IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO FEDERAL DEFENDANTS' AND DEFENDANT-INTERVENOR'S CROSS-MOTIONS FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Plaintiffs Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek"), Karuk Tribe ("Karuk"), and Tolowa Dee-ni' Nation ("Tolowa") (collectively, "Plaintiffs") reply in support of their motion for summary judgment ("Motion"), ECF No. 77, on six of their claims brought under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*. Defendant U.S. Department of the Interior ("DOI") and its officers (collectively, "Federal Defendants") violated the APA by issuing a final decision—embodied in the Final Environmental Impact Statement issued on November 22, 2024 ("FEIS") and the Record of Decision issued on January 10, 2025 ("ROD")—approving the acquisition of a 2.42-acre land parcel in Medford, Oregon into trust for the Coquille Indian Tribe ("Coquille") for the purpose of establishing a second Coquille casino nearly 170 miles from Coquille's reservation and ancestral territory. For the reasons discussed below and in Plaintiffs' Motion, DOI's final decision is contrary to separation of powers principles set forth in the U.S. Constitution; and it is also not in accordance with either the Indian Reorganization Act ("IRA"), the Indian Gaming Regulatory Act ("IGRA"), the National Environmental Policy Act ("NEPA"), or their implementing regulations. *See* 5 U.S.C. § 706(2).

For these reasons, Plaintiffs also oppose the cross-motion for summary judgment and opposition to the Motion filed by Federal Defendants, ECF Nos. 80–81, and the cross-motion for summary judgment and opposition to the Motion filed by Defendant-Intervenor Coquille Indian Tribe's ("Coquille"), ECF Nos. 82–83.[1] In defending DOI's final decision, Federal Defendants

[1] Because Federal Defendants' cross-motion (ECF No. 80) and opposition (ECF No. 81) are identical, Plaintiffs reference only the later filed opposition (ECF No. 81). Likewise, because Coquille's cross-motion (ECF No. 83) and opposition (ECF No. 82) are identical, Plaintiffs reference only the later filed cross-motion (ECF No. 83).

improperly raise new grounds on which DOI did not rely in issuing the final decision, such as their *post hoc* justification of DOI's exclusive reliance on the *ultra vires* Council on Environmental Quality ("CEQ") regulations, which were without legal force when DOI applied them as binding. Likewise, Federal Defendants also attempt to justify DOI's failure to sufficiently explain the agency's sudden reversal of DOI's prior decision that the benefits of Coquille's second casino in Medford did not outweigh the "significant concerns" raised by the State of Oregon and Jackson County under the IRA regulations, 25 C.F.R. § 151.11. *See* CC-020047; *see also SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943) ("The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.").

Nor have Federal Defendants demonstrated a rational connection between DOI's final decision acquiring the Medford parcel for Coquille's second casino and the facts previously found by the agency, such as the overwhelming opposition and concerns raised by the State and local governments with jurisdiction over the Medford parcel, as discussed above; and DOI's 2020 finding that the "modest" anticipated economic benefits from Coquille's second casino would "only alleviate a small portion of [Coquille's] anticipated budget needs" and, regardless, its overall economic benefits to Tribal members would be "muted," given the casino's 170-mile distance from Coquille's reservation. *See* CC-020044–45; *see also Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co. ("State Farm")*, 463 U.S. 29, 42 (1983) (adopting a presumption "against changes in current policy that are not justified by the . . . record.").

The Court should therefore enter summary judgment in favor of Plaintiffs and deny Federal Defendants' and Coquille's cross-motions for summary judgment.

II. ARGUMENT

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

Federal Defendants and Coquille attempt to justify DOI's repeated reliance on the invalid CEQ regulations despite the D.C. Circuit's binding conclusions, in *Marin Audubon Soc'y v. Fed. Aviation Admin.,* 121 F.4th 902 (D.C. Cir. 2024), that (1) CEQ had no constitutional authority to promulgate NEPA regulations, rendering those regulations *ultra vires*; (2) DOI failed to promulgate its own binding NEPA regulations; and (3) DOI and other agencies erred by "repeatedly invok[ing] the [invalid] CEQ regulations, not their own rules, as the source of the overarching regulatory framework they applied." *Id.* at 915. Federal Defendants and Coquille dismiss these conclusions as dicta, among other reasons, but each of their arguments are unavailing. Consistent with this Court's decision in *Neurelis*, *Inc. v. Califf*, this Circuit's *Marin Audubon* ruling mandates that this Court vacate the final agency action based on its exclusive reliance on the *ultra vires* CEQ regulations. No. 24-cv-1576 (APM), 2025 WL 1010222, at *2 (D.D.C. Mar. 19, 2025) (quoting *Marin Audubon*, 121 F.4th at 918).

1. Federal Defendants admit CEQ had no authority to issue the NEPA regulations that DOI applied as "mandatory" in the FEIS and ROD.

Federal Defendants now acknowledge that neither NEPA nor Executive Order 11991 granted the CEQ any authority to issue NEPA regulations that are binding on DOI or any other federal agency; and, as a result, the operative CEQ regulations raised "separation of powers" issues and were "*ultra vires*"—as the D.C. Circuit held in *Marin Audubon*. 121 F.4th at 908–09; *see* ECF No. 81 at 18–19. That is, Federal Defendants concede that the CEQ regulations were "not in force" nor "legally binding" when DOI applied them as binding in both the FEIS and ROD (each issued after *Marin Audubon* was decided). *Marin Audubon*, 121 F.4th at 909 (quoting *U.S. Nat'l*

Bank v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 446 (1993)).[2]

Nor do Federal Defendants dispute that DOI's final decision in this case extensively relied on the invalid CEQ regulations, citing those regulations at least 52 times in the FEIS and at least 13 times in the ROD. *See, e.g.*, CC-026289–91, CC-026297, CC-026309, CC-026313, CC-026316, CC-026327–30, CC-026335–36; CC-025997–98, CC-026000, CC-026025, CC-026028, CC-026030–31, CC-026032, CC-026133, CC-026202, CC-026235, CC-026239–40; CC-026868–70; CC-026870 n.1; CC-026918; CC-026896; CC-026900.

To be sure, Federal Defendants now argue that DOI's overwhelming reliance on the invalid CEQ regulations was "*voluntary compliance*," as opposed to mandatory compliance. ECF No. 81 at 22 (emphasis in original). But both the FEIS and the ROD belie the agency's *post hoc* rationalization and instead show the agency's application of the CEQ regulations was anything but "voluntary." The FEIS itself states, repeatedly, that the agency was "required" to comply with the invalid CEQ regulations—without acknowledging that those regulations lacked any legal force (or otherwise acknowledging the existence of the *Marin Audubon* decision). *See, e.g.*, CC-026289 ("CEQ *requires* that[] '[m]itigation and other conditions . . . shall be implemented by" DOI) (emphasis added); CC-026309 ("[T]he EIS presents a 'full and fair discussion of significant environmental impacts' as *required* by NEPA (40 CFR 1502.1), and reconsideration of the Draft EIS or reinitiation of the NEPA process is not warranted.") (emphasis added). It was not until DOI issued the ROD, and only in response to extensive comments raising the *ultra vires* status of the CEQ regulations, that it acknowledged the *Marin Audubon* decision and retroactively suggested

[2] Federal Defendants likewise acknowledge that after *Marin Audubon* was issued, President Trump issued an Executive Order revoking Executive Order 11991, and CEQ rescinded the NEPA regulations on which DOI relied. ECF No. 81 at 16; *see* 90 Fed. Reg. 10610, 10610–16 (Feb. 25, 2025); *see also* 90 Fed. Reg. 29498, 29498 (July 3, 2025).

its compliance was elective. CC-026839 n.1. And even then, the ROD continued to invoke the invalid CEQ regulations as mandatory. *See, e.g.*, CC-026896 (ROD's Mitigation Monitoring and Compliance Plan "has been prepared consistent with the *requirements* of 40 CFR § 1501.6(d) and 1505.3(c)") (emphasis added); CC-026900 (for compliance with 40 C.F.R. § 1508.27(b)(10), "the following mitigation measures *shall* be implemented") (emphasis added). There is simply no basis to accept DOI's *post hoc* position that it conducted the required NEPA review, as set forth in the FEIS, based on "voluntary compliance" with the *ultra vires* CEQ regulations.

In other words, DOI's NEPA analysis in this case—just like the agencies' NEPA analysis in *Marin Audubon*—"repeatedly invoked the CEQ regulations, not their own rules,[3] as the source of the overarching regulatory framework they applied." *Marin Audubon*, 121 F.4th at 915. Because DOI exclusively relied on the invalid CEQ regulations in conducting NEPA review in this case, the Court's review ends there. *Id.* at 908 (declining to address parties' arguments that the agencies complied with the CEQ regulations because they "are *ultra vires*"); *id.* at 918 (vacating the final decision because the agency's "actions were *ultra vires* when they determined that [the final decision] would have no environmental impact . . . ." and noting, again, the "[a]gencies acted without authority" in treating the *ultra vires* CEQ regulations as binding).

Federal Defendants and Coquille challenge this conclusion on the ground that *Marin Audubon*'s holding—that the CEQ regulations on which DOI exclusively relied are *ultra vires*—was mere dicta. ECF No. 81 at 18–19; ECF No. 83 at 21–22. This is wrong. The *Marin Audubon* court unambiguously concluded that the CEQ regulations were "*ultra vires*" (i.e., "not in force" or "not legally binding") because CEQ was without congressional authority to issue them, raising a

[3] Federal Defendants now belatedly argue that they did rely on their own NEPA regulations. But as discussed in Section II(A)(2) below, there is simply no evidence in the FEIS, ROD, or entire Administrative Record to support that *post hoc* argument.

"separation of powers issue." *Marin Audubon*, 121 F.4th at 908–09. As the *Marin Audubon* court explained, where the separation of powers "principle is implicated, the parties cannot by consent cure the constitutional difficulty for the same reason that the parties by consent cannot confer on federal courts subject-matter jurisdiction . . . ." *Id.* at 909 (citing cases). Federal Defendants nevertheless ask this Court to ignore the obvious constitutional deficiency present in *Marin Audubon*, as well as in this case, arguing that DOI was free to continue to rely on the CEQ regulations as binding and mandatory—notwithstanding *Marin Audubon's* unambiguous holding that the CEQ regulations are "*ultra vires*." *See id.* at 908, 918. Because the D.C. Circuit denied *en banc* review in *Marin Audubon*, its holding is binding, just as it was when DOI issued the FEIS and ROD. *See Marin Audubon*, No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025) (en banc). This is true regardless of the reasons that individual concurring judges (none of whom joined the panel majority's decision in *Marin Audubon*) invoked for denying en banc review. *Id.*

Federal Defendants and Coquille take pains to argue that *Marin Audubon*'s holding was actually "based on the deficiency of the agencies' environmental baseline" (discussed in Part III of the decision), as opposed to the fact that the agencies exclusively relied on the *ultra vires* CEQ regulations (discussed in Part II of the decision). ECF No. 81 at 19; ECF No. 83 at 21–22. But Part III did not discuss the court's conclusion that the "[a]gencies' actions were *ultra vires* when they determined that their [final decision] would have no environmental impact"; yet the court expressly relied on that ground to support not only its holding, but also its decision to vacate the final decision. *Marin Audubon*, 121 F.4th at 908–15, 918; *see also id.* at 920 ("In Part II of the court's opinion, my colleagues determine that the CEQ lacks authority to issue binding regulations implementing NEPA.") (Srinivasan, J., dissenting).[4] While the *Marin Audubon* court referenced

