, Plaintiffs' theory—demanding close judicial scrutiny of the agency's chosen methodologies for assessing environmental impacts—is squarely foreclosed by *Seven County*.

As the Supreme Court instructed, "[w]hen a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the reviewing court must account for the fact that NEPA is a *purely procedural statute*." *Seven Cnty.*, 145 S. Ct. at 1511. The "only role for a court" considering such a claim "is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project"—a review that requires "substantial deference to the agency" as to the "fact-dependent, context-specific, and policy-laden choices about the depth and breadth of [the agency's] inquiry." *Id.* at 1511–13 (internal quotation marks omitted). As detailed below, the record demonstrates that Federal Defendants "addressed environmental consequences" of, as well as "feasible alternatives" to, the Medford project; and their methodologies for doing so easily satisfy *Seven County*'s deferential "reasonableness" standard.

a. The FEIS addresses environmental consequences and feasible alternatives.

The FEIS confirms that the BIA considered a wide range of potential environmental consequences of the proposed project, including socioeconomic, environmental-justice, aesthetic, cultural, and paleontological impacts. CC-25957–94. In doing so, the BIA identified and analyzed a variety of potential negative effects on the environment and surrounding communities, including: soil erosion, discharge of pollutants to surface waters, migratory birds, cultural and paleontological resources, minority and low-income communities, local transportation, law enforcement, fire protection and emergency medical services, and noise. *Id*.

As relates to Plaintiffs, the BIA's environmental-justice analysis, conducted as part of its DEIS, "recognize[d]" several "populations that would be impacted by substitution effects," including "the Cow Creek Band of Umpqua Indians [and the] Karuk Tribe." CC-26329. Based on that analysis, as well as feedback from local governments and tribes, the BIA evaluated the proposed action's impact on Plaintiffs and documented its findings in the FEIS. *See, e.g.*, CC-26151–55 (discussing economic effects of proposed action, including impacts on Plaintiffs' casinos).

In addition to the proposed project, the BIA considered a range of alternative actions, including several "off-site" alternatives that would not involve taking the Medford Parcel into trust. CC-25957. After screening out alternatives that "were determined to be infeasible or would not fulfill the stated purpose and need of the Proposed Action," CC-26026; *see* CC-26025–28, the BIA selected four alternatives for additional consideration: the proposed action, two other "development" alternatives, and a "no development" alternative. *See* CC-26000–25. The FEIS reflects that the BIA extensively analyzed the "potential adverse and beneficial effects" of each, as well as "mitigation measures relevant to each." CC-25959; *see* CC-25959–94 (table summarizing each alternative's potential environmental effects and mitigation measures); CC-26133–234 (detailed analysis of each alternative's environmental effects); CC-26235–41 (detailed discussion of mitigation measures relevant to each alternative). This is precisely what NEPA calls for. And given *Seven County*'s take on agencies' NEPA responsibilities, Plaintiffs' efforts to find fault in the careful, extensive NEPA review here fall especially flat.

b. Plaintiffs' critiques of the FEIS are inconsequential, especially in light of *Seven County*.

Because the FEIS plainly addresses environmental consequences and feasible alternatives as *Seven County* requires, Plaintiffs are left to quibble with Defendants' *methods* for analyzing those factors. But Plaintiffs' feeble criticisms provide no basis for relief.

For one, Plaintiffs take issue with the FEIS's reference to a report outlining Coquille's unmet needs, which they describe as over a decade old. MSJ Br. 43–44. But the record shows that Coquille's unmet needs persisted; it was therefore perfectly reasonable for the BIA to consider them. *See, e.g.*, CC-25280 ("[Coquille's] budgetary needs to support existing expenditures continue to exceed incoming revenue," and that shortfall "has more recently been exacerbated by inflation and the growing and aging nature of the Tribe's membership."); CC-25863–64. NEPA does not require an agency to continually supplement its analysis with new data until the FEIS is issued. If that were the case, the environmental-review process would never end. "The goal of [NEPA] is to inform agency decisionmaking, not to paralyze it." *Seven Cnty.*, 145 S. Ct. at 1507.

Plaintiffs also criticize the FEIS's references to certain reports dated 2015 and 2016. MSJ Br. 44. Since then, Plaintiffs note, the Governor of Oregon has taken executive action aimed at regulating and reducing greenhouse-gas emissions. *Id.* What difference that fact should have made in the BIA's analysis, Plaintiffs do not say. Nor do they present any theory of why the relatively modest population growth in Jackson County during the intervening years—from roughly 210,000 to roughly 225,000—rendered the BIA's reference to these reports unreasonable.

In short, the FEIS addressed environmental consequences and feasible alternatives, as required by NEPA, and Plaintiffs' critiques of the BIA's analytical methods call for precisely the kind of judicial "micromanag[ing]" that the Supreme Court squarely rejected in *Seven County*. 145 S. Ct. at 1513. Defendants are entitled to summary judgment on Count VII.

II. IGRA's Restored-Lands Exception Authorizes Gaming on the Medford Parcel (Count III).

Plaintiffs claim that the Medford Parcel is ineligible for gaming under the statute-based restored-lands exception to IGRA's general prohibition against gaming on tribal lands newly acquired in trust. MSJ Br. 28–44; *see* 25 U.S.C. § 2719(a), (b)(1)(B)(iii); 25 C.F.R. § 292.11(a). Therefore, in Plaintiffs' view, Coquille was required to establish modern, historical, and temporal connections to the Medford Parcel under Interior's regulations. MSJ Br. 28–29, 38; *see* 25 C.F.R. §§ 292.11(b), 292.12. But Plaintiffs' claim rests on misreadings of IGRA, the IGRA regulations, the Restoration Act, and the relevant case law.

