IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs' opposition confirms that their seven-count amended complaint rests entirely on a series of faulty premises that are not grounded in applicable law. *First*, Plaintiffs continue to misread the D.C. Circuit's decision in *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024). Far from providing a new basis to invalidate agency action, the panel majority's opinion in *Marin Audubon* concluded that, because regulations previously promulgated by the Council on Environmental Quality ("CEQ") were nonbinding, plaintiffs could not invalidate agency action for failing to comply with those regulations. Nothing in *Marin Audubon* supports Plaintiffs' theory here that, by referencing CEQ's regulations, Interior lacked statutory authority to issue its Final Environmental Impact Statement ("FEIS") and Record of Decision ("ROD").

Second, Plaintiffs fail to establish any violation of the National Environmental Policy Act ("NEPA") based on the Department of Interior's ("Interior") consultation efforts or its analysis in the FEIS. Interior consulted extensively with the Plaintiffs throughout its decision-making process, and Plaintiffs do not identify any applicable legal standard that the consultation failed to satisfy. The FEIS demonstrates that Interior thoroughly considered the environmental impacts of Coquille's land-into-trust application.

Third, Plaintiffs continue to insist on a theory under the Indian Gaming Regulatory Act ("IGRA") that is contrary to Interior's IGRA regulations and does not comport with binding D.C. Circuit precedent. *See City of Roseville v. Norton*, 348 F.3d 1020, 1031 (D.C. Cir. 2003).

Fourth, Plaintiffs fail to demonstrate that Interior's analysis under the Indian Reorganization Act ("IRA") was insufficient, or that the agency's decision to take the parcel into trust diminished Plaintiffs' privileges and immunities.

The Court should enter summary judgment for Federal Defendants on each claim in Plaintiffs' amended complaint.

ARGUMENT

I. The Court should enter summary judgment on Claim I because Interior acted within its statutory authority in issuing the ROD and the FEIS.

Plaintiffs do not dispute Interior's statutory authority under the IRA to issue a decision on Coquille's land-into-trust application. *See* Pls.' Reply in Supp. of Mot. for Summ. J. and Opp'n to Defs.' Cross Mot. for Summ J. ("Opp'n") 8, Dkt. No. 85 ("Plaintiffs are not challenging the *ultra vires* aspect of [Interior's] unlawful final decision—i.e., repeatedly invoking the CEQ regulations as binding legal rules (as opposed to their own regulations) … based on the agency's purported lack of authority under the IRA."). Plaintiffs' opposition also makes clear that "Plaintiffs are not challenging the fact that [Interior] prepared an EIS consistent with NEPA requirements." *Id.* at 8 n.6. In other words, Plaintiffs concede (at least for purposes of Claim I) that Interior's voluntary compliance with CEQ's regulations did not violate NEPA. *Id.* Plaintiffs thus agree that the IRA authorized Interior to issue a decision on Coquille's application, and that NEPA required Interior to consider the environmental effects of that decision. Given those concessions, there can be no serious doubt that Interior acted within its statutory authority when it issued the ROD and FEIS.

In arguing to the contrary, Plaintiffs continue to misread *Marin Audubon* and mistake its import here. According to Plaintiffs, if CEQ lacked statutory authority to issue binding regulations, then Interior must also have acted without authority in voluntarily complying with those regulations. *See* Opp'n 8. That is wrong. Plaintiffs' argument is premised on a fundamental misunderstanding of the panel majority's rationale and the ultimate disposition in *Marin Audubon*. Nothing in that case supports the claims Plaintiffs raise here and the Court should enter judgment for Defendants on Claim I.

A. <u>*Marin Audubon* offers no support for Plaintiffs' arguments here.</u>

The panel majority's opinion that CEQ lacks authority to issue binding NEPA regulations centered on whether any statute granted CEQ that authority. *Marin Audubon*, 121 F. 4th at 914. The majority began by observing that "CEQ trace[d] its rulemaking authority not to legislation but to an Executive Order of the President." *Id.* at 908. "But," the majority reasoned, "an executive order is not law within the meaning of the Constitution." *Id.* (quoting *California v. EPA*, 72 F.4th 308, 313 (2023)). In the panel majority's view, "the Constitution does not permit the President" to issue an executive order that, "'like a statute, authorizes a government official to promulgate . . . rules and regulations.'" *Id.* (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588 (1952)). Thus, the question was whether CEQ "has statutory authority from Congress" to issue regulations. *Id.* at 912 (quoting *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451, (D.C. Cir. 2017); citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 304 (1979)). Finding it does not, the panel majority concluded that CEQ "had no lawful authority to promulgate the[] regulations." *Id.* at 914.

There is no similar question here. As Plaintiffs concede, Interior's authority to issue the ROD and FEIS does not come from an executive order. Instead, as explained above and in our opening brief, Fed. Defs.' Cross Mot. for Summ. J. and Opp'n to Pls.' Mot. for Summ. J. ("Fed. Defs.' Br.") 13-14, Dkt No. 80, Interior's authority to issue the ROD acting on Coquille's application arises from statute (the IRA), as does its obligation to consider the environmental impact of major federal actions (NEPA). Interior's authority to issue the FEIS and ROD thus is independent, and in no way derivative, of CEQ's authority to issue binding regulations.