[4] Federal Defendants do not explain why the *Marin Audubon* court, in justifying vacatur, expressly relied on the "*ultra vires*" aspect of the agencies' actions (by basing its final decision on the *ultra*

only "Part III" of its decision in justifying its chosen remedy, it also referenced the fact that the CEQ regulations were "*ultra vires*," as discussed in Part II. *Id.* at 918. Regardless, at no point did the *Marin Audubon* court indicate that it was basing its *holding* (as opposed to its decision to vacate) exclusively on Part III. *See id.* at 908–15. Nor could it: the APA expressly commands that courts "shall . . . hold unlawful and set aside" final agency actions that are "not in accordance with the law," or "in excess of statutory jurisdiction [or] authority." 5 U.S.C. § 706(2)(A), (C); *see Marin Audubon*, 121 F.4th at 920 (Randolph, J., concurring) (opinion it would be wrong "to suggest that a court may exercise its equitable discretion to disregard § 706(2) by leaving a regulation 'not in accordance with law' in effect") (citation omitted); *see, e.g.*, *INS v. Chadha*, 462 U.S. 919, 959 (1983) (affirming Court of Appeal's conclusion that a statutory provision violated the constitutional separation of powers and therefore vacating the deportation order). The *Marin Audubon* court unmistakably held that the "[a]gencies' actions were *ultra vires* when they determined that their [final decision] would have no environmental impact" based on regulations that CEQ had no statutory authority to promulgate. *Marin Audubon*, 121 F.4th at 918; *see id.* at 908–15.[5]

Federal Defendants also argue that Plaintiffs' "*ultra vires* claim focuses on the wrong thing" because the IRA, not NEPA, authorizes DOI to issue the ROD. ECF No. 81 at 20. This

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vires CEQ regulations, as discussed in Part II), and not the "arbitrary and capricious" aspects of the agencies' actions (by basing its decision on an improper environmental baseline, as discussed in Part III). Reading the court's opinion in context, the court's holding (and its chosen remedy) was clearly based on both Parts II and III.

[5] In *Marin Audubon*, Judge Henderson joined Judge Randolph's opinion with respect to Part II, which unambiguously concluded—as part of the court's binding majority opinion—that the CEQ regulations were *ultra vires* and without legal force. Notably, both Judges Randolph and Henderson voted to deny *en banc* review of the *Marin Audubon* decision without concurring with Judge Srinivasan's concurring opinion that "the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition." *Id.*, 2025 WL 374897, at *1 (Srinivasan, J., concurring).

argument is nonsensical. Plaintiffs are not challenging the *ultra vires* aspect of DOI's unlawful final decision—i.e., repeatedly invoking the CEQ regulations as binding legal rules (as opposed to their own regulations) in conducting NEPA review—based on the agency's purported lack of authority under the IRA. *But see id*. at 20–21.[6] Instead, Plaintiffs argue that because the CEQ lacked statutory authority under NEPA to issue binding environmental review regulations, DOI also acted *ultra vires* by exclusively relying on those CEQ regulations as legally "binding" rules, when conducting the required NEPA review and issuing the FEIS—even *after* the D.C. Circuit had already ruled that those CEQ regulations violated the U.S. Constitution and therefore lacked legal force. *See* ECF No. 77 at 20–28.

As the D.C. Circuit has repeatedly explained, "an agency cannot outsource authority over the content of its regulations to an entity that itself lacks rulemaking authority." *Marin Audubon*, 121 F.4th at 914 n.8; *Ass'n of Am. R.R.s v. U.S. Dep't of Transp.*, 721 F.3d 666, 670–71 (D.C. Cir. 2013), *vacated on other grounds*, 575 U.S. 43 (2015); *NRDC v. EPA*, 464 F.3d 1, 8–9 (D.C. Cir. 2006).[7] While the *Marin Audubon* court undoubtedly concluded that "CEQ . . . had no lawful

[6] Likewise, Plaintiffs are not challenging the fact that DOI prepared an EIS consistent with NEPA requirements, e.g., 42 U.S.C. § 4336(b)(1). *But see* ECF No. 81 at 21. Plaintiffs are instead challenging DOI's failure to adopt its own regulations implementing NEPA requirements, including the preparation of an EIS and analyzing other environmental, economic, and technical considerations. *See* 42 U.S.C. § 4332(2)(B); *see Marin Audubon*, 121 F.4th at 914–15. As discussed in Section II(A)(3) below, DOI's failure to promulgate these regulations was not harmless in this case. *See Marin Audubon*, 121 F.4th at 918 (vacating final decision because agencies failed to show "at least a serious possibility" that "they will be able to reach the same outcome on remand").

[7] This authority directly rebuts Federal Defendants' argument that the Court should reject Plaintiffs' *ultra vires* challenge on the ground that DOI did not exceed its *own* statutory authority (under the IRA) but instead applied regulations that CEQ, a different federal entity, lacked statutory authority to promulgate. *See* ECF No. 81 at 20–21. Federal Defendants also ignore *Marin Audubon*'s indication that even if DOI had adopted the CEQ regulations as their own, this would not be a "permissible exercise of its *own* rulemaking authority" under NEPA. *Marin Audubon*, 121 F.4th at 914 (emphasis added); *see id.* at 914 n.8.

authority to promulgate these regulations," it also concluded that DOI and other agencies acted "*ultra vires*" by applying those regulations as binding. *See Marin Audubon*, 121 F.4th at 918 (finding the actions of DOI and other agencies to be "*ultra vires*"); *see id.* at 908–15. There is no question that the *Marin Audubon* court determined these agencies' *ultra vires* actions demonstrated a "patent violation of agency authority," *Am. Clinical Lab'y Ass'n v. Azar*, 931 F.3d 1195, 1208 (D.C. Cir. 2019) (citation omitted), as the court ultimately vacated the final agency action because it was "*ultra vires*." *See Marin Audubon*, 121 F.4th at 918.

Moreover, that NEPA's mandate is "purely procedural," *Seven Cnty. Infrastructure Coal. v. Eagle County*, 145 S. Ct. 1497, 1511 (2025), does not change DOI's statutory obligations, under NEPA, to prepare an EIS and undertake other "analyses of the environmental impact of their proposals and actions" in accordance with *legally binding* rules and regulations. *Marin Audubon*, 121 F.4th at 906 (citing 42 U.S.C. § 4332(2)(C) & *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756–57 (2004)). Nor does it excuse DOI's failure in the first instance to follow NEPA's mandate to "identify and develop methods and procedures, in consultation with the [CEQ]" to give "appropriate consideration in decisionmaking" to "environmental," as well as "economic and technical considerations." 42 U.S.C. § 4332(2)(B); *see Marin Audubon*, 121 F.4th at 914–15 (concluding that DOI did *not* promulgate its own NEPA regulations or incorporate the CEQ regulations as its own). In short, DOI's failure to adopt its own regulations implementing NEPA (and instead following the CEQ regulations as purportedly "binding") was not "a permissible exercise of its own rulemaking authority" under NEPA. *Id.* at 914; *see id.* at 914 n.8.

Finally, Federal Defendants and Coquille appear to fault Plaintiffs for failing to "point to any other post-*Marin Audubon* decision that has adopted their proposed interpretation." ECF No. 81 at 22; ECF No. 83 at 22. Apart from the obvious fact that *Marin Audubon* was decided less than a year ago and only a handful of cases had interpreted that decision when Plaintiffs moved for summary judgment, Federal Defendants are also wrong. In *Iowa v. Council on Env't Quality*, 765 F. Supp. 3d 859 (D.N.D. 2025), which Plaintiffs cited in their briefing (ECF No. 70 at 23), a federal district court vacated CEQ's 2024 rule promulgating the most recent regulations as invalid on the ground that CEQ "ha[d] no rulemaking authority under NEPA." *Id.* at 874 (citing *Marin Audubon*, 121 F.4th 902). While the *Iowa* decision was later vacated as moot, because CEQ rescinded its NEPA regulations in February 2025, *id.*, Nos. 25-1641 & 25-1705, 2025 WL 2205808 (8th Cir. July 29, 2025), other federal courts have increasingly relied on *Marin Audubon*'s clear holding that the CEQ regulations are without legal force. *See, e.g.*, *Appalachian Voices v. FERC*, 139 F.4th 903, 926 (D.C. Cir. 2025) (citing *Marin Audubon's* "holding that CEQ's rules are not judicially enforceable") (Henderson, J., concurring); *Friends of the Everglades, Inc. v. DSHS*, No. 25-12873, 2025 WL 2598567, at *7 n.5 (11th Cir. Sep. 4, 2025) ("CEQ's regulatory definition is no longer on the books" because "[a]fter the D.C. Circuit found that CEQ 'has no lawful authority to promulgate . . . regulations,' CEQ removed its 'existing implementing regulations' for NEPA"); *cf. Ctr. for Biological Diversity v. U.S. Bureau of Reclamation*, No. 1:16-cv-00307, 2025 WL 1798970 at *14 n.14 (E.D. Cal. June 30, 2025) (acknowledging that *Marin Audubon* "held . . . CEQ 'had no lawful authority to promulgate these regulations," explaining its cited cases relied on the repealed CEQ regulations "for general background only").

Indeed, this Court has likewise concluded, in reliance on *Marin Audubon*, that it must "order[] vacatur where 'the Agencies actions were *ultra vires*,'" as "the Agencies [would] now need to take a completely different tack to complete their [] review" if they "failed to show 'at least a serious possibility that they would be able to reach the same outcome on remand.'" *Neurelis*, at *2 (quoting *Marin Audubon*, 121 F.4th at 918).[8]

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[8] In addition to Federal Defendants' threshold challenge to Plaintiffs' argument that DOI's exclusive reliance on the CEQ regulations in this case was *ultra vires*, Coquille raises a threshold

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

DOI's exclusive reliance on the ultra vires CEQ regulations is compounded by the undeniable fact that DOI failed to cite or apply its own NEPA regulations anywhere in the FEIS itself, rendering its entire NEPA framework without legally enforceable authority.

Despite Federal Defendants' and Coquille's arguments to the contrary, the record demonstrates DOI did not apply its own NEPA regulations, 43 C.F.R. Part 46, when it completed its NEPA review. *See* EC No. 81 at 27; ECF No. 83 at 22–23. Federal Defendants cite sections of the FEIS that allegedly "reference its regulations," but none of those pages actually reference DOI's NEPA regulations. ECF No. 81 at 27. Instead, they generally assert that the FEIS was completed in accordance with the CEQ regulations, 40 C.F.R. §§ 1500–1508; BIA's "NEPA Guidebook" (59 IAM 3-H); and/or DOI's Department Manual (515 DM 4)—again, *not* DOI's NEPA regulations, 43 C.F.R. Part 46. *See* CC-025995, CC-025997, CC-026030. DOI did not reference DOI's NEPA regulations until the ROD was issued. *See* CC-026839 n.1. Even then, the ROD makes a conclusory assertion that the agency complied with DOI's "procedures/regulations implementing NEPA at 43 CFR Part 46"—but without ever applying those regulations. *See id.*

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challenge of its own: asserting Plaintiffs' well-documented injuries are allegedly not within NEPA's "zone of interests." ECF No. 83 at 17–18. Coquille incorrectly assumes that Plaintiffs challenge DOI's *ultra vires* actions under NEPA when they in fact challenge these unlawful actions based on constitutional separation of powers principles, *see Marin Audubon*, 121 F.4th at 908–15, 918, and on the APA, which provides "[a] person suffering legal wrong because of agency action . . . is entitled to judicial review thereof." *United States v. S.C.R.A.P.*, 412 U.S. 669, 686 n.12 (1973). Nor is Coquille even correct that Plaintiffs' injuries, including both economic and environmental harm, are insufficient to fall within NEPA's "zone of interests." *Cf. id.* at 686–87 (standing under APA, challenging the failure to include an EIS under NEPA, is "not confined to those who could show 'economic harm,' as "[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society"); *see also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156 (2010) ("The mere fact that [plaintiffs] also seek to avoid certain economic harms that are tied to the risk of [environmental harm] does not strip them of prudential standing.").