A. The Medford Parcel Is Eligible for Gaming.

Interior correctly concluded that IGRA's statute-based restored-lands exception applies to the Medford Parcel. With certain exceptions, IGRA generally prohibits gaming on lands that the Secretary acquires in trust after IGRA's 1988 enactment. One exception is for tribes once terminated but then restored: Under the restored-lands exception, the prohibition against gaming on newly acquired lands "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." 25 U.S.C. § 2719(b)(1)(B)(iii). Plaintiffs do not dispute that Coquille is "a restored tribe," MSJ Br. 29 n.20, but they contend that the trust acquisition of the Medford Parcel was not part of "the restoration of lands" for Coquille, *id.* at 28–37. That is wrong.

While IGRA does not expressly define "restoration of lands," Interior has promulgated regulations under which Coquille, as a tribe "restored by a Congressional enactment of legislation," has established that the Medford Parcel is restored land. The regulations recognize two paths to establish that land is restored: the "statute-based" exception and the "connections-based" exception. *See* 25 C.F.R. § 292.11(a)(1)–(2). The Medford Parcel meets the statute-based exception because "[t]he [restoration] 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 that specific geographic area." *Id.* § 292.11(a)(1) (emphasis added). Specifically, the Coquille Restoration Act *authorizes* the Secretary to "accept … acreage in the Tribe's service area" into trust for the benefit of the Tribe. Coquille Restoration Act § 5(a), 103 Stat. 92. That service area includes "Jackson … Count[y]," *id.* § 2(5), 103 Stat. 91–92, and the Medford Parcel is in Jackson County, *see, e.g.*, CC-25947. Under the governing regulations, that ends the analysis.

Because the Medford Parcel meets the statute-based exception, the "connections-based" exception, which applies only "[i]f the legislation does *not* provide a specific geographic area for the restoration of lands," is irrelevant. 25 C.F.R. § 292.11(a)(2) (emphasis added). So, too, are its requirements, set forth in 25 C.F.R. § 292.12, which delineate the modern, historical, and temporal connections that a tribe proceeding under the connections-based exception must show. *See id.* § 292.12. Plaintiffs' argument that this test applies thus fails under a straightforward application of the regulations.

While the regulations resolve the question, even without them, the result would be the same. That is because Interior's regulations codified controlling D.C. Circuit precedent interpreting IGRA. *See* Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,364 (May 20, 2008). In *City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003), the D.C.

Circuit (in a unanimous panel opinion by Judge Rogers, joined by then-Judge Roberts) considered a restoration statute—the Auburn Indian Restoration Act ("AIRA"), Pub. L. No. 103-434, 108 Stat. 4533 (1994)—that is similar to Coquille's Restoration Act. Looking at "IGRA's language, structure, and purpose," the court held that "lands acquired [in trust] pursuant to [a] restoration statute . . . from within the restored tribe's service area designated in the [restoration statute]" satisfy IGRA's restored-lands exception. 348 F.3d at 1025–26.

That rule decides this case. Echoing Coquille's Restoration Act, AIRA's trust-acquisition provisions state that the Secretary (1) "may accept any real property located in [a statutorily designated county] for the benefit of the Tribe" and (2) "may accept any additional acreage in the Tribe's service area [which is defined as the same county plus five others] pursuant to the authority of the Secretary under the [Indian Reorganization Act]." AIRA §§ 204(a), 208(7), 108 Stat. at 4534, 4536, *as amended by* Pub. L. No. 104-122, § 1, 110 Stat. 876 (1996); *see* Coquille Restoration Act § 5(a), 103 Stat. at 92 (similar). Like Coquille's Restoration Act, AIRA also provides that lands acquired pursuant to this authority "shall be part of the Tribe's reservation." AIRA § 204(c), 108 Stat. at 4534; *see* Coquille Restoration Act § 5(c), 103 Stat. at 92 (similar).

Contrary to Plaintiffs' claims, it made no difference to the D.C. Circuit whether the land acquisition was discretionary or mandatory—that is, whether the Secretary acquired the parcel pursuant to statutory language providing that he "may accept" versus "shall accept" the land at issue.[7] Indeed, as the above-quoted language shows, the parcel in *City of Roseville* was acquired pursuant to the Secretary's "may accept" authority, just like the Medford Parcel. The panel even cited Coquille's Restoration Act to draw the parallel that "AIRA gives the Secretary discretion to

[7] Plaintiffs attempt to stack the deck by referring to mandatory-acquisition provisions as "restored land language" and to discretionary-acquisition provisions as "IRA affirmation language." MSJ Br. 32. But these nicknames mischaracterize the operation of the provisions.

accept lands into trust within a wide geographical range," just like "other statutes restoring Indian tribes to federal recognition," including the "Coquille Restoration Act." 348 F.3d at 1031. Also contrary to Plaintiffs' claims, the panel rejected the argument that a tribe seeking to game on lands taken into trust pursuant to a restoration act must show historical connection to the land. *See id.* at 1027–31.

Plaintiffs attempt to muddy the waters by focusing instead on the district court's decision in *City of Roseville*, 219 F. Supp. 2d 130 (D.D.C. 2002), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003). MSJ Br. 34–36. But the district court opinion does Plaintiffs no favors, either. That court was "not persuaded that the discretionary nature of the Secretary's obligation to take land into trust . . . bears any weight on the Court's . . . proper construction of [IGRA's] phrase 'restoration of lands.'" 219 F. Supp. 2d at 163.