The upshot of the *Marin Audubon* majority's opinion about CEQ's rulemaking authority is this: the plaintiffs there could not invalidate a NEPA review on the basis that it failed to comply with CEQ regulations because those regulations are not binding. *Marin Audubon*, 121 F. 4th at 908 (declining to address parties' arguments about whether the agencies complied with CEQ regulations because those regulations were *ultra vires*). Instead, the regulations were "merely advisory." *Id*. at 910 (citation omitted). That opinion did not provide a new basis for invalidating agency decisionmaking; it did the opposite, by taking an argument off the table altogether. *See Appalachian Voices v. FERC*, 139 F.4th 903, 926 (D.C. Cir. 2025) (Hendersen, J., concurring) (a member of the *Marin Audubon* majority) characterizing *Marin Audubon* as helping to "rein in NEPA.").

That conclusion simply has no bearing on Interior's authority to issue the ROD and FEIS here. Whether CEQ's regulations were binding or advisory does not affect Interior's statutory authority to take land into trust. Thus, it also does not matter whether Interior prepared those documents with the understanding that it was required to follow CEQ's regulations, or whether it did so voluntarily (notwithstanding Plaintiffs' arguments to the contrary, Opp'n 4-5). Either way, Interior had statutory authority to act on Coquille's application by issuing the ROD and FEIS.[1]

For that reason, Plaintiffs' argument that it was a post hoc rationalization for Interior to state, *in the ROD*, that it voluntarily followed CEQ's regulations is both incorrect and irrelevant. *See* Opp'n 4-5 (discussing CC-026839 n.1). As an initial matter, an agency decisionmaker's statement in a decision document cannot be a post hoc rationalization. In the APA context, a post hoc rationalization refers to a rationale for agency action offered by someone other than the agency decisionmaker (typically litigation counsel), which does not appear in the agency's own decision. *See Univ. of Colorado Health at Mem'l Hosp. v. Burwell*, 164 F. Supp. 3d 56, 65 (D.D.C. 2016)

[1] For the same reason, it does not matter here whether or not the *Marin Audubon* panel majority's opinion concerning CEQ's rulemaking authority was dicta. *See* Opp'n 5-7. As we have explained, a majority of the en banc D.C. Circuit determined that "the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition." *Marin Audubon Soc'y v. FAA*, No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025) (Srinivasan, C.J., concurring in the denial of rehearing en banc). But regardless, the question of whether CEQ's regulations were binding or just advisory is not relevant to Interior's own statutory authority here.

("The 'post hoc rationalization' rule 'forbids judges [from] uphold[ing] agency action on the basis of rationales offered by anyone other than the proper decisionmakers." (alterations in original) (quoting *Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 6 (D.C. Cir. 2006))); *Am. Great Lakes Ports Assoc. v. Zukunft*, 296 F. Supp. 3d 27, 51 (D.D.C. 2017) ("When reviewing agency action under the APA, this Court may only rely upon the reasons given by the agency, rather than 'counsel's *post hoc* rationalizations for agency action.'" (quoting *Motor Vehicle Mfrs. Assoc. of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983))). Here, the statement Plaintiffs reference was not a post hoc rationalization offered by counsel, but rather Interior's own reason offered at the time of its decision. It was not post hoc.

Regardless, it makes no difference to Interior's own statutory authority whether it believed the CEQ regulations to be binding or advisory. The question of whether Interior had authority to take any particular action turns on Interior's own statutory authority, not CEQ's. Because there is no dispute here that Congress granted Interior authority to act on Coquille's application in the IRA, Plaintiffs cannot succeed on Claim I.

B. <u>Plaintiffs' arguments concerning Interior's NEPA regulations are internally inconsistent and lack any basis in law.</u>

Plaintiffs repeatedly assert that Claim I does not allege any NEPA violation but is instead based solely on "constitutional separation of powers principles." *See* Opp'n 11 n.8 (disclaiming any reliance on NEPA for Claim I); *id.* at 8 n.6 ("Plaintiffs are not challenging the fact that [Interior] prepared an EIS consistent with NEPA requirements"). It is puzzling, then, that Plaintiffs spend several pages of their opposition arguing about Interior's NEPA regulations without articulating any coherent legal basis for finding the ROD and FEIS *ultra vires*. Plaintiffs state, in quick succession, that Interior's supposed "fail[ure] to adopt its own regulations implementing NEPA . . . was not 'a permissible exercise of its own rulemaking authority' under NEPA," but also that Interior erred because it "did not apply its own NEPA regulations." *Id.* at 9, 11-13. It is unclear whether Plaintiffs think Interior failed to follow some supposed statutory obligation to promulgate NEPA regulations, think Interior promulgated legally deficient regulations, or think that Interior failed to follow duly promulgated regulations. What is clear is that this argument has nothing to do with constitutional separation of powers principles. And all three arguments are legally and factually incorrect, in any event.[2]