Federal Defendants argue that DOI need not cite the agency's NEPA regulations a "specific number of times" but fail to acknowledge that those regulations were cited *zero* times in the FEIS. *See* ECF No. 81 at 24. Regardless, Plaintiffs challenge DOI's final decision on the ground that the agency entirely failed to consider or *apply* DOI's NEPA regulations to Coquille's fee-to-trust application. This is because DOI (unlike other federal agencies[9]) improperly "accepted the CEQ regulations as a stand-alone body of law that they must obey," and adopted NEPA regulations that merely "supplement[ed]" the CEQ regulations—as *Marin Audubon* made abundantly clear. 121 F.4th at 915; *see* 43 C.F.R. § 46.10(a)(2) (2008) (the purpose of DOI's NEPA regulations was to ensure "compliance with" the CEQ regulations and NEPA); *id.* § 46.20 (2008) (DOI's regulations were promulgated as a "supplement" and "to be used in conjunction with" the CEQ regulations); 90 Fed. Reg. 29498, 29498 (July 3, 2025). DOI also failed to "adopt[] the content of the CEQ regulations [or] incorporate[] those rules by reference." *Marin Audubon*, 121 F.4th at 914.

Because DOI largely neglected its obligation under 42 U.S.C. § 4332(2)(B) to develop its own body of NEPA regulations, it did not, in practice, consider or apply any legally enforceable regulations in conducting the required NEPA review of Coquille's fee-to-trust application. Even assuming that DOI's *supplemental* NEPA regulations represent a permissible exercise of its rulemaking authority, those regulations, again, were not applied here. *See* CC-025995, CC-025997, CC-026030. DOI instead applied CEQ's regulations as the overarching framework for its NEPA review, which are without legal force. *Marin Audubon*, 121 F.4th at 908, 918.

Nor is there any indication that DOI applied its other NEPA rules, e.g., the BIA's NEPA Guidebook (59 IAM 3-H) or DOI's Department Manual (515 DM 4) in any meaningful way, and

[9] FERC, for example, has complied with its statutory mandate to develop regulations implementing NEPA's requirements. *See* 18 C.F.R. § 380.1. DOI did not. *See Marin Audubon*, 121 F.4th at 914–15; *see* 43 C.F.R. §§ 46.10(a)(2), 46.20 (2008); 90 Fed. Reg. 29498, 29498 (July 3, 2025).

Federal Defendants do not argue that the agency did so. *See* ECF No. 81 at 25. More critically, Federal Defendants now contend that DOI's NEPA Guidebook and Department Manual are "strictly advisory," they do "not create policy, add to, delete from nor otherwise modify any legal requirement," and they "are not enforceable rules"; rather, "they merely 'clarif[y]' the agency's interpretation of the legal landscape' and do not 'bind the agency.'" ECF No. 81 at 31 n.9 (quoting *Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30, 66 (D.D.C. 2020)); *see Friends of Animals v. Pendley*, 523 F. Supp. 3d 39, 54 (D.D.C. 2021).[10]

By exclusively and knowingly relying on the unconstitutional CEQ regulations—which were without legal force when DOI applied them in this case—as binding, and by failing to apply DOI's own NEPA regulations or rules, DOI's entire NEPA review process was *ultra vires*. *Marin Audubon*, 121 F.4th at 918.

3. Vacatur is the only available remedy.

Because Federal Defendants' entire NEPA review process in this case was *ultra vires,* vacatur pursuant to 5 U.S.C. § 706(2) is necessary. *See, e.g., Marin Audubon*, 121 F.4th at 918; *Chadra*, 462 U.S. at 959 (affirming Court of Appeal's conclusion that a statutory provision violated the constitutional doctrine of separation of powers and therefore vacating the deportation order); *Crawford-Hall v. United States*, 394 F. Supp. 3d 1122, 1153–54 (C.D. Cal. 2019) (concluding that DOI's Notice of Decision taking land into trust for Santa Ynez Band of Mission Indians was *ultra vires* and vacating opinion).

Federal Defendants have yet to demonstrate "at least a serious possibility that they will be able to reach the same outcome on remand." *Marin Audubon*, 121 F.4th at 918. Nowhere in their

[10] DOI's failure to develop or apply its own procedures meant the agency could not satisfy the separate, statutory NEPA mandate, 42 U.S.C. § 4332(2)(B), which requires procedures ensuring "appropriate consideration in decisionmaking" of "economic and technical considerations."

summary judgment motion or opposition do Federal Defendants argue otherwise. *See generally* ECF No. 81. Regardless, DOI has already conceded its FEIS and ROD failed to sufficiently consider the economic impacts of its proposed actions. *See, e.g.*, CC-026311 (admitting the FEIS's failure to consider "environmental justice" impacts,[11] such as reduced "governmental and social services" to Plaintiffs' citizens, allegedly because Federal Defendants did not have Plaintiffs' "confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members"[12]). Yet, the FEIS admits that "[a]n adverse economic, fiscal, or social impact would occur" if Coquille's Medford casino "disproportionately affected an identified minority or low-income community or Native American tribe," including "negatively alter[ing] the ability of [Tribal] governments to perform at existing levels or alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services." CC-026150–51.

Had DOI followed NEPA's mandate to identify and develop regulations accounting for these environmental justice or economic considerations—as opposed to following unconstitutional CEQ regulations that do not sufficiently consider these factors—the agency would have been *required* to analyze the "environmental justice impact on governmental and social services"

[11] Despite DOI's admission that NEPA requires the agency to consider "environmental justice" impacts, CC-026311, Federal Defendants now disclaim this duty on the ground that the statute references only "economic" considerations, not "environmental justice" considerations. ECF No. 81 at 35; *see* 42 U.S.C. § 4332(2)(B). As discussed in Section II(A)(2) below, Federal Defendants simply ignore the agency's own rules and procedures implementing NEPA. *See, e.g.*, BIA NEPA Guidebook, 59 IAM 3-H, Appx. 18 (promulgating an entire guidebook on "Environmental Justice Guidance Under [NEPA]"); *id.* at Appx. 18, pp. 4–5 ("Review of NEPA compliance . . . must ensure the lead agency . . . has appropriately analyzed environmental effects on . . . Indian tribes, including human health, social, and economic effects.").

[12] Federal Defendants did not have this information because they failed to meaningfully consult with Plaintiffs in violation of NEPA's consultation requirements. *See* Section II(E) below.

provided by Plaintiffs to their citizens before issuing the FEIS. *See* 42 U.S.C. § 4332(2)(B); DOI NEPA Handbook, 516 DM 1, §6.1(v), p. 25 (the ROD must "discuss[] any preferences among alternatives based on relevant factors including *economic* and technical considerations").

Because of DOI's initial failure to comply with NEPA's mandate, *e.g.*, 42 U.S.C. § 4332(B), as well as its own admission in the FEIS that it failed to consider "the environmental justice impact on governmental and social services" provided by Plaintiffs and other Tribes, Federal Defendants cannot show "at least a serious possibility" they would reach the same outcome in this case on remand. *Marin Audubon*, 121 F.4th at 918. The Court must now declare Federal Defendants' issuance of the FEIS and ROD *ultra vires*, set aside Federal Defendants' final decision, and "take a completely different tack to complete their . . . review." *Id.*; 5 U.S.C. § 706(2).

Challenging vacatur, Federal Defendants and Coquille argue that post-*Marin Audubon* cases "have generally proceeded to review agencies' environmental analyses for compliance with NEPA, even where those agencies relied on CEQ's regulations." *See* ECF No. 81 at 23–24; *see* ECF No. 83 at 22. But neither Federal Defendants nor Coquille cite any other cases in which DOI "repeatedly invoked the CEQ regulations, not their own rules, as the source of the overarching regulatory framework they applied," as in this case. *See Marin Audubon*, 121 F.4th at 915. Here, vacatur is the only appropriate remedy because DOI's reliance on the CEQ regulations, which were without legal force, infected the agency's entire NEPA review process. *See id.* at 915, 918.

Federal Defendants' and Coquille's cited cases challenging FERC's NEPA review process are not to the contrary. *See, e.g.*, *Healthy Gulf v. FERC*, 132 F.4th 544, 549 n.1 (D.C. Cir. 2025); *Citizens Action Coal. of Indiana v. FERC*, 125 F.4th 229, 240 n.3 (D.C. Cir. 2025); *Am. Whitewater v. FERC*, 125 F.4th 1139, 1148 n.2 (D.C. Cir. 2025). Even before the *Marin Audubon* court found the CEQ regulations lacked legal force, FERC properly followed the CEQ regulations as *guidelines* to implement NEPA; that agency did not promulgate regulations that follow the CEQ regulations as mandatory. *See* 18 C.F.R. § 380.1 (providing the purpose of FERC's regulations are to "implement [FERC's] procedures under [NEPA]," not the CEQ regulations); *see also Citizens Action Coal. of Indiana*, 125 F.4th at 240 n.3 (explaining FERC "complied with CEQ *guidance*") (emphasis added); *Power Auth. of N.Y.*, 189 FERC P 61217, 2024 WL 5183200, *2 n.14 (FERC Dec. 19, 2024) (explaining that FERC "compl[ies] with the relevant CEQ regulations to the extent they are not inconsistent with [FERC's] statutory requirements"). By contrast here, DOI "obeyed CEQ's command and accepted the CEQ regulations as a stand-alone body of law that they must obey." *See Marin Audubon*, 121 F.4th at 915; *see* 43 C.F.R. § 46.10(a)(2) (2008) (the purpose of DOI's former NEPA regulations was to ensure "compliance with" the CEQ regulations); *id.* § 46.20 (2008) (DOI's regulations were promulgated as a "supplement . . . to be used in conjunction with" the CEQ regulations); *see also* 90 Fed. Reg. 29498, 29498 (July 3, 2025) ("DOI's regulations . . . stand in obvious need of fundamental revision.").

Apart from the fact that FERC's NEPA review process did not rely on the CEQ regulations as the overarching NEPA review framework (like DOI's NEPA review process did), Federal Defendants' and Coquille's other cited cases involving FERC's NEPA review process are also distinguishable because those courts did not need to resolve the impact of *Marin Audubon* decision where the plaintiffs failed to exhaust the issue before the agency. *See Healthy Gulf*, 132 F.4th at 549 n.1 (declining to address *Marin Audubon*'s impact where plaintiff's NEPA challenges failed for, *inter alia*, its failure to exhaust issues before the agency); *Am. Whitewater*, 125 F.4th at 1148 n.2 (same, explaining the court "must judge the propriety of [agency] action solely by the grounds invoked by the agency") (citation omitted). Here, by contrast, Plaintiffs (and other commenters) challenged the FEIS based on the *ultra vires* CEQ regulations before DOI issued the ROD, as Federal Defendants expressly invoked Plaintiffs' separation of powers challenge based on *Marin Audubon* (for the first time) when it issued the ROD. CC-026839 n.1; CC-026679; CC-026701-2;

CC-26584. *See NRDC v. EPA*, 824 F.2d 1146, 1150–51 (D.C. Cir. 1987) (en banc) ("This court has excused the exhaustion requirements for a particular issue when the agency has in fact considered the issue.") (citing cases); *see also Noel Canning v. NLRB*, 705 F.3d 490, 497 (D.C. Cir. 2013), *aff'd NLRB v. Noel Canning*, 573 U.S. 513 (2014) (invoking "extraordinary circumstances" exception to statute requiring issue exhaustion to address constitutional issue not raised before the agency because issue implicated separation of powers concerns). Because Plaintiffs did not fail to exhaust the separation of powers challenge before DOI, this Court cannot now avoid review of *Marin Audubon*'s impact on failure-to-exhaust grounds, as in *Healthy Gulf* and *American Whitewater*.