Plaintiffs' arguments thus fail under both the applicable regulations and the plain statutory text, as applied by binding precedent.

B. Plaintiffs' Restored-Lands Arguments Are Meritless.

Plaintiffs have wisely abandoned each of the six meritless restored-lands arguments that they advanced in their unsuccessful preliminary-injunction motion. *Compare* Mot. TRO and PI at 31–35, ECF No. 32, *with* MSJ Br. 28–37. But their new arguments fare no better. Each rests on a misreading of the Restoration Act and is incompatible with *City of Roseville*.

Plaintiffs first describe the Restoration Act's legislative history, which they claim "makes it clear that Congress intended only for the 1,000 acres in Coos and Curry Counties to constitute restored lands." MSJ Br. 31–32. But Plaintiffs do not explain what about this legislative history supports their position. The materials they rely on reflect only the undisputed point that acquisitions in Jackson County are discretionary. None of this legislative history mentions gaming or in any way suggests a relevant distinction between land acquired under the Act's mandatory- and discretionary-acquisition provisions. And even if it somehow supported Plaintiffs, legislative history cannot overcome the just-discussed statutory language, structure, and purpose, binding precedent, and applicable regulations. *See, e.g.*, *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018).

Plaintiffs then take another run at their "mandatory" acquisition argument by suggesting that five other restoration statutes enacted after Coquille's "have incorporated" the Act's provision that the Secretary "shall accept" certain land into trust, and that Coquille is "the very first of these Tribes" to seek to avail itself of the statute-based restored-lands exception for land taken into trust within its service area but acquired pursuant to "may accept" language. MSJ Br. 32–33. Plaintiffs' argument is as convoluted as it sounds. Dating back at least to the 1990s, Interior has never suggested that the statute-based restored-lands exception was confined to mandatory acquisitions. The question has always been whether the lands in question "fall within the land acquisition provisions as set forth by Congress in a tribe's Restoration Act" at all—whether the Secretary "may accept" or "shall accept" the land.[8] This makes sense, especially here. Because of termination, Coquille dispersed. In restoring federal recognition to Coquille in 1989, Congress chose a five-county service area because more than half the Tribe's members lived in those counties at the time. *See* CC-436; CC-20071; CC-20105. And they still do today. CC-22995. *City of Roseville* pays respect to Congress's sound judgment, 348 F.3d at 1026; so, too, do Interior's regulations, *see* 73 Fed. Reg. at 29,364; 25 C.F.R. § 292.11(a)(1), and its Decision Letter, *see* CC-26801–02.

Plaintiffs also assert that acceptance of Interior's interpretation will enable Coquille and

[8] Memorandum from Derrill B. Jordan, Assoc. Solic.–Indian Affs., to George Skibine, Dir., Indian Gaming Mgmt. Staff, at 3 (Jan. 18, 2000), https://www.nigc.gov/wp-content/uploads/2024/12/53_unitedauburnindiancomnityresultantparcelb.pdf; *accord* Memorandum from Acting Nw. Reg'l Dir., Bureau of Indian Affs., to Director, Office of Indian Gaming, at 6–8 (Apr. 23, 2014), CC-2968–70; Memorandum from Solic. of the Interior to Sec'y of the Interior, at 7–8 (Sept. 19, 1997), https://www.nigc.gov/wp-content/uploads/2024/12/40_pokagonbandofpotawatomiindns.pdf.

tribes with similarly worded restoration statutes "to franchise casinos throughout their service areas," MSJ Br. 33–34,[9] thus providing a "license to game on newly acquired lands." *Id.* (internal quotation marks omitted). But the D.C. Circuit rejected this exact assertion in *City of Roseville* because Interior's discretion in connection with any trust acquisition is separately "constrained by [the] departmental regulations" at 25 C.F.R. Part 151. 348 F.3d at 1031; *see id.* at 1023; *see also infra* Part III (discussing those regulations). The D.C. Circuit also recognized this assertion for what it is—a thinly veiled "policy argument." 348 F.3d at 1031. Such "unadorned appeal[s] to public policy" have no place in statutory interpretation and are "better directed to those who make the laws than those charged with following them." *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 706 (2022).

Plaintiffs next contend that Interior misapplied its regulation here because 25 C.F.R. § 292.11(a)(1)'s reference to "legislation . . . authoriz[ing] the Secretary to take land into trust" is actually limited to cases where a restoration statute contains *two* discretionary-acquisition clauses and the land at issue is acquired under the *first*. MSJ Br. 34–36 (internal quotation marks omitted). But the applicable regulation does not adopt this bizarre construction; and, in any event, it conflicts with *City of Roseville*.