The argument appears to be based solely on another fundamental misreading of *Marin Audubon*. According to Plaintiffs, *Marin Audubon* held that Interior "failed to promulgate its own binding NEPA regulations" and that Interior "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." Opp'n 3 (alteration in original) (citing *Marin Audubon*, 121 F.4th at 915). That is not correct. As we explained in our opening brief, the panel majority in *Marin Audubon* considered whether CEQ's regulations could become binding "[i]f an agency adopts CEQ's rules or incorporates them by reference into its NEPA regulations," and whether that would "be a permissible exercise of [the agency's] own rulemaking authority." Fed. Defs.' Br. 18 (quoting *Marin Audubon*, 121 F.4th at 914). But it did not resolve that question because it found that the agencies had not adopted CEQ's regulations. *Id.* The panel did not discuss any freestanding obligation that agencies adopt NEPA regulations, nor find any agency's regulations independently invalid. *Marin Audubon*, 121 F.4th at 914. And Plaintiffs do not identify any such legal obligation, much less one grounded in separation of powers principles on which Claim I is based. *See* Opp'n 11-13. The most Plaintiffs can muster is a citation to NEPA's text in 42 U.S.C.

[2] As we explained in our opening brief, Plaintiffs are wrong in continuing to assert that Interior has "acknowledge[d]" that its regulations are not a permissible exercise of rulemaking authority. Fed. Defs.' Br. 18-19 (citation omitted).

§ 4332(2)(B), *id.* at 12, but that provision merely directs agencies to consult with CEQ to "identify and develop methods and procedures" for considering "environmental amenities and values." 42 U.S.C. § 4332(2)(B). It does not provide any support for the convoluted argument Plaintiffs offer here.

C. Even if Plaintiffs had established a violation (they have not), vacatur is improper.

As explained above, Plaintiffs fail to demonstrate that any aspect of Interior's ROD or FEIS violated the constitutional separation of powers principles on which Claim I is based. But even if Plaintiffs had established that Interior incorrectly described CEQ's regulations as binding (they have not), that still would not justify vacatur. Any such error would undoubtedly be harmless, as Interior already explained that, "[t]o the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations." CC-026839 n.1.

"Not every error in an EIS requires 'a court to vacate the agency's ultimate approval of a project.'" *Appalachian Voices*, 139 F.4th at 928 (Hendersen, J., concurring) (quoting *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 185 (2025)). The APA requires courts to take "due account . . . of the rule of prejudicial error." 5 U.S.C. § 706. Here, Interior has already made clear that it would have followed CEQ's regulations whether or not they were binding. CC-026839 n.1. "A remand under th[ese] circumstances 'would be an idle and useless formality' that 'convert[s] judicial review of agency action into a ping-pong game." *Appalachian Voices*, 139 F.4th 928 (Hendersen, J., concurring) (alteration in original) (citing *Morgan Stanley Capital Grp. Inc. v. Pub. Util Dist. No. 1*, 554 U.S. 527, 544–45, (2008)).

II. Interior complied with NEPA.

As we demonstrated in our opening brief, Interior's NEPA review was thorough, its consultation extensive, and its final decision well-supported. Fed. Defs.' Br. 19-29. Interior's decisions about the scope of its consultation, and about the "depth and breadth of its inquiry" under NEPA fall well within the "broad zone of reasonableness" afforded to agencies. *See Seven Cnty.*, 605 U.S. at 183. Interior's analysis and conclusions in the FEIS are entitled to "substantial deference," *id.*, and Plaintiffs offer no sound basis on which the Court could find any aspect of the FEIS arbitrary or capricious. The Court should therefore grant summary judgment for Defendants on Claims II and VII.

A. Plaintiffs have not established any consultation-related NEPA violation.

The administrative record in this case demonstrates, conclusively, that Interior consulted with Plaintiffs throughout its decisionmaking process. *See* Fed. Defs.' Br. 24-26. Interior officials met with Plaintiffs well over a dozen times. *See id.* at 24-25 n.10; Coquille Cross Mot. for Summ. J. and Opp'n to Pls.' Mot. for Summ. J. ("Coquille Br.") 5 n.1, Dkt. No. 82. Each Plaintiff participated actively in the NEPA process. Fed. Defs. Br. 25 nn.11-13. And Interior considered the effects of the project on Plaintiffs and documented that analysis in the FEIS. *Id.* at 26. Interior's consultation here well exceeds any legal obligation imposed by NEPA.

In attempting to show otherwise, Plaintiffs invent a substantive consultation obligation that is not present in NEPA's text. Plaintiffs now claim that NEPA entitled them to "real consultation," which they were entitled to receive "in the weeks before [Interior] issued its final decision in this case." Opp'n 41. But that requirement—"real" consultation in the final weeks before a decision is rendered—is nowhere in NEPA's text (nor Interior's regulations and internal policies). Indeed, not one of Plaintiffs' cited sources contains a substantive consultation requirement, much less the requirement Plaintiffs assert here.[3]

[3] In support of their asserted substantive right to consultation, Plaintiffs cite the following:

In their opposition, Plaintiffs repeatedly assert standards and obligations that do not exist in NEPA or any other source of law. For instance, Plaintiffs again assert that "NEPA expressly directs [Interior] and other agencies to also analyze the 'economic justice' effects." Opp'n 37. But the single page of the FEIS Plaintiffs cite, CC-026311, does not contain the phrase "economic justice" at all, much less assert that NEPA requires its consideration.[4] Nor does anything

(i) Interior's now-rescinded regulation previously codified at 43 C.F.R. § 46.155. But that regulation merely directed Interior to "whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments." It did not mandate any specific consultation and left Interior wide latitude to conduct consultation "whenever possible."

