**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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

**DEFENDANT-INTERVENOR COQUILLE INDIAN TRIBE'S**
**REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Interior's decision to acquire the Medford Parcel in trust for the Coquille Indian Tribe was reasonable, reasonably explained, and based on correct interpretations of all relevant sources of law. It was informed by a report addressing the trust acquisition's anticipated environmental effects, as required by NEPA, as well as extensive consultation with a range of stakeholders, including Plaintiff tribes.

Plaintiffs cannot establish any basis for vacating the ROD. Their latest brief largely retreads the same meritless arguments from their prior submissions, failing to respond to—or even acknowledge—Coquille's contrary arguments and citations to binding precedent.

As to the threshold issues that prevent this Court from even reaching the merits of Plaintiffs' three NEPA claims, Plaintiffs *still* have not cited any record evidence of environmental injuries that would put them within NEPA's zone of interests, so they lack a cause of action under the statute. On the merits, Plaintiffs spend the bulk of their brief doubling down on their fundamental misreading of the D.C. Circuit's decision in *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024)—a misreading that a majority of the en banc D.C. Circuit and multiple subsequent panel opinions have expressly rejected. Nor can Plaintiffs establish any prejudice from the supposed procedural error of following the NEPA regulations at issue; to the contrary, Interior expressly stated that it would have followed the exact same procedures whether the regulations were mandatory or not. Plaintiffs then turn back to their claim that NEPA entitled them to more consultation. But having conceded that they met with Interior at least *two dozen* times, Plaintiffs are forced to cite unhelpful cases about a different statute altogether with easily distinguishable facts. And they do not even attempt to show how one more meeting could have changed anyone at Interior's mind.

On their IGRA claim, Plaintiffs misconstrue the D.C. Circuit's controlling decision in *City* *of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003), inventing from whole cloth a bizarre construction of the Coquille Restoration Act that they hope will distinguish this case. Perhaps sensing that this gambit will fail, Plaintiffs resurrect a previously abandoned reading of the Coquille Restoration Act that, in any event, ignores critical statutory text.

Plaintiffs fare no better on their remaining claims. As to their claim regarding departmental regulations, Plaintiffs simply disregard the record. On their privileges-and-immunities claim under the IRA, Plaintiffs continue to insist that inapplicable precedent supports them. And in the end, Plaintiffs fail meaningfully to join issue on their disparate-treatment claim.

For these reasons, this Court should deny Plaintiffs' motion for summary judgment in full and grant summary judgment to Defendants on all claims.

## ARGUMENT

As Coquille explained in its motion for summary judgment, Plaintiffs' attempts to invalidate the trust acquisition are meritless. The administrative record provides ample support for Interior's decision, which was both reasonable and reasonably explained, and Interior correctly interpreted each relevant source of law. Plaintiffs' arguments in opposition do not move the needle. Plaintiffs fail to meaningfully engage with Defendants' arguments, the factual record, or applicable law. Defendants are therefore entitled to summary judgment.

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

Each of Plaintiffs' three NEPA claims fails several times over. Not only do Plaintiffs lack a cause of action under the statute, but they cannot show either the agency irrationality or the prejudice that *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025), requires for a successful challenge under NEPA.

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

As Coquille has explained, Plaintiffs cannot assert a claim under NEPA because they are not within that statute's zone of interests. *See* Coquille MSJ Br. 9–11, ECF No. 83. Plaintiffs bring this suit to vindicate *economic* harms to their gaming enterprises. But "economic interests simply do not fall within [NEPA's] zone." *Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 274 (D.C. Cir. 2015). This is a basis for rejecting each of Plaintiffs' NEPA claims (Counts I, II, and VII).