Plaintiffs further argue that Interior's regulation misapplies IGRA and is not entitled to

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[9] Even if true, there is nothing unusual about this result. IGRA's general gaming prohibition does not apply to lands "located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988." 25 U.S.C. § 2719(a). Accordingly, tribes with large reservations can operate gaming facilities across large geographic areas. *Cf. Cayuga Nation v. Tanner*, 6 F.4th 361, 378–79 (2d Cir. 2021). There is no reason to think that Congress would exclude broadly defined service areas from IGRA's restored-lands exception when the entire point of restoration statutes is to "compensate [tribes] for historical wrongs" that deprived them of large swaths of land. *City of Roseville*, 348 F.3d at 1027; *see id.* at 1031 ("[It] would be anomalous for Congress to confine restored tribes to whatever of their pre-termination reservation is available while simultaneously allowing acknowledged tribes to conduct gaming anywhere on their initial reservation.").

deference. MSJ Br. 36–37. Regardless of whether deference is appropriate, agency action is valid if the "agency acted consistently with the 'best reading' of the statute" authorizing that action. *Vanda Pharms., Inc. v. U.S. FDA*, 123 F.4th 513, 521 (D.C. Cir. 2024) (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 396 (2024)), *petition for cert. filed*, 93 U.S.L.W. 3324 (U.S. May 16, 2025) (No. 24-1187).

As discussed, the D.C. Circuit in *City of Roseville* determined the best reading by applying familiar principles of statutory interpretation, analyzing "IGRA's language, structure, and purpose." 348 F.3d at 1025. The court determined that IGRA's syntax fits "comfortably with the concept of restitution" encompassed within the definition of the term "restoration" as it appears in IGRA's restored-lands exception. *Id.* at 1027; *accord Grand Traverse Band of Ottawa & Chippewa Indians v. Off. of the U.S. Att'y for the W. Dist. of Mich.*, 369 F.3d 960, 965 (6th Cir. 2004). IGRA's structure further illustrates that a "'restoration of lands' could easily encompass new lands given to a restored tribe to re-establish a land base and compensate it for historical wrongs," especially given that Congress used the broad term "lands" instead of a narrower term like "reservation." *City of Roseville*, 348 F.3d at 1027. IGRA, AIRA, and Coquille's Restoration Act all share "[t]he same objective"—"'promoting tribal economic development' and 'self-sufficiency.'" *Id.* at 1030 (quoting *Diamond Game Enters., Inc. v. Reno*, 230 F.3d 365, 366–67 (D.C. Cir. 2000)). And to the extent that IGRA is at all ambiguous in this regard, "[t]he Indian [c]anon of statutory construction would resolve any doubt" in Coquille's favor, *id.* at 1032, because it requires liberally construing statutes "in favor of the Indians." *Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 558 (D.C. Cir. 2016); *see also Scotts Valley Band of Pomo Indians v. United States Dep't of the Interior*, 633 F. Supp. 3d 132, 153–54 (D.D.C. 2022) (applying canon in assessing scope of IGRA's restored-lands exception in case with tribes as opposing parties).

To argue otherwise, Plaintiffs cite the Tenth Circuit's decision in *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250 (10th Cir. 2001). But, as the D.C. Circuit pointed out in *City of Roseville*, 348 F.3d at 1029, the Tenth Circuit's decision is inapposite because it interpreted the term "reservation" in IGRA's prohibition against gaming on newly acquired lands. *See* 25 U.S.C. § 2719(a). IGRA's restored-lands exception does not use that term. *See id.* § 2719(b)(1)(B)(iii). Moreover, Congress abrogated the Tenth Circuit's decision "almost immediately." 348 F.3d at 1029 (citing Pub. L. No. 107–63, § 134 (2001)).

Defendants are thus entitled to summary judgment on Count III.

III. Interior Complied with Departmental Regulations (Count IV).

Congress delegated to the Secretary of the Interior general authority to take land into trust for the benefit of Indian tribes in Section 5 of the IRA, 25 U.S.C. § 5108. Interior's regulations at 25 C.F.R. Part 151 guide the Secretary's exercise of that authority. *See* 25 C.F.R. § 151.1. Plaintiffs argue that Interior's action violated the IRA and the APA, either because the agency "entirely failed to consider certain Part 151 requirements" or because it "changed its position" from the 2020 Decision with insufficient explanation. MSJ Br. 21. Neither argument holds water.

A. Interior's Explanation Satisfied 25 C.F.R. Part 151 and the APA.

Interior more than satisfied its regulatory and APA duties here. An agency's obligations in rendering a determination under its own rules and regulations are governed by background APA principles. *See Viasat*, 47 F.4th at 776. As relevant, "[w]hen the Secretary considers an application to take lands into trust under the restored-lands exception," Interior "engages in . . . informal agency adjudication." *Butte County v. Chaudhuri*, 887 F.3d 501, 505 (D.C. Cir. 2018) (internal quotation marks omitted). And agency determinations "made by informal adjudication" are subject only to "the minimal requirements" in Section 555 of the APA. *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 655 (1990). As a result, to satisfy the APA, "nothing more than a brief statement" of the grounds for the agency's decision "is necessary." *Ark Initiative v. Tidwell*, 749 F.3d 1071, 1076 (D.C. Cir. 2014) (quotation marks omitted).

The AS-IA abided by the applicable regulations and the APA's demands. Plaintiffs point to 25 C.F.R. § 151.11,[10] which sets forth the criteria that the Secretary must consider in evaluating a tribe's trust application for land that is outside and not contiguous to the boundaries of the tribe's reservation. Section 151.11 incorporates seven criteria from 25 C.F.R. § 151.10 by reference and sets forth three more. The AS-IA carefully considered all ten criteria in his January 10, 2025 Decision Letter, *see* CC-26801–09, which Interior then incorporated into the ROD, *see* CC-26848.

First, the AS-IA began by correctly identifying Coquille's Restoration Act and the IRA as supplying the statutory authority for the acquisition. CC-26803; *see* 25 C.F.R. § 151.10(a).