(ii) NEPA's declaration of policy at 42 U.S.C. § 4331(a), which "do[es] not create substantive or enforceable rights." *Phoenix Herpetological Soc'y, Inc. v. U.S. Fish & Wildlife Serv.*, No. 17-CV-02584 (APM), 2020 WL 3035037, at *9 (D.D.C. June 5, 2020) (*quoting Bear Valley Mut. Water Co. v. Jewell*, 790 F.3d 977, 987 (9th Cir. 2015)) , *aff'd*, 998 F.3d 999 (D.C. Cir. 2021); *see also* Fed. Defs.' Br. 23-24. And regardless, the policy statement merely declares the "importance of restoring and maintaining environmental quality" "in cooperation with State and local governments" but in no way mandates specific consultation obligations. 42 U.S.C. § 4331(a).

(iii) Interior's BIA NEPA Guidebook and Department Manual. As we have explained, those internal guidance documents are not enforceable rules. Fed. Defs.' Br. 24 n.9. But regardless, Section 2.3 of the Guidebook does not require any particular form of consultation, much less mandate specific actions in the weeks before a decision is rendered. Likewise, Section 4.4 of the Department Manual states a policy that Interior "make good-faith efforts" to consult Tribes and to "seek consensus," but does not mandate any specific consultation. 512 DM 4 § 4.4, *available at* https://www.doi.gov/document-library/departmental-manual/512-dm-4-department-interior-policy-consultation-indian-0.

[4] To the extent Plaintiffs are referring to the FEIS's statement that "[w]ithout confidential and proprietary information . . . the environmental justice impact on governmental and social services cannot be determined," that sentence does not assert any NEPA requirement concerning "environmental" or "economic justice." In fact, that sentence appears in the section of the FEIS that responds to comments concerning gaming substitution effects. CC-026309. In summarizing comments Interior received, the FEIS notes that "[s]ome comments stated that substitution effects on tribal casinos would affect tribal government funding and services and is an environmental justice impact." *Id.* Interior began its response to that comment by reiterating that "[t]he issue for consideration under NEPA is whether competitive effects will result in significant environmental consequences." CC-025310. Nothing in that section of the FEIS could be plausibly construed as the "admission that NEPA expressly directs [Interior] and other agencies to also analyze 'economic justice' effects" that Plaintiffs assert, Opp.'n. 37.

in Appendix 18 of the BIA NEPA Guidebook require consideration of "economic justice." *See* Dkt. No. 2-2, Ex. 11, App'x 18 at PDF p. 690-727. Appendix 18 provides CEQ's guidance on an executive order that was revoked in January 2025, and that in any event did not mention "economic justice" or discuss consultation obligations. *See* Executive Order 14148, 90 Fed. Reg. 8237 (Jan. 21, 2025). Plaintiffs also claim that the agency "must apply mitigation measures," citing to page 21 of the BIA NEPA Guidebook. Opp'n. 37. But (even setting aside that the Guidebook does not create enforceable rules, *see* Fed. Defs.' Br. 24 n.9) the NEPA guidebook only states that such measures "can be applied" and "may be used"; it nowhere requires them. Dkt. No. 2-2, Ex. 11 at PDF p. 478.

Plaintiffs also fail to offer any support for their argument that Interior failed to fulfill some binding consultation obligation because it supposedly did not respond to each and every comment letter submitted by Tribal governments over a ten-year period. Opp'n. 38. As we have explained, Interior did respond to Plaintiffs' requests for consultation, including in late 2024. Fed. Defs.' Br. 25-26. But regardless, nothing in NEPA's text demands that agencies respond directly to every piece of communication they receive. To the contrary, as the Supreme Court recently reiterated, "NEPA is a procedural cross-check, not a substantive roadblock." *Seven Cnty.*, 605 U.S. at 173.

Unable to establish any consultation-related violation, Plaintiffs next resort to citing an entirely different project that involved a statute not at issue here, as purported evidence of some broader "pattern and practice" of failing to consult. Opp'n. 39 (citing *Federated Indians of Graton Rancheria v. U.S. Dep't of the Interior*, No. 24-cv-08582-RFL, 2025 WL 2522376 (N.D. Cal. Sep. 2, 2025)). That case dealt primarily with the National Historic Preservation Act, which imposes entirely different consultation requirements on federal agencies than anything in NEPA.

And, in any event, Plaintiffs cannot boot strap their claims here by relying on an entirely different project, with different facts, decided primarily on a different legal basis.

At bottom, Plaintiffs fail to show that their extensive consultation and participation here was insufficient under NEPA or any other legal requirement. Far from mandating specific consultation procedures, "NEPA imposes no substantive environmental obligations or restrictions" and "does not require the agency to weigh environmental consequences in any particular way." *Seven Cnty.*, 605 U.S. at 173. That makes good sense given that "[t]he goal of [NEPA] is to inform agency decisionmaking, not paralyze it." *Id.* There can be no doubt here that, after numerous meetings, comments, letters, and telephone calls with Plaintiffs over the course of its decisionmaking process, Interior was well informed of Plaintiffs' views on Coquille's application. Interior documented its consideration of the effects of its action, including to Plaintiffs, in the FEIS. *See* Fed. Defs.' Br. 26. That is all that NEPA requires.