Relegated to a footnote, Plaintiffs hazard two responses, neither persuasive. Plfs. MSJ Reply 10–11 n.8, ECF No. 85. First, Plaintiffs claim that they need not fall within NEPA's zone of interests because their claims do not arise under NEPA (a surprising argument given that the complaint pleads three claims under NEPA and the statute is mentioned over 60 times in Plaintiffs' principal brief). *See id.* Instead, Plaintiffs insist, their claims arise under "constitutional separation of powers principles" and the APA. *Id.* As to the former response, federal agency action cannot be challenged under constitutional principles in the abstract. *See NRC v. Texas*, 605 U.S. 665, 681–82 (2025) (noting the limits on "ultra vires review" where APA review is available); *Glob. Health Council v. Trump*, 153 F.4th 1, 20–21 (D.C. Cir. 2025). As to the latter, the fact that this is an APA suit does not absolve Plaintiffs from the zone-of-interests requirement, which is a "limitation on the cause of action for judicial review conferred by the [APA]." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014). Put otherwise, to plead an APA claim that the agency failed to comply with NEPA, Plaintiffs must demonstrate that they fall within NEPA's zone of interests.

Plaintiffs do not and cannot make that showing. Plaintiffs marshal no record evidence or affidavits showing how upgrading a bowling alley located on a two-acre plot scores of miles from

Plaintiffs' reservations will cause them to suffer environmental harm. *See* Plfs. MSJ Reply 11 n.8. The two cases Plaintiffs cite do not help, but rather parrot the blackletter rules that parties suffering environmental harm have Article III standing, *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 686–87 (1973), and that plaintiffs who have suffered an environmental injury (in addition to economic injury) fall within NEPA's zone of interests, *see Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 155 (2010). Applying Plaintiffs' own cases, Plaintiffs do not fall within NEPA's zone of interests. Each of Plaintiffs' three NEPA claims fails on this basis alone.

**B. Plaintiffs' NEPA Claims Fail on the Merits.**

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

As to the merits, Plaintiffs spend much of their brief belaboring their argument that under *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024), Interior's action is per se invalid because it followed nonbinding Council on Environmental Quality (CEQ) regulations. Plfs. MSJ Reply 3–18. But *Marin Audubon* only *insulated* certain NEPA errors from judicial review; it did not add to the toolkit of NEPA-based attacks on agency decisionmaking. As Judge Henderson—a member of the panel majority—later described the decision, *Marin Audubon* "rein[ed] in NEPA." *Appalachian Voices v. FERC*, 139 F.4th 903, 926 (D.C. Cir. 2025) (concurring opinion). Accordingly, as a majority of the en banc D.C. Circuit and multiple subsequent panel opinions have recognized, the import of *Marin Audubon* is that agency action cannot be invalidated for failure to follow CEQ regulations. *See Marin Audubon Soc'y v. FAA*, No. 23-1067, 2025 WL 374897, at *1 (D.C. Cir. Jan. 31, 2025) (Srinivasan, C.J., joined by Millett, Pillard, Wilkins, Childs, Pan, and Garcia, JJ., concurring in the denial of rehearing en banc); *Healthy Gulf v. FERC*, 132 F.4th 544, 549 n.1 (D.C. Cir. 2025); *Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 240 n.3 (D.C. Cir. 2025).[1]

Plaintiffs offer shifting responses as to why they are unable to identify a single case vacating agency action on their *Marin Audubon* theory—which, if Plaintiffs' reading of the decision were correct, should have led to the invalidation of scores of agency actions. Plfs. MSJ Reply 9–10, 15–18. Plaintiffs surmise that FERC's reliance on CEQ regulations has not been deemed fatal to its NEPA reviews because FERC only "complied" with the regulations whereas Interior "obeyed" them. *Id.* at 16 (quotation marks omitted). Or perhaps, Plaintiffs suggest, they are the first litigants ever to preserve the issue. *See id.* at 16–17.[2] But Plaintiffs simply misunderstand what everyone else has grasped about *Marin Audubon*: It did not invalidate the agency action at issue due to reliance on CEQ regulations, and it did not suggest that, in the future, other plaintiffs could seek such a remedy.[3]

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[1] Attacking a straw man, Plaintiffs assert that Coquille and Federal Defendants see *Marin Audubon*'s treatment of the CEQ regulations as dicta. Plfs. MSJ Reply 5. No Defendant makes such a claim. The *holding* of *Marin Audubon* (as relevant) is that failure to abide by CEQ regulations during NEPA review is not a basis to invalidate agency action because the CEQ regulations are nonbinding. *See* Coquille MSJ Br. 13.