Nor does this Court's recent decision in *Gulf v. Burgum*, 775 F. Supp. 3d 455 (D.D.C. 2025) permit this Court to avoid a determination that DOI's final decision must be vacated. Initially, as discussed above, this Court has already acknowledged that it must "order[] vacatur where 'the Agencies actions were *ultra vires*.'" *Neurelis*, 2025 WL 1010222, at *2 (quoting *Marin Audubon*, 121 F.4th at 918). When the Court later decided *Gulf*, it simply concluded that it could consider an agency's arguments based on the CEQ regulations only if the agency had not "disclaimed its reliance on the CEQ regulations in effect at the time the 2023 Supplemental EIS was prepared." *Id.* at 473 n.5.[13] Here, however, when DOI issued the FEIS on November 22, 2024 (and the ROD on January 10, 2025), the CEQ regulations were not "in effect" because the D.C.

[13] In *Gulf*, when the agency issued the challenged supplemental EIS in 2023, the D.C. Circuit had not yet held that the CEQ regulations were *ultra vires* (as *Marin Audubon* was decided more than a year later, on November 12, 2024). The agency in that case was therefore free to rely on the operative CEQ regulations, which were still then "in effect." 775 F. Supp. 3d at 467 n.5; *see Panhandle E. Pipeline Co. v. FERC*, 890 F.2d 435, 438–39 (D.C. Cir. 1989) (reviewing court must apply "the law in effect at the time [the agency] renders its decisions, even when a change in governing law is made by an administrative agency"). In this case, however, DOI was *not* free to rely on CEQ regulations, which were already determined to be constitutionally deficient and invalid by the D.C. Circuit in *Marin Audubon* when DOI issued the FEIS and ROD.

Circuit in *Marin Audubon* had determined, on November 12, 2024, that the CEQ regulations were *ultra vires* and without legal force. *Cf. id.*; *see* 90 Fed. Reg. 10610, 10614 (Feb. 25, 2025) (CEQ guidance stating that agencies "should . . . continue to rely on the . . . CEQ regulations that [were] *in effect* at the time the agency action under challenge was completed") (emphasis added). Further, for the reasons discussed in Section II(A)(1) above, there is nothing in the FEIS or ROD to indicate that DOI *voluntarily complied* with the CEQ regulations. *Cf. Gulf*, 775 F. Supp. 3d at 467 n.5 (emphasizing that agencies "should consider voluntarily relying on those regulations in completing ongoing NEPA reviews"). In this case, DOI applied the CEQ regulations as the only binding NEPA review framework, notwithstanding *Marin Audubon*'s decision that those regulations were invalid and without legal effect. *See* CC-026289; CC-026309 CC-026896; CC-026900.

Again, because DOI relied on the unconstitutionally promulgated CEQ regulations as binding (although they were already determined to be without legal force), and because the agency failed to otherwise apply DOI's own NEPA regulations or rules, DOI's entire NEPA review process was *ultra vires*, and its final decision cannot stand. *Marin Audubon*, 121 F.4th at 918.

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

Federal Defendants and Coquille both acknowledge that in deciding to acquire off-reservation land for Coquille (which is located nearly 170 miles away from Coquille's reservation), DOI was required to follow the IRA and the former 1995 version of the agency's IRA regulations ("Part 151" regulations), including 25 C.F.R. §§ 151.10 and 151.11 (1995). ECF No. 81 at 37–38, 37 n.15; ECF No. 83 at 41 n.10; *see also Panhandle E. Pipeline Co. v. FERC*, 890 F.2d 435, 438–39 (D.C. Cir. 1989) (reviewing court must apply "the law in effect at the time [the agency] renders its decisions, even when a change in governing law is made by an administrative agency"). As Federal Defendants' and Coquille's papers make clear, however, the agency failed to sufficiently consider or apply these Part 151 requirements and also failed to explain why the agency changed its position since 2020, when DOI determined that a number of the Part 151 requirements were *not* satisfied.

Federal Defendants and Coquille both emphasize Coquille's "need . . . for additional land" and the "anticipated economic benefits" associated with Coquille's second casino in Medford. ECF No. 81 at 38–39; ECF No. 83 at 41, 47–48; *see* 25 C.F.R. § 151.11(b)–(c) (1995); *see id.* § 151.11(a) (incorporating 25 C.F.R. § 151.10(a)–(b) (1995)). It is clear, however, DOI (and now Federal Defendants) rely on outdated and inaccurate data. As just one example, the FEIS reported in November 2024 that a total of 6,434 acres was held in trust for Coquille, CC-026027,[14] while Coquille itself represents it has "regained more than ***10,000 acres*** of [its] ancestral homeland."[15] Federal Defendants do not explain why DOI's final decision misstated this basic information about the Tribe's landholdings, which is directly relevant to Coquille's "need" for additional land. 25 C.F.R. § 151.10(b) (1995).[16] This demonstrable factual error regarding Coquille's asset base undermines the agency's ability to rationally assess the foundational criteria of need under § 151.10(b), especially when relying on a stale economic report.

More egregiously, DOI (and now Federal Defendants) rely on economic *projections* made in 2013. ECF No. 81 at 38. Federal Defendants, for example, emphasize the FEIS's speculative statements that "[a]s of 2023, the budgetary needs to support existing expenditures of the [Coquille

[14] The FEIS acknowledges the following trust land: the 954-acre Kilkich Reservation, 80 acres of waterfront, and 5,400 acres of timberland. CC-026027.

[15] *See We Are Still Here*, CoquilleTribe.org, https://www.coquilletribe.org/our-people/#:~:text=Our%20ancestral%20culture%20nearly%20went,we%20number%20almost%201%2C200%20members.

[16] Federal Defendants also emphasize that approximately 52% of Coquille's membership lives in the five-county service area identified in the CRA but noticeably omit the percentage of Coquille's membership that lives in *Jackson County*, where Medford is located. ECF No. 18 at 38.

government] continue to exceed incoming revenues" and "[g]aming revenues at Coquille's Mill Casino have been unable to keep pace with Coquille's 'growing Tribal population with an increasing need for support services, and . . . general inflation." *Id.* (citing CC-025996). Noticeably, however, neither Federal Defendants nor Coquille addresses the FEIS's failure to confirm whether the $74 million deficit that was projected in 2013 was, in fact, realized by 2022 or at any point since then. *See id.*; *see, e.g.*, ECF No. 83 at 41, 47–48; *see also* CC-025996–97. It is also troubling that Federal Defendants and Coquille fail to explain the FEIS's statement that Coquille continues to require an additional $300 million through 2035 (the precise amount Coquille's 2013 Business Plan projected the Tribe would need through 2022), notwithstanding inflation and the "aging nature" of Coquille's membership. CC-025996; CC-020041–42; *see* ECF No. 81 at 38; ECF No. 83 at 41, 47–48. Nor do Federal Defendants address the FEIS's failure to account for Coquille's current non-gaming revenue, including timber revenue and revenue from Tribal One—again, which successfully secured *hundreds of millions* of dollars in federal contracts from 2016 to 2024, and is not even mentioned in the FEIS. *See* CC-025216–17. Coquille does not deny this. ECF No. 83 at 48.

DOI's near exclusive reliance on 2013 economic projections (as opposed to post-2013 economic data) demonstrates why the agency did not adequately consider the "anticipated benefits" of Coquille's second casino in Medford. 25 C.F.R. § 151.11(b). It further rebuts DOI's conclusion that the second casino was necessary (or would be anywhere near sufficient) to support Coquille's unmet economic needs or its goal of self-determination in 2025, *id.* §§ 151.3(a)(3), 151.11(b)–(c), despite Federal Defendants' conclusory statements to the contrary. ECF No. 81 at 41; *see* CC-026804–09; *but see* CC-020041–42 (DOI finding only "modest" anticipated economic benefits associated with the Medford casino based on Coquille's 2013 Business Plan, and recognizing any economic benefits would not impact Tribal members residing

170 miles away). DOI's refusal "to consider evidence bearing on the issue[s]" in its final decision, as required by the applicable version of 25 C.F.R. §§ 151.10 and 151.11, was arbitrary and capricious. *See Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010).

It was also arbitrary and capricious for DOI to ignore its obligation to give "greater scrutiny to [Coquille's] justification of anticipated benefits from the acquisition," in light of the 170-mile distance between Coquille's reservation and Medford. 25 C.F.R. § 151.11(b) (1995). Although conspicuously missing from the ROD itself,[17] only in its response to Plaintiffs' motion for summary judgment do Federal Defendants argue DOI "gave great scrutiny to Coquille's need for the agency to take the Medford Parcel into trust" and found the need to be "sufficient." ECF No. 81 at 39–40. However, critically, Federal Defendants fail to point to any place in the final decision where DOI expressly acknowledged this obligation under § 151.11(b). *See* ECF No. 81 at 39–40; *see also Chenery*, 318 U.S. at 87 (courts cannot rely on the agency's new grounds raised later in litigation).

Even assuming the Court defers to DOI's findings that Coquille "need[s]" a second casino located 170 miles away from its reservation, there is also nothing in DOI's final decision indicating that the agency gave "greater weight to the concerns raised" by State of Oregon or Jackson County—again, as required by 25 C.F.R. § 151.11(b) (1995). DOI's final decision entirely disregards the "[j]urisdictional problems and potential conflicts of land use" raised by the Governor of Oregon, including, *inter alia*, (1) the "considerable" impact to the Oregon Lottery,

[17] The ROD quotes and then addresses each applicable subpart of 25 C.F.R. §§ 151.10 and 151.11 *except* § 151.11(b). CC-026803–09. Instead, DOI quoted only the first sentence, leaving out and failing to address the crux of the section: "as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section," despite having denied Coquille's application in 2020 on this very basis. CC-020051–53.

resulting in "a significant source of revenue for the State," and (2) and the Governor of Oregon's "concerns about the expansion of gaming throughout the state." CC-020043–CC-020045; CC-024304 (DOI acknowledging Oregon Today article covering Governor Kotek's April 14, 2023, letter to Tribes publicly opposing the proposed Coquille casino in Medford, like her two predecessors in 2013 and 2016).[18] They further ignore the staunch "opposition from other Tribes and tribal members in the [Medford] area." *Id.*; *see* 25 C.F.R. § 151.10(f) (1995). Again, as DOI explained in 2020,

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

CC-020047; 25 C.F.R. § 151.11(b) (1995).

With DOI having failed to adequately address 25 C.F.R. § 151.11(b) in the ROD, Federal Defendants now assert in this litigation that DOI gave "great scrutiny" to these significant jurisdictional concerns but ultimately concluded "all of the concerns raised in the 2020 decision had been resolved." ECF No. 81 at 39–40. In support of this assertion, Federal Defendants point to one place in the ROD indicating that DOI considered the following two issues to be "resolved"

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[18] *See Governor Kotek & Tribal Gaming Facilities, April 14*, OREGON TODAY (Apr. 14, 2023), available at https://oregontoday.net/governor-kotek-tribal-gaming-facilities-april-14-2023/ . *See* Fed. R. Evid. 201(b)(2); *see, e.g.*, *O.A. v. Trump*, 404 F. Supp. 3d 109, 123 n.5 (D.D.C. 2019) (taking judicial notice of information outside the Administrative Record because such information could be accurately and readily determined from sources whose accuracy could not be reasonably be questioned).