Second, the AS-IA found that Coquille had demonstrated a need for additional land as "an essential component of the Tribe's self-determination and … long-term revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development." CC-26804; *see* 25 C.F.R. § 151.10(b); *see also, e.g.*, CC-25996. The AS-IA expressly considered the fact that the Tribe already operates its Mill Casino but noted the threat that natural disaster could befall the Casino given its location on the Coos Bay shoreline. CC-26804; *see also, e.g.*, CC-25996.

Third, the AS-IA found that operating a new gaming facility on the Medford Parcel would "facilitate tribal self-determination and economic development" and be "consistent with" Coquille's prior use of the Parcel as a bowling alley that already housed video lottery terminals owned and operated by the State of Oregon. CC-26804; *see* 25 C.F.R. § 151.10(c).

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[10] Interior applied (and this brief cites) the 1995 version of Sections 151.10 and 151.11 because Coquille filed its application before the 2024 amendments took effect. *See* 25 C.F.R. § 151.17(a).

Fourth, the AS-IA considered the impact of removing the Medford Parcel from state and local tax rolls and stated that Interior had sent notices of Coquille's application to the State, its political subdivisions, and several Indian tribes, including Plaintiff Cow Creek. CC-26804–06; *see* 25 C.F.R. § 151.10(e). The AS-IA also noted that Interior had "received letters of opposition from . . . third party Tribes." CC-26806. The AS-IA found that the lost taxes due to Coquille's trust acquisition would amount to less than 0.007% of Jackson County's overall tax base and ultimately concluded that any losses would be "offset by increased revenue from project related indirect and induced activity," including money that Coquille had agreed to pay the City of Medford for continued municipal services on the Parcel. CC-26806.

Fifth, the AS-IA found that the acquisition "would not cause conflicts of land use or other jurisdictional problems," especially because the Medford Parcel was already "zoned for regional commercial and heavy commercial development," and because Coquille and the City of Medford had arranged for the City to provide crucial municipal services for the Parcel in exchange for payments from Coquille. CC-26807; *see* 25 C.F.R. § 151.10(f).

Sixth, the AS-IA concluded that the BIA "has sufficient resources to assume the additional responsibilities resulting from the acquisition," and the AS-IA noted that such responsibilities would be insignificant. CC-26807; *see* 25 C.F.R. § 151.10(g).

Seventh, the AS-IA found that Coquille had provided sufficient information for the Secretary to comply with NEPA. CC-26808–09; *see* 25 C.F.R. § 151.10(h). The AS-IA reviewed the measures undertaken by the BIA per Interior's NEPA obligations, identified the four alternatives considered in the FEIS, and adopted the BIA's conclusions that any "potentially significant effects will be adequately addressed by mitigation measures" set forth in the FEIS and the acquisition would have "no significant impact on the quality of the human environment." CC-26809.

Eighth, the AS-IA assessed the location of the Medford Parcel relative to the Coquille Reservation and concluded that, although the Parcel was "approximately 167 miles south of the . . . Reservation," it nonetheless fell within "the Tribe's congressionally-designated Service Area." CC-26809; *see* 25 C.F.R. § 151.11(b).

Ninth, the AS-IA found that Coquille had, in 2013, provided adequate documentation "to demonstrate the economic benefits associated with the proposed use" of the Medford Parcel, including "a business plan" that featured "a market assessment, analysis of [Coquille's] current operations, and a financial plan with revenue projections." CC-26809; *see* 25 C.F.R. § 151.11(c). And the administrative record on which the AS-IA relied made clear that these needs persisted over time. *See, e.g.*, CC-25996; CC-25280; CC-25863–64.

Tenth, the AS-IA noted that Interior had made the required contacts with the state and local governments having regulatory jurisdiction over the parcel, including through "a notice of application dated February 1, 2013." CC-26809; *see* 25 C.F.R. § 151.11(d).

Only after considering each of the ten criteria, as well as "the Tribe's application, the IRA, the IGRA, the Department's regulations at 25 C.F.R. Part 151 and Part 292, and all of the documents in the record," did the AS-IA conclude that "the Tribe's application meets all of the regulatory requirements." CC-26810. The AS-IA's Decision Letter, along with the ROD, FEIS, and other cited record materials, plainly illustrated "why [Interior] chose to do what it did" such that Interior's decision satisfies the APA as well. *Schacht v. Lieberman*, 103 F.4th 794, 798 (D.C. Cir. 2024) (quotation marks omitted). Given this extensive consideration, there can be no question regarding procedural compliance with the applicable regulations and the APA.

B. The 2020 Decision Was Wrong, and Interior Adequately Explained Its Subsequent Actions.

Plaintiffs' also challenge the sufficiency of Interior's analysis under Section 151.11 for insufficiently explaining a change from the 2020 Decision, which Plaintiffs cast as having concluded that the applicable regulatory considerations weighed against granting Coquille's application. MSJ Br. 22–25; *see* CC-20049–63. That is wrong on both the law and the facts.