[2] Specifically, Plaintiffs claim that *Healthy Gulf*, 132 F.4th 544, and *American Whitewater v. FERC*, 125 F.4th 1139 (D.C. Cir. 2025), declined to address *Marin Audubon* because the challenger had not exhausted the issue before the agency. Neither opinion says any such thing.

[3] Plaintiffs repeatedly cite this Court's decision in *Neurelis, Inc. v. Califf*, No. 24-cv-1576, 2025 WL 1010222 (D.D.C. Mar. 19, 2025), as supposedly holding that *Marin Audubon* requires vacatur of all agency decisions resting on NEPA review processes that followed CEQ regulations. *See, e.g.*, Plfs. MSJ Reply 3. *Neurelis* had nothing to do with NEPA and cited *Marin Audubon* for an unrelated point about the propriety of remanding invalid agency action without vacatur. *See Neurelis*, 2025 WL 1010222, at *2.

Plaintiffs also fault Interior for failing to develop a comprehensive set of NEPA regulations, flatly asserting that agencies must undertake environmental review "in accordance with *legally binding* rules and regulations." Plfs. MSJ Reply 9, 11–13. Wishing does not make it so. As Coquille has explained, NEPA does not require agencies to promulgate regulations. *See* Coquille MSJ Br. 14–15. "[A]n agency may weigh environmental consequences as the agency reasonably sees fit." *Seven Cnty.*, 605 U.S. at 173.

Nor can Plaintiffs show prejudice from Interior's supposedly wrongful treatment of CEQ regulations as binding. In issuing the ROD—the final agency action under review—Interior explained that it had elected to follow CEQ's regulations regardless of whether those regulations were binding. *See* CC-26870 n.1. In other words, the agency has already made plain that if made to go back and redo its environmental analysis, it would follow precisely the same procedures. In that circumstance, there can be no prejudice, and remanding for a redo "is a waste of time." *Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 62 (1st Cir. 2001).

Still, Plaintiffs insist, if Interior had developed its own NEPA regulations, it might have differently accounted for "environmental justice" concerns. Plfs. MSJ Reply 14–15.[4] But the statute on which Plaintiffs rely, 42 U.S.C. § 4332(B), simply directs agencies to *consult with CEQ* in developing NEPA procedures; it says nothing about "environmental justice." There is zero

[4] Plaintiffs continue to confuse the prejudice inquiry, which is an element of an APA improper-procedure claim, *see Prohibition Juice Co. v. U.S. FDA*, 45 F.4th 8, 24–25 (D.C. Cir. 2022), and the question whether there is "a serious possibility that [the agency] will be able to reach the same outcome on remand," *Marin Audubon*, 121 F.4th at 918 (internal quotation marks omitted). The latter speaks to whether remand without vacatur is appropriate. *See, e.g.*, Plfs. MSJ Reply 10, 13, 15. At any rate, here there is no doubt that the agency would reach the same result on remand if ordered to redo its NEPA review process because the agency said—back in January, when it issued the ROD—that it would do everything the same.

support for Plaintiffs' speculation that, if only Interior went back and fashioned new NEPA regulations, those regulations would look anything like Plaintiffs' wish list rather than the procedures the agency *said* it would follow.

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

Unable to refute the extensive record "evidence of consultation through 2022," Plfs. MSJ Reply 38 n.29, Plaintiffs now focus their failure-to-consult claim on "the weeks before [Interior] issued its final decision," *id.* at 41. But Plaintiffs' myopic focus on the degree of consultation in this particular period—selected from a decade-plus project-approval process—is unsupported by precedent. And, fatally, Plaintiffs still fail to establish prejudice.

As an initial matter, Plaintiffs concede that they met with Interior personnel at least 24 times regarding Coquille's application, and that Cow Creek alone had at least as many consultation sessions with the federal government as did Coquille itself. *See* Coquille MSJ Br. 5, 19. The record demonstrates that Federal Defendants consulted Plaintiff Tribes throughout the project-approval process, including before and during the year 2022 and again immediately after issuing the FEIS. *See* Plfs. MSJ Reply 38 n.29; Coquille MSJ Br. 5 & nn.1–2, 18–20. Additionally, on February 27, 2023, Plaintiff Cow Creek met with the then-Assistant Secretary–Indian Affairs ("AS-IA") to further discuss Coquille's "application to transfer fee land in Medford, Oregon . . . into trust for gaming purposes." CC-27021. As Coquille has argued, that more than suffices under binding precedent. *See* Coquille MSJ Br. 18–21.