(1) the Governor of Oregon's concern that Coquille would later convert its second casino from a Class II to a Class III gaming facility and (2) the City of Medford's concerns regarding the need for additional services associated with the second casino. *Id.* at 40 (citing CC-026807). At most, the ROD explains that the *City of Medford's* significant concerns were addressed through a Municipal Services Agreement. *See* CC-026806–07. The ROD, however, does not indicate that the significant concerns repeatedly raised by three different Governors of Oregon were "resolved"—such as the significant reduction in State tax revenue from the Oregon lottery (CC-20043–45) and "the disruption of the well-established balance of the number of casinos in Oregon, and the potential for expansion of gaming against the wishes of the State and its elected officials" (CC-200047). *See* CC-024304 (DOI acknowledging Governor Kotek's April 14, 2023, opposition); *but see* CC-026806–07 (ROD acknowledging the State's significant concerns but without explaining how they were resolved).[19]

Federal Defendants' *post hoc* representation that DOI considered "all the concerns of" and "potential impacts to" the State of Oregon and that DOI further "identified logical reasons to conclude that [those] impacts would be offset or entirely resolved," ECF No. 81 at 40, is not supported by the record. *See* CC-026806–07; *see also Chenery*, 318 U.S. at 87 (courts cannot rely on the agency's new grounds raised later in litigation). With respect to the specific concerns raised by the State of Oregon, DOI "merely describe[d] an impact and state[d] a conclusion of nonimpairment" without further explanation. *Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 100 (D.D.C. 2006). This too was arbitrary and capricious, as it rebuts Federal Defendants' newfound and unsupported argument that DOI gave "great scrutiny" to the State of Oregon's concerns. To

[19] The only decline in tax revenue that the ROD addressed was the allegedly minimal tax losses to be suffered by Jackson County. *See* CC-026806; *see* ECF No. 81 at 40.

the contrary, as argued in Plaintiffs' Motion, there is no indication that the FEIS, ROD, or the ROD's Decision Letter acknowledged § 151.11(b)'s balancing test at all. *See* CC-026806–07.

Neither do Federal Defendants nor Coquille point to any place in DOI's final decision (or elsewhere in the record) where the agency gives any "reasoned analysis" in support of DOI's reversal of its 2020 determination that Coquille's application failed under § 151.11(b)'s balancing factors. *See* CC-020047 (the "Tribe has not made a convincing case that its projected benefits outweigh these significant concerns" raised by the State of Oregon); *see, e.g.*, *Sierra Club v. EPA*, 294 F.3d 155, 163 (D.C. Cir. 2002) (concluding EPA's subsequent omission of certain emission-reducing (or similar) measures it previously endorsed, "whether the result of inadvertence or of an unexplained change of course," rendered "EPA's decision arbitrary and capricious"); *Airmark Corp. v. FAA*, 758 F.2d 685, 692 (D.C. Cir. 1985) ("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from tolerably terse to intolerably mute."). Federal Defendants—like the FEIS, ROD, and January 10, 2025 Decision Letter—flout the agency's obligation under the APA to explain this flip-flop. *See* ECF No. 81 at 39–41.

DOI's final decision entirely ignored whether Coquille's anticipated economic benefits from the Medford casino (which are themselves based on stale 2013 economic projections) outweighed the significant jurisdictional concerns identified by the State of Oregon through 2025, in violation of §§ 151.10 and 151.11, particularly § 151.11(b) (1995). DOI's additional failure to explain why the agency decided to reverse course since 2020 adds yet another reason to set aside the final decision under 5 U.S.C. § 706(2).

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

DOI's unprecedented conclusion that the Medford parcel qualifies under IGRA's restored lands exception, 25 U.S.C. § 2719(b)(1)(B)(iii), and IGRA's regulations, 25 C.F.R. §§ 292.11–12, on the ground that the Coquille Restoration Act ("CRA"), Pub. L. No. 101-42, 103 Stat. 91 (June 28, 1989), references the Secretary's discretionary authority under the *IRA* to acquire trust land in Jackson County (where Medford is located), as part of Coquille's five-county "Service Area," is a misapplication of IGRA, IGRA's implementing regulations, and the CRA.

As explained in Plaintiffs' Motion, five of the seven Tribal restoration acts passed by Congress since 1988 have incorporated the language found in the CRA, providing the Secretary with the authority to acquire trust land in a specific geographic region (i.e., in the Tribe's ancestral territory), as well as the more general discretionary authority under § 5 of the IRA to acquire other trust land.[20] (As in the motion, the former provision is referred to hereinafter as the "restored land language," and the latter provision is referred to hereinafter as the "IRA affirmation language.") And again, five of these six restored Tribes, including Coquille, currently operate gaming facilities on restored lands pursuant to their restoration act's restored land language. *See* 25 U.S.C. § 2719(b)(1)(B)(iii); 25 C.F.R. § 292.11(a)(1). Until now, none of these Tribes has argued that they may open a gaming facility on land transferred into trust for them pursuant to their *IRA affirmation language*, let alone a *second* gaming facility, under the statute-based restored lands exception.[21]

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[20] *See* CRA, Pub. L. No. 101-42, 103 Stat. 91, § 5(a) (June 28, 1989) (codified as 25 U.S.C. § 715 (omitted)); Ponca Restoration Act, Pub. L. No. 101-484, 104 Stat. 1167 (Oct. 31, 1990), § 4(c) (codified as 25 U.S.C. § 938b(c) (omitted)); Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, Pub. L. No. 103-324, 108 Stat. 2156 (Sep. 21, 1994), § 6(a)–(c) (codified as 25 U.S.C. § 1300k-4(a)-(c) (omitted)); Auburn Indian Restoration Act, Pub. L. No. 103-434, 108 Stat. 4533 (Oct. 31, 1994), *amended by* Pub. L. No. 104-122 (Mar. 29, 1996), § 204(a) (codified as 25 U.S.C. § 1300l-2(a) (omitted)); Paskenta Band Restoration Act, Pub. L. No. 103-454, 108 Stat. 4793 (Nov. 2, 1994), § 305(a) (codified as 25 U.S.C. § 1300m-3(a)).

[21] Notably, under 25 C.F.R. § 292.12(c)(2) a tribe seeking to "establish connections to newly acquired lands for the purposes of the 'restored lands' exception" for the second or subsequent time, must demonstrate "[t]he tribe submitted an application to take the land into trust within 25

Coquille is the very first of these Tribes to attempt to have land within their IRA affirmation language geographic area, but outside of the area listed in the CRA's restored lands language, taken into trust under the statute-based restored lands exception found at 25 C.F.R. § 292.11(a)(1).[22] The connections-based restored lands test would require Coquille to demonstrate it was not already "gaming on other lands," 25 C.F.R. § 292.12(c)(2), and a two-part determination would require the Oregon Governor's concurrence. 25 U.S.C. § 2719(b)(1)(A); 25 C.F.R. § 292.13(d). Where Coquille cannot make such a showing under 25 C.F.R. § 292.12(c)(2) and the Governor's position indicates she would not concur with a two-part determination, CC-24304-9, Coquille should not be able to make an end run around Congressional intent through misapplication of 25 C.F.R. § 292.11(a). In adopting Coquille's misreading of its CRA, DOI is allowing Coquille to franchise casinos throughout its five-county service area, providing an "open-ended license to game on newly acquired lands" in direct contravention of IGRA. *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015).

In fact, this Court, in *City of Roseville v. Norton*, 219 F. Supp. 2d 130 (D.D.C. 2002), aff'd, 348 F.3d 1020 (D.C. Cir. 2003), already rejected Coquille's novel argument, finding that a Tribal restoration act's IRA affirmation language, "which provides that the Secretary may take additional acreage in the Tribe's service area pursuant to the [IRA]," is clearly "*limited by the provisions of the [IRA]*." *Id.* at 155 (emphasis added). In other words, this Court has already determined that for

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years after the tribe was restored to Federal recognition and *the tribe is not gaming on other lands*." *Id.* (emphasis added).

[22] In its response, Coquille disingenuously summarizes a "holding" from *City of Roseville* that is not actually found in its text. *See* ECF No. 82 at 35. Coquille claims *City of Roseville* holds that lands anywhere within the Auburn Community's service area constitute statute-based restored lands. But that is not what the *City of Roseville* court said or held. The land at issue in that case was covered by the restored land language, "[t]he Secretary may accept any real property located in Placer County, California . . .," 25 U.S.C. § 1300*l*-2(a) (omitted), and thus was taken into trust pursuant to the Auburn Indian Restoration Act, not the IRA.

any land taken into trust pursuant to the IRA affirmation language, DOI must follow the IRA's requirements, because the language in a Tribe's restoration act, standing alone, would *not* qualify under IGRA's statute-based restored lands exception. *Id.* at 155, 162; *see also id.* at 161 (concluding the Tribe's restoration act "clearly contemplates the creation of a land base for the Tribe" but "the challenge remains of identifying the contemplated land base that should be considered restored lands").

City of Roseville's conclusion that land acquired solely under the IRA affirmation language did not qualify under IGRA's restored lands exception was not impacted by DOI's later adoption of 25 C.F.R. § 292.11 and § 292.12, as Federal Defendants incorrectly suggest. ECF No. 81 at 45. Section 292.11(a)(1) provides that land qualifies under the statute-based restored lands exception if the *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 the specific geographic area." *Id.* The "authorizes" in this sentence references the Auburn Indian Restoration Act, whose restored lands language uses "may" instead of "shall": "The Secretary may accept any real property located in Placer County, California, for the benefit of the Tribe . . ." 25 U.S.C. § 1300*l*-2(a) (omitted). Section 292.11(a)(1) does not support Coquille's argument because, as explained in Plaintiffs' Motion, the CRA, standing alone, does not authorize the Secretary to acquire trust land in Jackson County; rather, the CRA permits the Secretary to acquire trust land in Jackson County pursuant to the Secretary's discretionary authority under the IRA (assuming the IRA's requirements are met).[23] DOI's conclusion that IRA affirming language in the CRA grants the Secretary authority to acquire trust land in Jackson County under 25 C.F.R. § 292.11(a)(1) is contrary to the plain terms of that regulation, which requires the restoration legislation itself to

[23] As discussed in Section II(B) above, the IRA's requirements were not met in this case.

authorize the trust acquisition in a specific geographical area.

For purposes of the regulation, the CRA does not "authorize" the Secretary to take land into trust anywhere within Coquille's service area, it simply makes the IRA applicable to Coquille and confirms that land within Coquille's service area is subject to the IRA, just like any land anywhere, other than the up to 1,000 acres in Coos or Curry Counties restored to the Tribe. The legislative history of the CRA makes this conclusion clear. As originally proposed, the CRA contained the authority that Coquille wants the final version of the statute passed by Congress to have included, despite it having been excised. The original bill simply said: "The Secretary shall accept real property within the service area for the benefit of the Tribe . . ." CC-024721. Recognizing the consequences of the breadth of this language, the House Committee on Interior and Insular Affairs modified the bill and clarified that the CRA only authorizes the Secretary to take up to 1,000 acres in Coos and Curry Counties into trust as restored lands, explaining that any other land within the Tribe's service area could only be taken into trust pursuant to the IRA, just like any other land anywhere. CC-024732–41. The House Committee's modification was endorsed by the corresponding Senate Committee and became law. CC-024742–52; *see* ECF No. 77 at 31–32; *see also Gen. Motors Corp. v. Ruckelshaus*, 742 F.2d 1561, 1570 n. 13 (D.C. Cir. 1984) (concluding that while "committee reports are not the law," "they are . . . aids in interpreting statutory language and are useful . . . to the extent they fairly reflect congressional intent"). The legislative history confirms Congress's choice to excise the broad service-area authority from the CRA means the statute itself does not "authorize" the Secretary to take land for gaming purposes in Jackson County under 25 C.F.R. § 292.11(a)(1); rather, it merely confirms the general applicability of the IRA, thereby requiring satisfaction of the connections-based test under § 292.11(a)(2).