On the law, Plaintiffs reach for an inapplicable body of precedents to heighten the agency's obligation to explain its actions. Plaintiffs cite cases involving the "change-in-position doctrine," under which "[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change, display awareness that [they are] changing position, and consider serious reliance interests." *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025) (alterations in original) (internal quotation marks omitted); *see* MSJ Br. 22–23. But that doctrine applies to changes in existing agency policy; it does not apply to an agency's application of a policy to a discrete set of facts in an adjudication, as here. *See White Lion*, 604 U.S. at 570–71.[11]

Even if the doctrine did apply, the facts show that AS-IA satisfied it. The 2025 Decision Letter explained Interior's decision to change course. The AS-IA made clear that he "withdrew the 2020 [Decision] because the Department failed to complete the NEPA process, which had deprived the decision maker of relevant material to make an informed decision." CC-26798. Plaintiffs simply ignore this reasonable account, which would satisfy any requirement. *See White Lion*, 604 U.S. at 570 (agency changing policy need not "provide a more detailed justification than

[11] Plaintiffs deceptively quote *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983), which held that "an agency changing its course by *rescinding a rule* is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." *Id.* at 42 (emphasis added). Plaintiffs unilaterally expand this doctrine to encompass individualized "decision[s]," saying: "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.'" MSJ Br. 22 (emphasis added) (quoting *State Farm*, 463 U.S. at 42). The change-in-position doctrine applies to broad rules, not to discrete, individual decisions. *See White Lion*, 604 U.S. at 570–71.

what would suffice for a new policy created on a blank slate" (quotation marks omitted)); *cf. Seven Cnty.*, 145 S. Ct. at 1511 (requiring agency action to be "reasonable and reasonably explained").

Moreover, the 2020 Decision is replete with errors that, standing alone, justify its withdrawal. First, the 2020 Decision determined that Coquille failed to demonstrate that the acquisition "would provide … a significant economic benefit" because Coquille's proposed gaming facility would alleviate only "a small portion of the Tribe's anticipated budget needs." CC-20057. In what world must a project address all or nearly all of a tribal community's unmet needs to be a proper vehicle for "promoting tribal economic development, self-sufficiency, and strong tribal governments"? 25 U.S.C. § 2702(1).

Second, the 2020 Decision faulted Coquille for its "failure . . . to reach . . . an agreement" with the City of Medford to resolve "jurisdictional problems" that the City once asserted, CC-20055, including that the proposed gaming facility "would generate" an increased "number of calls for law enforcement service," CC-20054. Nothing in Section 151.11 requires a tribe to contractually bind itself to suit the preferences of state and local governments. Such a requirement would effectively enable states and localities to veto a trust acquisition by simply refusing to negotiate with a tribe, as the City of Medford initially did here. *See* CC-20054–55. What's more, the record shows that Coquille subsequently reached an agreement with the City, thus eliminating the factual basis for this supposed rationale. *See, e.g.*, CC-26806.

Third, the 2020 Decision assumed that a hypothetical "less than one percent" decrease in state lottery revenue resulting from the proposed gaming facility "represent[ed] a significant threat to [Jackson] County and its provision of services." CC-20058. This assumption lacks any corroborating record evidence and falls well short of Interior's obligation to ensure that "its decision is adequately explained and supported by the record." *Clark County v. FAA*, 522 F.3d 437, 441 (D.C.

Cir. 2008) (internal quotation marks omitted).

Because the 2020 Decision was not "reasoned decisionmaking," the agency had no obligation to go into great detail disclaiming it here. *Id.* Had Interior replicated any of these errors in a final decision denying Coquille's application, that decision would have been arbitrary, capricious, and contrary to law, in violation of the APA. Little wonder the AS-IA withdrew the 2020 Decision, said why, and reached a different conclusion after gathering more relevant information through the reinitiated NEPA process. The APA demands nothing more.

C. Plaintiffs' Other Factual Objections Are Unavailing.

Plaintiffs argue that the record fails to supply an adequate basis for Interior's decision to grant Coquille's application, and they point to various facts that Interior purportedly failed to consider. MSJ Br. 24–27. To begin, Plaintiffs' repeated emphasis on specific facts wrongly implies that the Court should scrutinize each piece of record evidence before the agency and determine anew whether the agency correctly evaluated it. To the contrary, the "deferential arbitrary-and-capricious standard" asks "not whether [the court] agrees with the agency decision, but rather only whether agency action was reasonable and reasonably explained." *Seven Cnty.*, 145 S. Ct. at 1511.

Just as bad, Plaintiffs pick out individual documents in the record that they contend lack required information while ignoring other documents that contain that very information. *See, e.g.*, MSJ Br. 24 (arguing that "[t]he ROD … referenced the Part 151 regulations just once" even though the Decision Letter analyzed each relevant requirement under those regulations); *id.* at 25 (arguing that "the Decision Letter failed to assess" certain facts that were analyzed in the FEIS). Courts reviewing Interior's trust-acquisition decisions under the APA must "consider[] the whole administrative record" and reject the selective focus that Plaintiffs advance here. *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, 659 F. Supp. 3d 33, 53 (D.D.C. 2023), *aff'd*, No. 23-5076, 2024 WL 3219481 (D.C. Cir. June 28, 2024), *cert. denied*, 145 S. Ct. 1960 (2025).

On the specifics, Plaintiffs first accuse Interior of "gloss[ing] over" the "negative impacts of Coquille's proposed casino in Medford." MSJ Br. 25. But the FEIS extensively considered the projected revenue losses that each Plaintiff's casino would experience as a result of the alternatives it considered. *See, e.g.*, CC-25975–76, CC-26080, CC-26154–55, CC-26162–63, CC-26166, CC-26170. The FEIS also considered, for each alternative, the full slate of possible negative impacts to the human and natural environments, economies, and jurisdictions surrounding the Medford Parcel, and it weighed those impacts against each alternative's benefits. *See* CC-26133–234.