Rather than respond, Plaintiffs point to certain "unanswered comment letters" representing that Interior did not make its personnel available for each and every "request[ed] . . . consultation," and insist that the failure to engage in further consultation "in the weeks before" Interior's issuance of the FEIS and ROD requires vacatur of those agency actions. Plfs. MSJ Reply 38, 41. Plaintiffs conspicuously cite no authority to support their curious proposition that further tribal consultation is required by NEPA in the weeks immediately before Interior issues a final decision. Instead, Plaintiffs attempt to analogize to a recent out-of-circuit district-court decision that—like the other case on which Plaintiffs rely, *Quechuan Tribe*—deals with the distinct consultation requirements of the National Historic Preservation Act ("NHPA"), a statute Plaintiffs never even mention in their summary-judgment brief. Plfs. MSJ Reply 39, 41 (citing *Federated Indians of Graton Rancheria v. U.S. Dep't of Interior*, No. 24-cv-08582, 2025 WL 2522376 (N.D. Cal. Sept. 2, 2025) (*FIGR*), *appeal docketed*, No. 25-5833 (9th Cir. Sept. 16, 2025)). In *FIGR*, Interior determined that no historic properties would be affected *before meeting even once with the tribe*. *See* 2025 WL 2522376 at *5–8. The court held that, under NHPA, that did not constitute adequate consultation regarding the project's impacts on historic properties to which FIGR may attach religious and cultural significance. *See id.* Without further analysis, the court also held that the agency likewise failed to adequately consider impacts on those same cultural resources under NEPA. *See id.* at *9–10. It is unclear what Plaintiffs think they get out of this case. NHPA's consultation requirements—the focus of the *FIGR* court's analysis—are different, and more demanding, than any under NEPA.[5] In any event, in *FIGR*, the agency had *zero* meetings with the tribe before making a determination; Plaintiffs here had at least two dozen.

Plaintiffs also fail to respond to Coquille's point that they cannot show that any alleged consultation error was prejudicial. Vacatur would not be warranted "absent reason to believe" that Interior would "disapprove the project" upon correcting the error. *Seven Cnty.*, 605 U.S. at 185.

[5] Unlike NEPA, NHPA expressly requires tribal consultation. *See* 54 U.S.C. § 302706(b) ("[A] Federal agency *shall consult* with any Indian tribe . . . that attaches religious and cultural significance to property." (emphasis added)). Here, Plaintiffs merely rely on language in Interior's then-applicable NEPA implementing regulations that contemplates tribal consultation "whenever possible." 43 C.F.R. § 46.155, *rescinded by interim final rulemaking*, 90 Fed. Reg. 29,498, 29,504 (July 3, 2025).

Here, Interior was aware of and considered the potential economic impacts on Plaintiffs' existing casinos when it approved the project, s*ee, e.g.*, CC-26151–56 (evaluating potential economic effects of proposed action, including impact on Plaintiffs' casinos), so there is no basis to conclude that further consultation on this issue in the weeks before Interior's final decision would have suddenly caused the agency to change course. Tellingly, Plaintiffs again ignore the fact that, although the agency repeatedly solicited economic analysis from them, *e.g.*, CC-27441–42 (email to Cow Creek dated March 24, 2015), CC-27745–46 (letter to Cow Creek dated July 16, 2015), CC-27648–50 (letter to Cow Creek dated July 17, 2015), Plaintiffs failed to provide the information that they now imagine might have decisively turned the tide in their favor, *see* Coquille MSJ Br. 21–22.

Because Interior engaged in extensive consultation and Plaintiffs have failed to show prejudice from any alleged shortcoming, Defendants are entitled to summary judgment on Count II.