More recently, this Court clarified that § 292.11(a)(1)'s statute-based restored lands exception does not apply if a Tribe's restoration act merely allows DOI to use its general authority under the IRA; in that event, § 292.11(a)(2) applies, requiring the Tribe to satisfy the additional connections-based requirements set forth in § 292.12. *See E. Band of Cherokee Indians v. U.S. Dep't of Interior*, 534 F.Supp.3d 86, 111 (D.D.C. 2021). There, DOI found that the Catawba Nation's restoration act's IRA affirming language merely "allows [DOI] to use its section 5 [of the IRA] authority nationwide" because the Nation's restoration act *itself* does not "provide a specific geographic area for the restoration of lands within the meaning of section 292.11(a)(2)." *See E. Band of Cherokee Indians*, 534 F.Supp.3d at 111 (cleaned up). Accordingly, DOI determined that the Catawba Nation "must *also* meet the [connections-based] requirements of Section 292.12"—a determination that this Court upheld. *Id.* (accepting DOI's representation that "25 C.F.R. § 292.11(a)(1) d[id] not apply, and the issue is whether the site qualifies as 'restored lands' is governed by 25 C.F.R. § 292.11(a)(2)") (emphasis in original); *see also Nebraska ex rel. Bruning v. U.S. Dep't of Interior*, 625 F.3d 501, 509 (8th Cir. 2010) (granting DOI's request to remand to consider whether land to be taken into trust outside of the Ponca Restoration Act's restored lands language was "restored lands" based on the temporal, historical and connections test); *City of Council Bluffs, Iowa v. U.S. Dept. of Interior*, 11 F.4th 852, 855 (8th Cir. 2021) (DOI applying the connections-based restored lands test in evaluating Ponca Tribe's fee-to-trust application).[24]

Even in this case, until as recently as May 2020, DOI did not interpret the CRA's IRA

[24] Coquille argues that DOI did not treat it differently than the Ponca Tribe. ECF No. 83 at 51–52. Coquille, however fails to explain why DOI chose to apply the connections-based restored lands exception in the case of the Ponca Tribe, but not in the case of Coquille; this is true despite the fact that in both cases, DOI had the discretionary authority to take the land into trust exclusively under the Tribe's restoration acts' *IRA* affirming language (not the restoration acts themselves). *See* CRA, Pub. L. No. 101-42, § 5(a); Ponca Restoration Act, Pub. L. No. 101-484, § 4(c).

affirmation language to authorize DOI to permit gaming on the Medford parcel under IGRA's restored lands exception *at all*. CC-020062. Because the CRA permits the trust acquisition pursuant to the Secretary's discretionary authority under the IRA (not the CRA itself), DOI reviewed Coquille's request to take the Medford parcel into trust for gaming purposes exclusively under the IRA's regulations found at 25 C.F.R. Part 151 (1995). CC-020049–62. When DOI issued its then final decision on May 27, 2020, which concluded that Coquille could not satisfy the applicable IRA requirements, DOI explained that Coquille's only other "potential legal avenue to pursue gaming" on the Medford parcel was under IGRA's "so-called 'two part determination' provisions." 25 U.S.C. § 2719(b)(1)(A). CC-020062. DOI emphasized that applying a two-part determination process to Coquille's request would "provide a process whereby concerns of the state [could] be addressed." *Id.*[25]

But DOI now adopts a new interpretation of IGRA's restored lands exception, including 25 C.F.R. § 292.11(a)(1), concluding that the IRA affirmation language in a Tribe's restoration legislation is sufficient to qualify under § 292.11(a)(1)'s statute-based restored lands exception, as opposed to § 292.11(a)(2)'s connections-based restored lands exception. This is in direct contrast to DOI's prior interpretation that the Ponca and Catawba Tribes needed to satisfy the connections based restored lands test for parcels outside of their restoration act's specifications. *See, e.g.*, *E. Band of Cherokee Indians*, 534 F.Supp.3d at 111; *City of Council Bluffs*, 11 F.4th at 855. DOI's reversal of its prior interpretation of § 292.11(a) is arbitrary and capricious. *See Koi Nation of N. Cal. v. U.S. Dep't of Interior*, 361 F. Supp. 3d 14, 42, 59 (D.D.C. 2019) (concluding "DOI's gaps

[25] The legal detriment suffered by Plaintiffs is manifest: Coquille was permitted to circumvent the two-part determination process under 25 U.S.C. § 2719(b)(1)(A), which requires gubernatorial concurrence and state consideration, a process DOI itself previously deemed necessary, CC-020062, thereby granting Coquille a legal advantage unavailable to similarly situated tribes.

in reasoning for the agency's interpretation of [IGRA's] restored lands exception . . . renders the agency's explanation for 25 C.F.R. § 292.10(b) arbitrary and capricious and the challenged regulation itself invalid.").

DOI's novel interpretation of the CRA and § 292.11(a)(1) is also inconsistent with the CRA itself. As discussed previously, in passing the CRA, Congress only ever intended for land in Coquille's ancestral territory, Coos and Curry Counties, to constitute restored lands—*not* lands located 170 miles away from Coquille's reservation, in Jackson County (unless the IRA's requirements are also met, including 25 C.F.R. § 292.12, the regulation that applies to applications to take land into trust for gaming purposes as "restored lands" pursuant to the IRA). *See* CC-024735–36; CC-024730–31; CC-024742 (providing the purpose of the CRA was to, *inter alia*, "provide for the transfer of certain lands within *Coos and Curry Counties* . . . in trust for . . . the Coquille Tribe") (emphasis added); CR-024719–20 (CRA drafters and sponsors affirming this reading of statute's purpose and intent); *see also* ECF No. 77 at 38–39.

Because DOI's interpretation of the CRA and § 292.11(a)(1) conflicts with Congress's clear purpose and intent in passing IGRA and the CRA, it is likewise arbitrary and capricious. *See Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 597, 609 (2013) ("It is a basic tenet that 'regulations, in order to be valid, must be consistent with the statute under which they are promulgated.'") (citation omitted); *Ark. Dep't of Hum. Servs. v. Sebelius*, 818 F. Supp. 2d 107, 115 (D.D.C. 2011) (concluding courts "must reject an agency's interpretation of its own regulation if that interpretation is inconsistent with Congress's statutory directives").

DOI's interpretation of the CRA and § 292.11(a)(1) also conflicts with the policy considerations underscoring IGRA's after-acquired land exception for "lands . . . 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). As the Ninth Circuit has explained, "[i]n administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations." *See Redding Rancheria*, 776 F.3d at 711; *see also Decker*, 568 U.S. at 609; *Ark. Dep't of Hum. Servs.*, 818 F. Supp. 2d at 115.

This Court has adopted a similar approach in interpreting the restored lands exception to IGRA's general prohibition of gaming on Tribes' after-acquired lands—again, despite Federal Defendants' contrary assertions. *See* ECF No. 81 at 45. While this Court has acknowledged that land outside of the "lands specifically identified in a restoration act" may qualify as part of "the restoration of lands" under 25 U.S.C. § 2719(b)(1)(B)(iii), that land must still "bear[] a significant connection to an Indian tribe," including "the location of the acquisition and the temporal relationship of the acquisition to the restoration." *E. Band of Cherokee Indians*, 534 F.Supp.3d at 106 (citations omitted); *see also* 25 C.F.R. § 292.12.[26]

To be sure, because the CRA incorporates the Secretary's general authority under the IRA to take land into trust in Jackson County (or elsewhere in Coquille's service area), the Medford parcel could have qualified as restored lands had Coquille demonstrated that the connections-based requirements of 25 C.F.R. § 292.12 were satisfied. *See id.* § 292.11(a)(2); *see, e.g.*, *E. Band of Cherokee Indians*, 534 F.Supp.3d at 93, 111–12 (concluding that the Catawba Nation's planned casino site, which was located only 33 miles from its Tribal headquarters and was home to 253 Tribal members who were provided with Tribal government services at that location, demonstrated

[26] Although this Court has generally acknowledged IGRA's restored lands exception should be read "broadly," it has also explained that the purpose of this exception is to benefit "disadvantaged" restored Tribes, e.g., compensation for lost opportunities. *Koi Nation*, 361 F. Supp. 3d at 47. There is nothing in the record demonstrating that Coquille is a disadvantaged restored Tribe, as Coquille has long operated a successful gaming complex and hotel on its reservation, has recently established several other successful economic enterprises, and has regained up to 10,000 acres of land in its ancestral territory. CC-025216–17; *See We Are Still Here*, *supra* Note 11.

sufficient connections under § 292.12). However, both Coquille and DOI appear to acknowledge that Coquille cannot satisfy § 292.12's connections-based requirements, given the 170-mile distance between the Medford parcel and the Tribe's reservation, Coquille's complete lack of significant historical or temporal connections to the Medford parcel or surrounding region, and the fact that Coquille is already gaming on other land. *See* 25 C.F.R. § 292.12; *see Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 566 (D.C. Cir. 2016) (DOI has interpreted § 292.12 and related regulations to require that the Tribe "made use of the parcel in question").

By allowing Coquille to establish a second casino and reservation 170 miles from its original reservation and existing casino, based on DOI's flawed interpretation of 25 C.F.R. § 292.11(a)(1), the agency has disregarded the plain language of that regulation, ignored IGRA's other regulations, and flouted Congress's intent in passing both IGRA's restored lands exception and the CRA.

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

DOI's new interpretation of IGRA's restored lands exception, including its interpretation of 25 C.F.R. § 292.11(a)(1), violates the IRA's privileges and immunities clause as well. 25 U.S.C. § 5123(f). Again, the purpose of that clause is to prohibit "disparate treatment between similarly situated recognized tribes." *Koi Nation,* 361 F. Supp. 3d at 54.

Neither Federal Defendants nor Coquille deny that Plaintiffs are similarly situated to Coquille, as all four Tribal nation parties are located on the West Coast and share nearly identical political histories. *See* 25 U.S.C. § 715, *et seq*. (omitted); 25 U.S.C. § 712 (omitted). Nor do they deny that all four Tribes operated one casino within or near their reservations, at least prior to the ROD's determination that Coquille can operate a second casino 170 miles from its reservation.

But by approving Coquille's second casino in a region with which Coquille shares no significant historic or temporal connections and without requiring a two-part determination under 25 U.S.C. § 2719(b)(1)(A)—based on DOI's novel, flawed reading of 25 C.F.R. § 292.11(a)(1)'s statute-based restored lands exception and the CRA's IRA affirmation language—DOI violated the IRA's privileges and immunities clause. *See* 25 U.S.C. § 5123(f) (providing federal agencies shall not "make any decision or determination pursuant to the [IRA] . . . that classifies, enhances, or diminishes the privileges and immunities available to the Indian Tribe relative to other federally recognized tribes"); *see also Koi Nation,* 361 F. Supp. 3d at 52.