Plaintiffs next argue that Interior "failed to assess . . . whether Coquille needed additional land" in view of Coquille's cumulative landholdings at the time Interior rendered its decision. MSJ Br. 25. Again, the FEIS weighed the risk that a natural disaster could befall Coquille's existing Mill Casino on the edge of Coos Bay, CC-25996, and it noted that "no lands have been added to the [5,400-acre] Coquille Forest since it went into trust in 1998" despite Interior's trust acquisitions of tens of thousands of acres of lands for nearby tribes in the intervening years, including the "2019 transfer[] of . . . 17,519 acres to [Plaintiff Cow Creek]," CC-25997. Plaintiffs similarly suggest that "timber revenue" adequately promotes Coquille's tribal self-determination and economic development, MSJ Br. 25, but they ignore the FEIS's express finding that Coquille's timber-related "[r]evenues and revenue growth . . . are both limited due to the tribe's non-industrial approach to timber management, … the protection afforded to listed species[,] and the growing impacts of disease and wildfire." CC-25997.

Plaintiffs further argue that Interior erroneously relied on Coquille's 2013 business plan in considering the benefits that acquiring the Medford Parcel in trust would yield to Coquille because, in Plaintiffs' view, the plan was outdated by the time Interior issued its final decision. MSJ Br. 25. But Plaintiffs identify no record evidence indicating that the plan's analysis was no longer accurate. Relatedly, Plaintiffs fault Interior for relying on a 2013 report detailing Coquille's unmet fiscal needs, *see id.*, but they fail to identify evidence establishing that those needs have since been met; in fact these needs have continued unabated, CC-25280; *see also* CC-26297, including through 2023, CC-25996, and 2024, *see* ECF No. 17-3, Ex. B at 77–79. Interior expressly observed that "[a]s of 2023, the budgetary needs to support existing expenditures of the Tribe continue to exceed incoming revenue" from existing sources. CC-25996. Plaintiffs also do not contest Interior's conclusion that the trust acquisition would "enabl[e]" Coquille "to provide essential programs and services to its membership, including but not limited to health care, educational resources, housing, social services, employment resources, public safety, utilities, cultural preservation, and environmental and natural resource management." *Id.* That conclusion is the type of "predictive . . . judgment" for which it is "[b]lack-letter administrative law" that "a reviewing court must be at its most deferential." *Seven Cnty.*, 145 S. Ct. at 1512 (internal quotation marks omitted).

Finally, Plaintiffs make much ado about Tribal One, a federally chartered architecture, engineering, construction, technology, and professional-services group owned by Coquille. *See* MSJ Br. 25–26. By Plaintiffs' logic, Tribal One's revenues must have satisfied Coquille's outstanding fiscal needs because Tribal One has been awarded federal government contracts while Coquille's application was pending. But Plaintiffs' only evidence is a set of comments that Plaintiff Cow Creek drafted and submitted in response to the DEIS, and those comments make the very same logical leap without justification. *See* MSJ Br. 26 (citing CC-25215–16). Interior was entitled to disregard Cow Creek's say-so. *See Sault Ste. Marie Tribe*, 659 F. Supp. 3d at 51, 54 & n.20 ("[The APA] does not require that [Interior] note and address every argument in explaining its [decision on a trust application]."); *see also Phoenix Herpetological Soc'y, Inc. v. U.S. Fish & Wildlife Serv.*, 998 F.3d 999, 1006 n.14 (D.C. Cir. 2021) ("[I]n informal adjudications, . . . an agency may entirely reject, give credit to, or discount the weight of hearsay evidence as appropriate.”).

At bottom, Plaintiffs’ grievance is that Interior did not agree with their objections. But the APA is concerned with the question whether “the agency’s path may reasonably be discerned,” *Garland v. Ming Dai*, 593 U.S. 357, 369 (2021) (quoting *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)), and “a court . . . ‘cannot substitute [its] judgment for that of an agency,’” *Mich. Gambling Opposition v. Kempthorne*, 525 F.3d 23, 29 (D.C. Cir. 2008) (quoting *Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678, 684 (D.C. Cir. 1982)). That Plaintiffs “would have weighed the [facts] differently provides no grounds to displace [Interior’s] otherwise reasonable determination.” *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 640 (D.C. Cir. 2016); *see Sault Ste. Marie Tribe*, 659 F. Supp. 3d at 51 (stating that “the point of allowing the agency to serve as finder of fact” is that “it collects, weighs, and even discards, documents as it sees fit,” and declining to “second-guess how Interior weighed the evidence” submitted in connection with a trust application).

Thus, Defendants also are entitled to summary judgment on Count IV.

IV. Plaintiffs’ Treatment-Based Claims (Counts V and VI) Are Baseless.

Plaintiffs assert two interrelated claims predicated on the allegation that Interior treated Coquille differently from other federally recognized Indian tribes in granting Coquille’s application. First, Plaintiffs claim that Interior violated the privileges-and-immunities clause in Section 16(f) of the IRA, 25 U.S.C. § 5123(f), because its approval of Coquille’s application enhanced Coquille’s gaming operations to the detriment of Plaintiffs. MSJ Br. 38. Second, Plaintiffs claim that Interior treated Coquille and the Ponca Tribe of Nebraska differently in adjudicating their trust applications “[d]espite the similarities of Coquille and Ponca’s respective restoration acts.” Am. Compl. ¶ 196; *see* MSJ Br. 30 n.21. Each claim is meritless.

A. The IRA's Privileges-and-Immunities Clause Is Irrelevant.

Plaintiffs' contention that Interior's decision implicates the IRA's privileges-and-immunities clause is contrary to the statutory text. The clause provides that Interior and other agencies "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). In Plaintiffs' view, their privileges were diminished by Interior's "application of IGRA's restored lands exception" to the Medford Parcel. MSJ Br. 39.