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

Once again, Plaintiffs fail to grapple with *Seven County*'s impact on their claim that alleged deficiencies in the FEIS render Interior's action arbitrary and capricious. They even go so far as to fault Federal Defendants for failing to "expressly acknowledge" the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), Plfs. MSJ Reply 45, apparently suggesting that *Loper Bright* somehow casts doubt on *Seven County*'s subsequent call for deference to an agency's methodologies for conducting NEPA reviews. Not so. As *Seven County* itself explained, *Loper Bright* calls for *de novo* review of an agency's interpretation of a statute, while judicial review of an agency's exercise of discretion granted by a statute—here, the discretion to analyze environmental consequences "as the agency reasonably sees fit"—is conducted under the "deferential arbitrary-and-capricious standard." 605 U.S. at 173, 179–80 (citing *Loper Bright*, 603 U.S. at 391–92).

Faced with this highly deferential standard, Plaintiffs now rest their claim on just two aspects of the FEIS for which, they say, Interior unreasonably declined to update its analysis to incorporate more recent data: Coquille's economic needs and the trust acquisition's economic impact on Plaintiffs. Neither comes close to providing grounds for relief under NEPA. Even setting aside the fact that each of these considerations is economic in nature and thus outside NEPA's scope, *see* Part I.A, *supra*, the record demonstrates that Interior's approach to analyzing each easily falls within "a broad zone of reasonableness." *Seven Cnty.*, 605 U.S. at 183.

*First*, regarding Coquille's economic needs, the record confirms that the unmet needs identified in 2013 persisted throughout the environmental-review process and thus were reasonably considered in the FEIS. *See* Coquille MSJ Br. 24 (citing CC-25280, CC-25863–64). Plaintiffs' only response is to point to two pieces of "evidence" that supposedly render this analysis irrational. Plfs. MSJ Reply 43. The first is the existence of Tribal One, a federally chartered professional-services group owned by Coquille that Plaintiffs seem to contend has generated sufficient revenue to satisfy Coquille's unmet needs. *Id.* But Plaintiffs fail to substantiate this claim with anything beyond their own say-so in comments they submitted in response to the DEIS. *See id.*; *see also* Coquille MSJ Br. 40–41. Moreover, Plaintiffs' claim is false. *See, e.g.*, Coquille MSJ Br. 24; CC-25280, CC-25863–64. It is self-evident that the mere existence of an economic arm of the Tribe does not establish that unmet needs have been met.

The other piece of supposed "evidence" is a statement on Coquille's website about the Tribe's total landholdings, *see* Plfs. MSJ Reply 19 & n.15, 43, which is both outside the administrative record and, in any event, consistent with Interior's analysis in the FEIS. There is no contradiction between the FEIS's reporting that, as of November 2024, "6,434 acres [were] *held in trust* for Coquille," CC-26027, and Coquille's reporting on its website that the Tribe has "regained more than 10,000 acres" of its ancestral lands. Plfs. MSJ Reply 19 (emphasis added and omitted). The former expressly refers to land held *in trust*, while the latter refers to all landholdings, including land held by the Tribe in fee. Indeed, nearly all the acreage differential is attributable to Coquille's 2015 re-acquisition of the Sek-wet-se Forest, which is held in fee simple—and has generated no net revenue for the Tribe to date. *See* Declaration of Kyle ViksneHill, Ex. 1, ¶¶ 4–5.[6] For that reason, even if the Court were to consider the extra-record statement on Coquille's website, it provides no basis to conclude that Interior's analysis of Coquille's persistent unmet economic needs was outdated or inaccurate.

*Second*, regarding the proposed project's economic effects on Plaintiffs, Plaintiffs continue to insist that the agency's acknowledgment that it lacked "confidential and proprietary information specific to the revenues of each tribal casino" evinces the agency's failure to sufficiently consider the economic impact on Plaintiffs' casinos. Plfs. MSJ Reply 43–44. But the only failure here was by Plaintiffs, who ignored the agency's repeated requests to submit economic analyses of impacts on Plaintiffs' casinos—a failure that Coquille has highlighted and Plaintiffs have declined to defend. *See* Coquille MSJ Br. 21–22 (citing CC-27745–46). Surely, interested parties cannot withhold proprietary information requested by the agency and then sandbag the agency in court when it inevitably does not analyze that very information.