Federal Defendants assert that Plaintiffs "fail to identify any instance in which [DOI] denied a similar application under IGRA's restored lands exception, nor do they provide any evidence to suggest that [DOI] changed its interpretation of its own regulations." ECF No. 81 at 42. Yet, Federal Defendants' own cited authority, *Eastern Band of Cherokee Indians*, rebuts this contention. As explained in Section II(C) above, before DOI reversed course here, the agency determined that § 292.11(a)(1)'s statute-based restored lands exception does not apply if a Tribe's restoration act merely allows DOI to use its general authority under the IRA; rather, § 292.11(a)(2) applies, which requires the Tribe satisfy § 292.12's connections-based requirements. *See E. Band of Cherokee Indians*, 534 F. Supp. 3d at 111; *see also City of Council Bluffs*, 11 F.4th at 855 (DOI applying the connections-based restored lands test in evaluating Ponca Tribe's fee-to-trust application). It is also telling that neither Federal Defendants nor Coquille identifies any other instance where DOI applied § 292.11(a)(1)'s statute-based restored lands exception on the ground that the subject tribe's restoration act contained IRA affirmation language.[27]

[27] Coquille argues that DOI "has done the same in other cases involving similarly worded restoration acts," i.e., "applied the statute-based restored-lands exception." ECF No. 83 at 50. But Coquille's primary citation for this is *Native Village of Eklutna v. U.S. Dep't of the Interior*, No. 19-cv-2388, 2021 WL 4306110 (D.D.C. Sep. 22, 2021), a case that did not involve IGRA's restored lands exception at all and in which DOI denied that Tribe's fee-to-trust application. *See id.* at *7. The *Native Village of Eklutna* decision only supports Plaintiffs' argument: the IRA's

Moreover, until at least May 27, 2020, DOI denied Coquille's application without even considering whether IGRA's restored lands exception applied, let alone § 292.11(a)(1)'s statute-based restored lands exception. CC-020062. As explained above, because the CRA's IRA affirmation language permits the Secretary to acquire trust land for gaming purposes only if the IRA's requirements are met, in 2020, DOI exclusively reviewed Coquille's application under the IRA and its implementing regulations (25 C.F.R. Part 151 (1995)); the agency did *not* consider whether IGRA's restored lands exception, or the relevant regulations, 25 C.F.R. §§ 292.11–292.12, could be satisfied. CC-020049–62. DOI's 2020 denial was clear: Coquille's application was required to proceed under IGRA's "so-called 'two part determination' provisions," 25 U.S.C. § 2719(b)(1)(A), because IGRA's restored lands exception did not apply to Coquille's application *at all.* CC-020062.

DOI's sudden reversal of its prior interpretation of IGRA's restored lands exception by later approving Coquille's application under § 292.11(a)(1)'s statute-based restored lands exception, as opposed to any other applicable IGRA exception, violates the IRA's privileges and immunities clause by enhancing Coquille's privileges at the expense of diminishing those of Plaintiffs. *See* 25 U.S.C. § 5123(f). *See Koi Nation*, 361 F. Supp. 3d at 52 (DOI cannot "implement [a new] interpretation of IGRA's restored lands exception in a manner that violates § 5123(f), which prohibits the agency from promulgating 'any' regulation or making 'any' decision 'with respect to a federally recognized Indian tribe' that diminishes the tribe's privileges 'relative to other federally recognized tribes.'"); *see also Redding Rancheria*, 776 F.3d at 711.

privileges and immunities clause, 25 U.S.C. § 5123(f), "require[s] . . . that [DOI] apply the same legal rule in the same manner," as DOI so clearly failed to do here. Coquille's only other cited case, *Cherokee Nation v. Bernhardt*, 936 F.3d 1142 (10th Cir. 2019), also does not demonstrate that DOI previously applied 25 C.F.R. § 292.11(a)(1) to other Tribes similarly situated to Coquille (again, it does not even involve IGRA's restored lands exception). *But see* ECF No. 83 at 50–51.

Coquille appears to countenance DOI's reversal of its prior interpretation of IGRA's restored lands exception and the CRA on the ground that "[n]othing in [DOI's] decision regarding the Medford Parcel inhibits Plaintiffs' legal ability to apply to have land taken into trust for gaming purposes consistent with applicable statutes and regulations." ECF No. 83 at 50. That is, Coquille's proposed "solution" to DOI's repeated statutory and regulatory violations is to permit Plaintiffs or other Tribes to open second (or third or fourth) casinos. *Id.* But this ignores IGRA's general ban on gaming on lands taken into trust after October 17, 1988 (like the Medford parcel), 25 U.S.C. § 2719(a), and the State of Oregon's significant, ongoing concerns regarding "the disruption of the well-established balance of the number of casinos in Oregon, and the potential for expansion of gaming against the wishes of the State and its elected officials." CC-200047; CC-024304. Indeed, this is precisely why DOI, in May 2020, declined to apply IGRA's restored lands exception to Coquille's application and unambiguously required Coquille, if it wished to proceed, to satisfy the two-part determination process to "provide a process whereby *concerns of the state can be addressed*." CC-020062 (emphasis added).

DOI's novel and unprecedented application of IGRA's restored lands exception to diminish Plaintiffs' relative privileges is invalid under § 5123(f) and must be vacated.

E. Plaintiffs Are Entitled to Summary Judgment Because They Did Not Receive Real Consultation from Federal Defendants (Second Claim).

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

Federal Defendants cannot deny that NEPA requires the agency to conduct NEPA review, including both environmental *and* environmental justice impacts, in cooperation with State and local governments, including Tribal governments. ECF No. 81 at 31; *see* 42 U.S.C. § 4331(a); 43

C.F.R. § 46.155; *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 365 (D.C. Cir. 1981) (NEPA's consultation requirement is necessary "to ensure that the public has an opportunity to participate meaningfully in decisionmaking at the administrative and legislative levels."). Federal Defendants take pains to argue that DOI needs only to consult Tribal governments regarding the "environmental effects of any Federal action," ECF No. 81 at 31; they relatedly argue that "Plaintiffs fail to show that NEPA requires environmental justice analysis." *Id.* at 34. Federal Defendants are wrong.

Apart from DOI's *admission* that NEPA expressly directs DOI and other agencies to also analyze the "economic justice" effects, CC-026311, Federal Defendants simply ignore an *entire* section in the agency's own BIA NEPA Guidebook that is dedicated to "Environmental Justice Guidance Under [NEPA]." *See, e.g.*, BIA NEPA Guidebook, 59 IAM 3-H, Appx. 18, pp. 4–5 ("Review of NEPA compliance . . . must ensure the lead agency . . . has appropriately analyzed environmental effects on . . . Indian tribes, including human health, *social, and economic effects*.") (emphasis added). Likewise, the agency must apply mitigation measures to "reduce or eliminate adverse effects to biological, physical, or *socioeconomic* resources." *Id.* at p. 21 (emphasis added); *see also* 42 U.S.C. § 4332(2)(B) (requiring federal agencies to develop "methods and procedures" to "ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations"); DOI NEPA Handbook, 516 DM 1, § 6.1(v), p. 25 (the ROD must "discuss[] any preferences among alternatives based on relevant factors including economic and technical considerations").

Apparently recognizing their obligation to consult Tribal governments regarding *all* aspects of the required NEPA review (including economic, socioeconomic, and environmental justice considerations), Federal Defendants alternatively contend that DOI fulfilled its consultation duties under NEPA. *See* ECF No. 81 at 31–32; *but see* 43 C.F.R. § 46.155 (providing DOI, "whenever possible," will "consult, coordinate, and cooperate with . . . tribal governments . . . concerning the environmental effects of any Federal action within the jurisdiction or related to the interests of these entities"); 59 IAM 3-H (Aug. 2012), § 2.3, p. 6; DOI Department Manual, 512 DM 4 at § 4.4.[28] Federal Defendants' representation that DOI fulfilled its consultation duties to Tribal governments is directly rebutted by the multiple unanswered comment letters submitted by Tribal governments in Oregon, California, and beyond, beginning in 2013, representing that DOI ignored their requests for consultation. *See, e.g.*, CC-020298; CC-024203; CC-024783; CC-024785; CC-026397; CC-026439; CC-026442; CC-026460; CC-026967; CC-027718. Again, just prior to issuing the FEIS, DOI failed to consult with Cow Creek despite direction from the White House to do so. *See* CC-026397; CC-026442; CC-026439; CC-026460; CC-026967.[29]

DOI failed to follow its own regulations, policies, and procedures requiring the agency to consult, coordinate, and cooperate with Plaintiffs and other Tribal governments affected by DOI's decision to allow Coquille to expand its gaming operations throughout Southern Oregon. As a result, Plaintiffs will suffer devastating environmental justice consequences. 43 C.F.R. § 46.155; *see* 42 U.S.C. § 4331(a); BIA NEPA Guidebook, 59 IAM 3-H, § 2.3, p. 6; DOI NEPA Handbook, 512 DM 4 at § 4.4; *see also Comm. to Save the Rio Hondo v. Lucero*, 102 F.3d 445, 448–49 (10th Cir. 1996) ("The injury of an increased risk of harm due to an agency's uninformed decision is precisely the type of injury [NEPA] was designed to prevent."); *Sierra Club v. Marsh*, 872 F.2d

[28] Federal Defendants now disclaim any legal obligation of DOI to follow its NEPA Guidebook or Department Manual. ECF No. 81 at 31 n.9.

[29] In support of their argument that DOI consulted with Cow Creek, Federal Defendants point to evidence of consultation through 2022. ECF No. 81 at 32 n.10. The only evidence Federal Defendants identify after 2022 is that DOI "invit[ed]" Cow Creek "to meetings" in late 2024, after the agency had already issued the FEIS. *Id.* Even then, however, DOI provided a mere 24 hours' notice and arbitrarily elected the Tuesday before Thanksgiving, when it knew most Tribal governments are closed and Tribal officials unavailable, to set this so-called "consultation." CC-026453–57.

497, 500 (1st Cir. 1989) (concluding the harm NEPA seeks to prevent is complete when agency makes a decision without considering information NEPA seeks to place before the decisionmaker and public); *see also Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) (concluding the "Tribe was entitled to be consulted under NEPA").

DOI's failure to consult with Tribal governments was not unique to Plaintiffs—it was a pattern and practice of DOI under the prior administration. Tellingly, in *Federated Indians of Graton Rancheria v. U.S. Dep't of Interior*, No. 24-cv-08582-RFL, 2025 WL 2522376 (N.D. Cal. Sep. 2, 2025), an APA case brought by the Federated Indians of Graton Rancheria ("FIGR") challenging DOI's January 13, 2025 decision to acquire trust land in California for a casino project proposed by Koi Nation, a federal district court in California found that "DOI railroaded [FIGR] at every turn," having "already made up its mind prior to receiving FIGR's input." *See id.* at *8. The *FIGR* court held that DOI's "lack of any substantive engagement with FIGR's comments, coupled with the history of attempts to avoid any real consultation with FIGR," *id.*, demonstrated DOI failed to satisfy NEPA's "hard look" standard, at least with respect to "the impact on cultural resources" *Id.* at *10 ("Without proper consultation from FIGR and other tribes, DOI was unable to consider significant aspects of the issue.").[30] The *FIGR* court vacated DOI's final fee-to-trust decision in favor of Koi Nation because, *inter alia*, that "decision was made without adequately consulting FIGR under NHPA and thus without taking a sufficiently hard look at cultural resource impacts under NEPA." *Id.* at 15. There was not any real consultation with Tribal Plaintiffs either.