B. Plaintiffs fail to show that any other aspect of Interior's NEPA analysis was arbitrary or capricious.

Plaintiffs' opposition repeats its argument that the FEIS violates NEPA because it "relies on stale and outdated reports." Opp'n. 42-45. But as we have explained, Interior considered changed circumstances between when it published the Draft EIS and the FEIS, identified those aspects of the Draft EIS that should be updated, and revised its analysis accordingly. Fed. Defs.' Br. 20-21 (citing CC-026297). As Interior explained in the FEIS, "[w]hile new information has been presented, the information has not resulted in substantial changes in the EIS's conclusions regarding the environmental impacts of the Proposed Action." CC-026297. That is precisely the type of "fact-dependent, context-specific" determination to which "[c]ourts should afford substantial deference." *Seven Cnty.*, 605 U.S. at 183.[5]

Plaintiffs do not even attempt to demonstrate that Interior's conclusion was arbitrary or capricious. Instead, Plaintiffs state that, "[e]ven accepting . . . that these changed environmental circumstances do not 'render[] any aspect of [Interior's] NEPA analysis arbitrary,'" the mere fact of allegedly changed economic and socioeconomic circumstances "demonstrated [Interior's] failure to take a 'hard look' at the environmental justice impacts of its final decision." Opp'n. 42-43 (citation omitted). That is wrong. Setting aside that NEPA does not expressly require consideration of environmental justice impacts, *see* Fed. Defs.' Br. 27-28, Plaintiffs are wrong about the content of Interior's FEIS and about the legal standard they must meet to succeed on their NEPA claim.

First, the record demonstrates that Interior considered environmental justice impacts of the proposed action at length—a point we raised on our opening brief and that Plaintiffs fail to engage with in their opposition. *See id.* at 28-29 (citing CC-026080 - CC-026092; CC-026151; CC-026163; CC-026166- 67; CC-026170). And, as discussed above, the record demonstrates that Interior considered changed circumstances before issuing its decision here. CC-026297; Fed. Defs.' Br. 20-21.

Second, Plaintiffs are wrong that they can succeed on their NEPA claim by flyspecking one or two data sources cited in the FEIS without showing that any aspect of Interior's decision was arbitrary or capricious. It is black letter law that, in APA cases like this one, courts may set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §§ 702, 706(2)(A). Thus, in a NEPA case, "[t]he ultimate question

[5] Plaintiffs cite *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), in an apparent attempt to avoid the deference Interior is owed here. But as the Supreme Court explained in *Seven County*, *Loper Bright* held that "judicial review of the agency's [statutory] interpretation is *de novo*." *Seven Cnty.*, 605 U.S. at 179. But "[j]udicial deference in NEPA cases extends to an agency's determination of what details are relevant in an EIS." *Id.* at 169.

is not whether an EIS in and of itself is inadequate, but whether the agency's final decision was reasonable and reasonably explained." *Seven Cnty.*, 605 U.S. at 184-85.

Here, Plaintiffs have failed to demonstrate any inadequacy in the FEIS, much less that Interior's final decision in the ROD was arbitrary or capricious. The Court should therefore grant summary judgment for Defendants on Claims II and VII.

III. Interior reasonably concluded that the Medford parcel satisfies IGRA's "restored lands" exception.

Interior properly analyzed Coquille's application under the restored lands exception, and Plaintiffs' opposition fails to demonstrate otherwise. As outlined in detail in Federal Defendants' opening brief, Interior considered Coquille's application to take land into trust for gaming under the restored lands exception of IGRA. 25 U.S.C. § 2719(b)(1)(B)(iii). Under section 292.11(a) of Interior's regulations implementing IGRA, a parcel may qualify as restored lands if "(1) [t]he legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area," or (2) "must meet the requirements of § 292.12." 25 C.F.R. § 292.11(a). Section 292.12, in turn, requires a tribe to demonstrate a modern, historical, and temporal connection to the newly acquired lands. *Id.* at § 292.12.

The Coquille Restoration Act ("CRA") authorized the Secretary to "accept any additional acreage in the Tribe's service area pursuant to his authority under the [IRA]." Pub. L. No. 101-42, § 5(a), 103 Stat. 91 (1989). Coquille's "service area" includes "Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon." *Id.* § 2(5). The Medford parcel is located in Jackson County. CC-025801. Accordingly, Interior determined that the Medford parcel satisfied the restored lands criteria under section 292.11(a) because the CRA plainly "authorizes the Secretary to take land into trust for the benefit of the tribe" within that specific geographic area. CC-026801-02. Interior's analysis was straightforward, sound, and grounded in the CRA's plain text.

Plaintiffs do not demonstrate that this decision was arbitrary or capricious. Instead, Plaintiffs offer a convoluted argument that lacks support in the statutory text and cases Plaintiffs cite. Plaintiffs continue to argue that the CRA's text authorizing Interior to accept land in the Tribe's service area into trust "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." Opp'n. 28. But as explained in Federal Defendants' opening brief, this interpretation of the CRA is contrary to the plain text of the statute. Fed. Defs.' Br. 38-39. "When Congress has wanted to limit the geographical range in which a restored tribe's reservation can be located," thereby limiting the tribe's gaming eligibility, "it has done so by specifying a particular tract of land as the restored tribes' reservation." *City of Roseville v. Norton*, 348 F.3d 1020, 1031 (D.C. Cir. 2003). Congress did not do so here.