[6] Coquille believes the Court should ignore any facts outside the administrative record. If, however, the Court decides to consider Coquille's website as Plaintiffs request (*see* Plfs. MSJ Reply 19 & n.15, 32 n.26, 43), Coquille respectfully asks the Court also to consider the Declaration of Kyle ViksneHill to ensure the completeness and accuracy of the record on this issue.

Because the record amply supports the reasonableness of Interior's environmental review, as documented in the FEIS, Defendants are entitled to summary judgment on Count VII.

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

Plaintiffs cannot overcome binding precedent and applicable regulations confirming that the Medford Parcel is eligible for gaming under IGRA's restored-lands exception. The restored-lands exception permits gaming on 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). In *City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003), the D.C. Circuit held that the term "restoration of lands" in the statute encompasses lands taken into trust pursuant to a restoration statute, regardless of whether the tribe has some prior connection to those lands. *Id.* at 1025–32. Under the Bureau of Indian Affairs regulation, lands qualify for the exception if a restoration act "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." 25 C.F.R. § 292.11(a)(1). Here, the Coquille Restoration Act expressly authorizes the Secretary of the Interior to accept land into trust in the statutorily defined "service area," which includes Jackson County—the site of the Medford Parcel. Pub. L. No. 101-42, §§ 2(5), 5(a), 103 Stat. 91, 91–92 (1989). So the IGRA issue in this case should be open and shut.

Plaintiffs' attempt to distinguish *City of Roseville* is incoherent. The restoration act at issue there—the Auburn Indian Restoration Act ("AIRA")—stated:

> *The Secretary may*[7] *accept* any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary . . . . *The Secretary may accept any additional acreage* in the Tribe's service area pursuant to the authority of the Secretary under the [IRA].

[7] As initially enacted, the AIRA said "shall" here, like the Coquille Restoration Act; it was later amended to say "may." *See* Act of Mar. 29, 1996, Pub. L. No. 104-122, § 1, 110 Stat. 876, 876.

Pub. L. No. 103-434, tit. II, § 204(a), 108 Stat. 4533, 4534 (1994) (emphases added). Compare the Coquille Restoration Act language at issue in this case:

> The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary . . . . *The Secretary may accept any additional acreage* in the Tribe's service area pursuant to his authority under the [IRA].

§ 5(a), 103 Stat. at 92 (emphasis added). In *City of Roseville*, as here, the acquisition at issue was pursuant to language stating that the Secretary "may accept" land in trust, and the D.C. Circuit concluded that meant the lands qualified for gaming under the restored-lands exception.

Plaintiffs try to create daylight between the cases by arguing that, in *City of Roseville*, the acquisition was pursuant to the *first* "may accept" clause, not the parallel *second* "may accept" clause that references the IRA. Plfs. MSJ Reply 26 n.22. From there, Plaintiffs say that the acquisition in *City of Roseville* was pursuant to authority provided only in AIRA, whereas the acquisition here is pursuant to the Secretary's authority under the IRA given the cross-reference in that clause. *Id.* And Plaintiffs go on to claim that here the statutory cross-reference means that the Secretary's acquisition was pursuant *only* to the IRA and *not* to the Coquille Restoration Act at all.

That is not how statutory construction works, and it is not consistent with *City of Roseville*. A cross-reference in a statute does not mean that the referencing statute does not apply. *See Panama R.R. Co. v. Johnson*, 264 U.S. 375, 392 (1924) ("incorporating one statute or system of statutes into another[] . . . serves to bring into the latter all that is fairly covered by the reference"). Both here and in *City of Roseville*, the acquisition was pursuant to *both* a restoration act *and* the