That theory suffers from two independently fatal flaws. First, it conflates an alleged factual circumstance—decreased economic opportunity because of increased gaming competition—with a legal detriment. Nothing in Interior's decision regarding the Medford Parcel inhibits Plaintiffs' ability, as a matter of law, to apply to have land taken into trust for gaming purposes consistent with applicable statutes and regulations. Accordingly, this case is wholly distinguishable from the single case on which Plaintiffs rely, *Koi Nation of Northern California v. U.S. Department of the Interior*, where the court held that Interior's failure to treat all tribes who were "de facto terminated" and then later reinstated to recognition as "restored" violated Section 5123(f). 361 F. Supp. 3d 14, 41–42 (D.D.C. 2019).

Second, Interior applied the statute-based restored-lands exception not because of Coquille's legal status as an Indian tribe, but because of express language in Coquille's Restoration Act. Interior has done the same in other cases involving similarly worded restoration statutes. *See Native Village of Eklutna v. U.S. Dep't of the Interior*, No. 19-cv-2388, 2021 WL 4306110, at *7 (D.D.C. Sept. 22, 2021) ("[Section 5123(f)] require[s] only that Interior apply the same legal rule in the same manner, not that Interior necessarily reach the same outcome [in any given case]");

see also Cherokee Nation v. Bernhardt, 936 F.3d 1142, 1160 (10th Cir. 2019) ("[Section 5123(f)] prohibited the BIA from finding [one tribe] lacks territorial jurisdiction while other tribes possess it."). Here, no Plaintiff is subject to a restoration statute that, like Coquille's Restoration Act, expressly identifies a specific geographic area in which the Secretary is authorized to take land into trust. Interior's legal treatment of Coquille in connection with its trust application was a direct consequence of Congress's decision to use the language in the Restoration Act, not a decision by Interior to elevate Coquille's legal status as a tribe *qua* tribe over that of Plaintiffs. *See Agua Caliente Band of Cahuilla Indians v. Riverside County*, No. 14-cv-7, 2017 WL 4533698, at *10 (C.D. Cal. June 15, 2017) ("[S]ection 5123[(f)]'s prohibition on federal agencies from enacting discriminatory regulations or decisions does not override the express terms of hundreds of treaties, executive orders, and federal statutes that are tribe- and/or reservation-specific." (internal quotation marks omitted)), *aff'd*, 749 F. App'x 650 (9th Cir. 2019).

Plaintiffs' claim thus fails, and Defendants are entitled to summary judgment on Count V.

B. Interior Did Not Treat Coquille and the Ponca Tribe Differently.

Plaintiffs' related claim that Interior accorded disparate treatment to Coquille and the Ponca Tribe is simply false. Tellingly, Plaintiffs "do not move for summary judgment on [this claim]." MSJ Br. 1 n.1.

Interior did not, as Plaintiffs claim, deny the Ponca Tribe's application to have land taken into trust for gaming purposes. *See* Am. Compl. ¶ 196. Interior *granted* the Ponca Tribe's application based on its finding that the parcel satisfied the connections-based restored-lands exception. *See In re Gaming Ordinance of the Ponca Tribe of Nebraska* ("*Ponca Tribe*") at 9–12 (Nat'l Indian

Gaming Comm'n Apr. 30, 2019).[12] It is true that, like Coquille's Restoration Act, the Ponca Tribe's restoration statute identifies specific counties in which it authorizes the Secretary to take land into trust under the IRA. *See* Ponca Restoration Act, Pub. L. No. 101-484, § 4(c), 104 Stat. 1167, 1167 (1990) (formerly codified at 25 U.S.C. § 983b(c)). But the Iowa county containing Ponca Tribe's parcel was not one of the two *Nebraska* counties listed in the Tribe's restoration statute. *Compare id.* (Knox and Boyd Counties, Nebraska), *with Ponca Tribe* at 4 (Pottawattamie County, Iowa). Interior thus had no occasion to consider the statute-based exception. In any event, that Interior *granted* applications from two Tribes cannot establish disparate treatment.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for summary judgment should be denied in full, and Defendants' motions for summary judgment should be granted as to all seven claims.

Dated: October 9, 2025

Respectfully submitted,

/s/ Keith M. Harper

Keith M. Harper (D.C. Bar No. 451956)
Sam Hirsch
Elizabeth B. Deutsch
JENNER & BLOCK LLP
1099 New York Avenue, N.W., Suite 900
Washington, DC 20001
(202) 639-6000
kharper@jenner.com
shirsch@jenner.com
edeutsch@jenner.com

Scott Crowell (*pro hac vice*)
CROWELL LAW OFFICE—
TRIBAL ADVOCACY GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 87337
(425) 802-5369
scottcrowell@clotag.net

Judith A. Shapiro (D.C. Bar No. 376153)
JUDITH A. SHAPIRO, ESQ.
750 First Street, NW, Suite 940
Washington, DC 20002
(202) 723-6400
jshapirolaw@earthlink.net

[12] *Available at* https://www.nigc.gov/wp-content/uploads/2024/12/RevisedAmendment_toFDO-PoncaNE1.pdf.

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia, using the CM/ECF system, which will send a notice of filing to all counsel of record who have consented to service by electronic means.

Dated: October 9, 2025

/s/ Keith M. Harper
Keith M. Harper