In attempting to show otherwise, Plaintiffs rely on a misreading of this Court's decision in *City of Roseville v. Norton*, 219 F. Supp. 2d 130 (D.D.C. 2002). Opp. 26-27. Plaintiffs pluck isolated language from that case out of context in a failed attempt to show that this Court has previously rejected the reasoning Interior employed here. *Id.* Plaintiffs are wrong. Judge Sullivan's statement in *City of Roseville* that Interior's authority to accept acreage into trust in a Tribe's service area "is limited by the provisions of the IRA" was made in response to the plaintiffs' argument in that case that the Auburn Indian Restoration Act was an unconstitutional delegation of Congressional power—an argument that is not at issue here. *Id.* at 154-55. Moreover, Plaintiffs ignore the D.C. Circuit's unambiguous statement that the term "restoration" for purposes of IGRA can "readily be construed to include lands acquired pursuant to the restoration statute . . . from within the restored tribe's service area." *City of Roseville*, 348 F.3d at 1026; *see also* Coquille Br. 27. Plaintiffs' highly restrictive interpretation of the statute is not grounded in the text and defies D.C. Circuit precedent.

Plaintiffs are also wrong that the CRA's reference to Interior's "authority under the [IRA]," Pub. L. No. 101-42, § 5(a), somehow means that only the IRA—not the CRA—applies. That argument defies common sense and is not a plausible reading of the text. Plaintiffs do not explain how the CRA's reference to Interior's broad discretionary authority to take land into trust for tribes under the IRA somehow invalidates the CRA's more focused and specific authority to acquire land within Coquille's service area as part of Coquille's reservation.

Plaintiffs' opposition next claim that Interior's restored lands determination is inconsistent with the agency's position in numerous other cases. But Plaintiffs misread these opinions. First, *Nebraska ex rel. Bruning* and *City of Council Bluffs* both involve the Ponca Restoration Act, which authorizes Interior to take land into trust in Knox and Boyd counties. Pub. L. No. 101-484, § 4(c), 104 Stat. 1167, 1167-68 (1990). *Nebraska ex rel. Bruning* remanded to Interior the decision of whether the restoration act allowed lands outside Knox and Boyd counties to be taken into trust under the restored lands exception. *Nebraska ex rel. Bruning v. U.S. Dep't of Interior*, 625 F.3d 501, 513 (8th Cir. 2010). Interior determined, and the court in *City of Council Bluffs* agreed, that the restoration act does not prohibit Interior from taking lands outside of Knox and Boyd counties into trust for the tribe for purposes of gaming. *City of Council Bluffs, Iowa v. U.S. Dep't of Interior*, 11 F.4th 852, 860 (8th Cir. 2021). And *Easten Band of Cherokee Indians* confirms that section 292.11(a)(1) and (2) are not mutually exclusive. *Easten Band of Cherokee Indians v. U.S. Dep't of Interior*, 534 F.Supp.3d 86, 111. If a tribe is unable to show that its statutory language authorizes Interior to take a parcel into trust under 292.11(a)(1), the tribe may still attempt to satisfy the restored lands exception under 292.11(a)(2) by demonstrating a modern, historical, and temporal connection to the land. *Id.*

None of these cases suggest that lands within a tribe's service area may not qualify as restored lands under section 292.11(a)(1), or that Interior interpreted such. Indeed, in all these cases, the parcel at issue was not located within any region named in the tribes' restoration act whatsoever. And Plaintiffs do not point to a single case in which Interior required a tribe to satisfy a modern, temporal, and historical connection to land within a region named, by Congress, in its restoration act. Interior's decision does not contradict these opinions.

Next, Plaintiffs assert that Interior's 2020 decision did not interpret the CRA "to authorize [Interior] to permit gaming on the Medford parcel under IGRA's restored lands exception at all." Opp'n 29-30. But Interior's decision to deny Coquille's initial application in 2020 was made pursuant to the IRA, not IGRA. CC-020055, CC-020062; *see also* Fed. Defs.' Br. 32-34 (discussing Interior's 2020 decision in detail). In 2020, Interior did not evaluate whether the Medford parcel could qualify as restored lands under IGRA or interpret the CRA for purposes of the restored lands exception. Interior's application of section 292.11(a)(1) to the Medford parcel is not inconsistent with its previous determination in 2020.

Finally, Plaintiffs argue that "[Interior's] interpretation of the CRA and § 292.11(a)(1) conflicts with Congress's clear purpose and intent in passing IGRA and the CRA." Opp'n. 31. This argument fails because Plaintiffs' opposition does not articulate any inconsistencies between Interior's decision and the statute. Plaintiffs appear to suggest that Interior's decision violates the statutory purpose of IGRA because Coquille did not show a modern, historical, or temporal connection to the Medford parcel. Opp'n 32. But (1) IGRA does not itself require a tribe to satisfy historical, temporal, and cultural connections to land it wishes to qualify as "restored;" and (2) these connection-based requirements stem from Interior's own implementing regulations, which do not apply to the circumstances here. 25 C.F.R. §§ 292.11(a), 292.12. As discussed above, 292.11(a) applies and does not require Coquille to satisfy a connections analysis. *Id.* § 292.11(a). Plaintiffs do not argue that Interior's regulations themselves violate IGRA.