Federal Defendants respond with DOI's justification that "competition . . . is not sufficient,

[30] The *FIGR* court likewise found DOI's failure to consult FIGR and other Tribes regarding the impact on cultural resources violated the National Historic Preservation Act ("NHPA"). *Id.* at *8.

in and of itself, to conclude [there would be] a detrimental impact on' a tribe."[31] ECF No. 81 at 33 (citing CC-026155). Coquille makes a similar argument. ECF No. 83 at 50. Yet, Plaintiffs do not challenge DOI's unprecedented expansion of gaming in Oregon—without adequately consulting Plaintiffs and other affected Tribal governments—on the ground that Plaintiffs' casinos will face increased "competition" with Coquille's second casino in Medford. As Plaintiffs have extensively detailed, Plaintiffs' dramatic loss of gross gaming revenue (e.g., up to 37% for Karuk) and non-gaming revenue (e.g., up to 51.7% for Karuk) will result in significant decreases in total revenue that Plaintiffs use to fund their *governmental programs* and *public services*; reduced overall governmental revenue, in turn, will have profound environmental and environmental justice consequences for Plaintiffs' Tribal governments. CC-025039 (representing that the Karuk Casino's gaming revenue is the Tribe's "sole source of revenue for providing essential governmental services to [its] people"); CC-026091, CC-026055 (wildfire impacts, one of the primary sources of greenhouse gases ("GHG") in Medford); CC-026215 (GHG emission impacts); CC-025059 (showing Karuk's exposure to devastating wildfires); CC-012768–69, CC-024214 (showing the devastating impact Coquille's Medford casino will have on Karuk's ability to meet the immediate and long-term needs of its citizens, including recovery from wildfire damage); *see also Confederated Tribes of Chehalis Reservation v. Mnuchin*, 456 F. Supp. 3d 152, 164 (D.D.C. 2020) (recognizing that a final agency action resulting in substantially diminished funding to Tribal

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[31] Federal Defendants base this conclusion on a misreading of *Citizens for a Better Way v. U.S. Department of the Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925 (E.D. Cal. Sep. 24, 2015). *Citizens* recognizes that a "purely economic interest" can be a sufficient basis for a finding of detrimental impact on a tribe when the competing facility "would … jeopardize the competing casino's viability." *Id.* at *9. Furthermore, in *Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934 (9th Cir. 2005), the Ninth Circuit case on which *Citizens* relies, the court found loss of potential revenue for a commercial, for-profit entity was a "purely economic interest," which did not bring the commercial entity within the "zone of interest" NEPA is designed to protect. The *Ashley Creek* decision draws a distinction between "purely economic interest" and an "economic concern that is . . . tethered to the environment." *Id.* at 943.

governments for "core public services" constituted irreparable harm).[32]

Federal Defendants' callous disregard for Plaintiffs' significant environmental justice concerns—concerns that are equally shared by the Governor of Oregon (CC-024304)—as mere "competition" concerns only prove Plaintiffs' point: DOI never substantively engaged with Plaintiffs' (or other government officials') concerns before approving Coquille's fee-to-trust application. Instead, "DOI railroaded [Plaintiffs] at every turn" and "had already made up its mind prior to receiving [Plaintiffs'] input"—just as DOI had ignored FIGR's significant concerns before hastily approving a different casino project in California. *FIGR*, 2025 WL 2522376, at *8.

Plaintiffs here were entitled to real consultation in the weeks before DOI issued its final decision in this case, under NEPA and DOI's implementing regulations and policies. 43 C.F.R. § 46.155; *see* 42 U.S.C. § 4331(a); 59 IAM 3-H, § 2.3, p. 6; 512 DM 4 at § 4.4. Because Federal Defendants failed to truly consult Plaintiffs before issuing the FEIS and ROD, they acted contrary to NEPA, and their final decision must be vacated. *See, e.g.*, *FIGR*, 2025 WL 2522376, at *8, 10, 15; *see also Quechan Tribe*, 755 F. Supp. 2d at 1120.[33]

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

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[32] To add insult to the injury, DOI determined expansion of Coquille's existing Mill Casino was an insufficient alternative to the proposed action because of increased tribal gaming competition in the Mill Casino's market. CC-025995–57.

[33] Federal Defendants disregard Plaintiffs' reliance on the *Quechan* decision because that court concluded "without analysis" that a Tribal government "was entitled to be consulted under NEPA" and thus "provides no basis for crediting Plaintiffs' consultation claims here." EDC No. 81 at 34. There is no question, however, that NEPA and DOI's implementing regulations and rules require consultation with Tribal governments. Federal Defendants' contrary suggestion is without merit. 42 U.S.C. § 4331(a); 43 C.F.R. § 46.155; 59 IAM 3-H, § 2.3, p. 6; 512 DM 4 at § 4.4. Further, DOI's complete failure to consult Tribal governments also demonstrates the agency's failure to satisfy NEPA's "hard look" standard in reviewing Tribal governments' environmental justice concerns, as a federal court in California recently held, *FIGR*, 2025 WL 2522376, at *10, and as DOI itself admits in the FEIS. CC-026311; CC-026150–5.

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

As discussed in Plaintiffs' Motion, in assessing the environmental and environmental justice impacts of Coquille's proposed casino in Medford, the FEIS relied on several reports that were issued more than a decade earlier (e.g., Coquille's 2013 Unmet Needs Report and Business Plan, a 2015 traffic impact analysis, and a 2016 AES report). *See* CC-007553; CC-026809; CC-024967–74. Federal Defendants do not deny this. ECF No. 81 at 27. Plaintiffs' Motion also identifies significant changes in environmental circumstances in the intervening years, such as new state GHG regulations and increased population growth in Jackson County, which were not reflected in those decades' old reports. CC-025019 (citing OAR 660-012-045–660-012-0445; OAR 660-012-0410; ORS § 455.417); CC-011350; CC-024798.

Even accepting Federal Defendants' (and Coquille's) position that these changed environmental circumstances do not "render[] any aspect of [DOI's] NEPA analysis arbitrary," ECF No. 81 at 29, Federal Defendants do not persuasively rebut Plaintiffs' position that Coquille's changed economic and socioeconomic circumstances—which were not reflected in Coquille's 2013 Unmet Needs Report and Business Plan—demonstrated DOI's failure to take a "hard look" at the environmental justice impacts of its final decision. *Id.* To the extent Federal Defendants continue to maintain that Coquille's "unmet" economic needs are a "non-environmental factor" that should be considered "outside the scope of NEPA and, therefore, not described in the EIS," ECF No. 81 at 29 (citing CC-026336), Federal Defendants are, again, wrong. *See* BIA NEPA Guidebook, 59 IAM 3-H, Appx. 18, pp. 4–5 ("Review of NEPA compliance . . . must ensure the lead agency . . . has appropriately analyzed environmental effects on . . . Indian tribes, including human health, social, and economic effects."); *see also* 42 U.S.C. § 4332(2)(B).

Before DOI issued its final decision, Plaintiffs presented overwhelming evidence that since Coquille's economic reports were issued, almost 12 years ago, Coquille greatly expanded its land holdings (which now include up to 10,000 acres) and its economic enterprises. CC-025216–17; CC-026923–24; *See We Are Still Here*, *supra* Note 11. This evidence, which is reflected in neither Coquille's stale Unmet Needs Report nor its Business Plan,[34] directly contradicts DOI's conclusion that a second casino in Medford is "necessary to facilitate tribal self-sufficiency, self-determination, and economic development." CC-026847.

Relatedly, DOI further admits that the FEIS failed to consider adverse "environmental justice" impacts to Plaintiffs,[35] including reduced "governmental and social services" to Plaintiffs'

[34] Again, notably, Coquille's successful government contracting enterprise, Tribal One, is not mentioned in the FEIS or ROD.

[35] Despite DOI's admission that NEPA requires the agency to consider "environmental justice" impacts, CC-026311, Federal Defendants now disclaim this duty on the ground that the statute references only "economic" considerations, not "environmental justice" considerations. ECF

Tribal governments and their citizens, allegedly because DOI was unable to secure 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")[36]. CC-026311; *but see* CC-026150–51 (FEIS admitting that "[a]n adverse economic, fiscal, or social impact would occur" if Coquille's Medford casino "disproportionately affected an identified minority or low-income community or Native American tribe," including "negatively alter[ing] the ability of [Tribal] governments to perform at existing levels or alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services.").

This evidence also rebuts DOI's conclusion in the FEIS that "there [were] no significant new circumstances or information relevant to environmental concerns and bearing on the [p]roposed [a]ction or its impacts." CC-026297. By failing to update Coquille's Unmet Needs Report and Business Plan or otherwise consider environmental justice and socioeconomic data collected in or around the year the FEIS was issued—including basic information about Coquille's present socioeconomic need for a second casino or the detrimental socioeconomic impacts to Plaintiffs and other Tribal governments—DOI failed to take the requisite hard look before approving Coquille's second casino in Medford. *See, e.g.*, *Lands Council*, 395 F.3d at 1031 (finding that six-year-old data, without updated habitat surveys, was too stale); *Lemon*, 668 F. Supp. 2d at 142 (vacating agency decision and remanding to either issue a supplemental EIS addressing significant impacts or otherwise "mak[ing] a convincing case why [the changed

No. 81 at 35; *see* 42 U.S.C. § 4332(2)(B). As discussed in Section II(A)(2) below, Federal Defendants ignore the agency's own NEPA rules. *See, e.g.*, BIA NEPA Guidebook, 59 IAM 3-H, Appx. 18 (promulgating an entire guidebook on "Environmental Justice Guidance Under [NEPA]"); *id.* at Appx. 18, pp. 4–5 (agency NEPA review must review impact on "Indian tribes, including human health, social, and economic effects.").

[36] Federal Defendants present no evidence that they sought the "confidential and proprietary information," which would have occurred during consultations.

circumstances] present[] no significant impacts above and beyond those determined in the EIS").

Federal Defendants and Coquille respond that DOI's conclusion that there were no new significant circumstances or information since 2013 that required the agency to update its 2025 final decision, "is entitled to significant deference." ECF No. 81 at 27; *see* ECF No. 83 at 20, 30, 38–39. In support of their request for deference, Federal Defendants do not expressly acknowledge *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), or its holding that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." *Id.* at 412. And while judicial deference nevertheless extends to an agency's determination of what details are relevant to an EIS, those agency choices must still "fall within a broad zone of reasonableness." *Seven Cnty.*, 145 S. Ct. at 1513.

Here, there is nothing reasonable about relying on environmental and economic reports that are more than a decade old, even though such reports are directly relevant to the agency's sole justification for approving Coquille's second casino nearly 170 miles away from its reservation. *See* CC-026847 (concluding DOI's approval of Coquille's fee-to-trust application was "necessary to facilitate tribal self-sufficiency, self-determination, and economic development"). *See, e.g.*, *Lands Council*, 395 F.3d at 1031 (finding that six-year-old data was too stale).

Thus, the final decision should also be vacated on the ground that DOI failed to satisfy NEPA's "hard look" standard by basing Coquille's alleged socioeconomic needs on stale economic data, and failing to consider Plaintiffs' socioeconomic concerns. *FIGR*, 2025 WL 2522376, at *10, 15.

III. CONCLUSION

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

DATED this 30th day of October, 2025.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

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

DATED this 30th day of October, 2025.

Respectfully submitted,

/s/ Gabriel S. Galanda

CERTIFICATION OF SERVICE

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

DATED this 30th day of October, 2025.

Respectfully submitted,

/s/ Gabriel S. Galanda