As for the CRA, Plaintiffs argue that Interior's decision is contrary to the CRA because "Congress only ever intended for land in Coquille's ancestral territory, Coos and Curry Counties, to constitute restored lands." Opp'n. 31. But Plaintiffs' interpretation is contrary to the statutory language and purpose. "IGRA is designed to promote the economic viability of Indian Tribes, and [the tribe's restoration statute]," here the CRA, "focuses on ensuring the same." *City of Roseville*, 348 F.3d at 1032. And the CRA's plain language authorizes Interior to take land within Jackson County into trust for Coquille. If Congress intended to limit Coquille's ability to game on lands within its designated service area, it could have done so. *City of Council Bluffs v. U.S. Dep't of Interior*, 11 F. 4th 852, 859 (8th Cir. 2021) ("Congress has shown that it knows how to limit a tribe's ability to conduct gaming on its land when it wishes to do so."). Interior's decision is not contradictory to IGRA or its implementing regulations, nor does it conflict with the CRA.

All of Plaintiffs' arguments challenging Interior's IGRA determination fall short. Summary Judgment on Claim III should be granted in Federal Defendants' favor.

IV. Interior complied with the IRA.

Plaintiffs also do not demonstrate that Interior's analysis under the IRA was insufficient, or that the agency's decision to take the parcel into trust diminished Plaintiffs' privileges and immunities. Therefore, summary judgment should be granted in Federal Defendants' favor on Claims IV and V.

A. <u>Interior gave great scrutiny to state and local concerns relative to Coquille's anticipated benefits of the trust acquisition.</u>

Plaintiffs challenge Interior's consideration of two regulatory factors under the IRA, arguing (1) Interior did not adequately consider Coquille's need for the Medford parcel to be taken into trust; and (2) Interior did not give sufficient weight to state and local concerns as required under section 151.11(b). Both of these arguments are easily disproven by the record.

First, Plaintiffs' opposition argues that the information used to evaluate Coquille's need for the parcel was outdated and therefore inadequate. Opp'n. 19-20. But Interior continually reevaluated Coquille's need for the parcel to be taken into trust and determined that Coquille continued to demonstrate significant economic need. CC-025996 (noting that, as of 2023, Coquille's budgetary needs continued to exceed incoming revenue); CC-025996-97 (finding that taking the Medford parcel into trust would provide sustainable revenue in the face of Coquille's growing population and budgetary needs). Interior concluded that Coquille established a substantial need for the Medford parcel to be taken into trust. CC-025997; *see also* Fed. Defs.' Br. 30-32. Interior is required "to examine all relevant factors and record evidence, and to articulate a reasoned explanation for its decision." *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017). The record shows that Interior more than did so here.

Plaintiffs disagree, arguing that Interior should have confirmed the projections in the 2013 Unmet Needs Report—even where Interior identified that Coquille's need continued to exceed revenue, CC-025996 —or explained why Coquille continued to anticipate needing an additional $300 million through 2035. Opp'n. 20. But these arguments go beyond a Court's review under the APA. "[T]he only role for the court is to 'assure that the agency has given reasoned consideration to all the material facts and issues,'" *Southern Airways Express, LLC v. U.S. Dep't of Transportation*, 159 F.4th 50, 61-62 (D.C. Cir. 2025) (citation omitted), not to scrutinize each estimate used in the agency's analysis. And as Interior noted for purposes of its NEPA analysis, "the preparation of revised analyses to evaluate effects caused by the passage of time could perpetuate a continual cycle of document revisions." CC-026298. The same is true for the agency's analysis of Coquille's budgetary needs. Interior was not required to conduct the exhaustive, perpetual review of every piece of evidence provided, as Plaintiffs appear to suggest here. Interior continued to reevaluate Coquille's need over time, considered all information before it, and articulated a reasoned explanation for its conclusion that Coquille demonstrated sufficient need.

Second, the record demonstrates that Interior gave great weight to the concerns raised by state and local governments. 25 C.F.R. § 151.11(b). As explained in Federal Defendants' opening brief, Interior responded to state and local concerns raised during the public comment period. CC-026312-22.[6] The agency evaluated the concerns raised and determined that local impacts would be mitigated or entirely resolved. CC-026803-CC-026809. And while Plaintiffs argue that Interior's decision did not address concerns raised previously by former Oregon Governors, Opp'n. 23, these concerns are also addressed in the record. For example, Interior recognized that "three Governors who have held office during the decade-long pendency of this application expressed concern with any further expansion of Tribal gaming" within the State. CC-026806. Interior then noted that "those three Governors also presided over significant expansions in Oregon State Lottery gaming including into mobile sports betting." *Id.* After reviewing all materials presented, Interior determined that Coquille's need for the Medford parcel outweighed state and local impacts which the agency deemed to be addressed, mitigated, or resolved. CC-026803-CC-026809. Interior provided a "reasoned consideration" of the materials presented and all relevant factors, as

[6] The FEIS and ROD received and responded to comments from multiple government entities, including the City of Medford, State of California – Office of the Governor, Jackson County, and several members of the Oregon House of Representatives. *See e.g.,* CC-26290-CC26295.

required. *See Southern Airways Express, LLC*, 159 F.4th at 61-62 (finding an agency's reasoning sufficient even where it did not articulate precisely how it weighed the requisite factors).

Plaintiffs argue that Interior did not give a "reasoned analysis" to explain its reversal of the 2020 decision. Opp'n. 24. But this is addressed by the record. The 2020 decision identified a concern that local governments would still be required to provide services to the site but would lose beneficial tax revenue. CC-020053. Interior found that these concerns had been resolved, both through Coquille's subsequent agreement with the City of Medford and additional analysis of tax revenue in Jackson County. CC-026806-CC-026807. The APA requires nothing more. *See State Farm,* 463 U.S. at 43; *Southern Airways Express, LLC*, 159 F.4th at 61-62. Interior considered and carefully weighed all relevant factors in the 151.11 regulations, as evidenced in the record. Plaintiffs fail to show otherwise. The Court should enter summary judgment in Federal Defendants' favor on Claim IV.

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

Summary judgment should also be granted on claims IV and V because approving Coquille's application for the Medford parcel under the restored lands exception did not "enhance[], or diminish[] the privileges and immunities available to the Indian Tribe relative to other federally recognized tribes." 25 U.S.C. § 5123(f). And nothing in Plaintiffs' opposition would suggest otherwise. Plaintiffs do not argue that they were restored to federal recognition under a similarly structured statute. Nor do they claim to have been denied gaming rights on newly acquired, restored lands. And Plaintiffs do not show that Interior has denied other applications based on what Plaintiffs refer to as a statute's "IRA affirmation language." Opp'n. 25. There is no indication whatsoever that Interior failed to "apply the same legal rule in the same manner." *Native Vill. Of Eklutna v. U.S. Dep't of Interior*, No. 19-cv-2388 (DLF), 2021 WL 4306110, *7 (D.D.C. Sept. 22, 2021). Plaintiffs argue instead that Interior changed its interpretation of its own rule, which diminishes Plaintiffs' privileges relative to Coquille. But Interior's interpretation is entirely consistent with past practice.

Plaintiffs cite to *Eastern Band of Cherokee Indians* and *City of Council Bluffs* for the proposition that Interior "reversed course here" in applying its own regulations. Opp'n. 34. But, as discussed above, these cases do not involve an analysis of lands located within a tribe's "service area," or indeed lands named in the tribes' restoration acts at all. These cases merely illustrate that a tribe restored to federal recognition by statute may still satisfy the restored lands exception even if its restoration act does not authorize Interior to take the land into trust. The tribe may satisfy the exception by showing a modern, temporal, and historical connection to the land. That is not the basis for the decision here. The CRA explicitly authorizes Interior to take land into trust within Jackson County, where the Medford parcel is located. Interior's decision is not a reversal of past practice, it is simply an entirely different set of factual circumstances.

Interior's decision also does not conflict with its proper determination in 2020. *See* Opp'n. 35. Interior's 2020 decision did not analyze the Medford parcel's eligibility under the restored lands exception. At that time, Coquille did not satisfy the requirements of the IRA and an IGRA analysis was no longer necessary. *See* Fed. Defs.' Br. 35 (describing Interior's 2020 decision made pursuant to the IRA). Once Interior's IRA-related concerns were resolved, Interior proceeded to analyze Coquille's application under the restored lands exception. *Id.* Interior did not apply any new interpretation of its IGRA regulations, and Plaintiffs provide no other evidence to suggest that Interior's decision "enhance[d], or diminish[ed] the privileges and immunities" of Plaintiffs relative to others. 25 U.S.C. § 5123(f). Summary judgment should be entered in Federal Defendants' favor on Claim V.[7]

CONCLUSION

Plaintiffs' claims fail at each step of their analysis. Because Plaintiffs cannot show that Interior lacked statutory authority to act on Coquille's application in the ROD and to issue the FEIS, they cannot succeed on Claim I. Plaintiffs also have not established that Interior's consultation was inadequate under NEPA or any other applicable law, and thus they cannot succeed on Claim II. Additionally, because Interior's conclusion that the Medford parcel satisfies IGRA's restored lands exception was reasonable and well-supported, Plaintiffs cannot succeed on Claim III. Interior also considered and carefully weighed all relevant factors in its IRA regulations, and because its decision in the ROD did not diminish any privileges and immunities available to Plaintiffs, Plaintiffs cannot succeed on Claim IV or V. Having failed to move for summary judgment on Claim VI, Plaintiffs cannot succeed on that claim, either. And finally, Plaintiffs fail to establish that any other aspect of the FEIS was arbitrary or capricious, and thus cannot succeed on Claim VII. The Court should enter summary judgment for Federal Defendants on all claims in the Complaint.

Respectfully submitted this 22nd day of December, 2025.

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[7] Plaintiffs did not argue, and thus abandoned, Claim VI. Thus, the Court should enter summary judgment for Federal Defendants on that claim as well.

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