IRA.[8] In any event, *City of Roseville* nowhere suggests that this distinction would matter for purposes of IGRA. The D.C. Circuit there made clear that if a particular geographic area is *mentioned* in the restoration statute, then acquisitions in that area count as restored lands—those are "the lands the Secretary takes into trust to re-establish the tribe's economic viability." 348 F.3d at 1031. Indeed, *City of Roseville* left open the possibility that even lands *not mentioned at all* in the restoration statute might qualify as restored lands, *see id.* at 1025, a position inconsistent with Plaintiffs' view that lands *actually mentioned* in a restoration statute are somehow *not* restored lands. Plaintiffs' view is inconsistent, too, with *City of Roseville*'s direction that the restored-lands exception "be read broadly," with the "Indian canon requir[ing] the court to resolve any doubt in favor of the tribe" for which Interior is acquiring land in trust. *Id.* at 1032; *see also Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (federal statutes should be "construed liberally in favor of the Indians"); *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, 633 F. Supp. 3d 132, 153–54 (D.D.C. 2022) (applying canon in assessing scope of IGRA's restored-lands exception).

As for the regulation, Plaintiffs again advance their inscrutable argument that the word "authorizes" in 25 C.F.R. § 292.11(a)(1) refers only to the first use of the word "may" in the AIRA but not to identical language in other restoration acts likewise authorizing discretionary acquisitions. Plfs. MSJ Reply 27–28. Plaintiffs have not bolstered this point with any new analysis. It remains an implausible construction of the regulatory text, as Coquille previously explained. *See* Coquille MSJ Br. 30.

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[8] It is true that the first "may accept" clause in the AIRA does not reference the IRA, but that is likely just a vestige of the fact that the clause previously stated "shall accept," like the parallel provision of the Coquille Restoration Act. *See* p. 12 & n.7, *supra*.

Perhaps sensing failure under binding law, Plaintiffs' principal maneuver in reply is to resurrect their previously abandoned argument—raised in their preliminary-injunction motion and omitted from their summary-judgment brief—that because the Coquille Restoration Act authorizes discretionary acquisitions "pursuant to [the Secretary's] authority under the [IRA]," the acquisition here cannot be pursuant to the Coquille Restoration Act at all. *See* Plfs. MSJ Reply 27. This argument should have been left on the cutting-room floor.[9] Because the Coquille Restoration Act specifically authorizes the Secretary to acquire land in Jackson County, such an acquisition is made pursuant to the Coquille Restoration Act—just as Interior stated in its decision. *See* CC-26803. That this provision of the Coquille Restoration Act references the IRA may mean that the acquisition is *also* pursuant to the IRA, but it does not mean that the acquisition is *not* pursuant to the Coquille Restoration Act.[10]

To prop up this rediscovered theory, Plaintiffs argue that the key language in the Coquille Restoration Act—"The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the [IRA]," § 5(a), 103 Stat. at 92—does nothing more than "confirm[] that land within Coquille's service area is subject to the IRA, just like any land anywhere." Plfs. MSJ Reply 28. But Section 3(e) of the Restoration Act already provides that the IRA "shall be applicable" to Coquille, thus extending the Secretary's IRA land-into-trust authority to Coquille. 103 Stat. at 92; *see City of Council Bluffs v. U.S. Dep't of the Interior*, 11 F.4th 852, 854

[9] Because this argument was omitted from Plaintiffs' summary-judgment brief and revisited only in their reply brief, this Court should deem it waived. *See, e.g.*, *See, Inc. v. Walsh*, 581 F. Supp. 3d 265, 280 (D.D.C. 2022).

[10] There is nothing unusual about the Coquille Restoration Act's reference to the IRA. In authorizing the Secretary to discretionarily acquire land, Congress sought to incorporate the half-century-old body of interpretation and regulations under the IRA to guide the acquisition process. *See* 25 C.F.R. Part 151. Had the Restoration Act not mentioned the IRA, the Secretary would have had no less authority to acquire the Medford Parcel; but it would have been less clear which procedures would govern that acquisition.

(8th Cir. 2021); *Kelsey v. Pope*, 809 F.3d 849, 852 (6th Cir. 2016). So Plaintiffs' argument devolves to: The discretionary language in Section 5(a) does nothing. That is not a permissible reading. *See City of Roseville*, 348 F.3d at 1028 ("It is generally presumed that Congress does not intend to enact surplusage." (citation omitted)). Under Coquille's reading, this discretionary-acquisition language does critical work: It is the basis on which the lands acquired within Coquille's service area are gaming-eligible under IGRA's restored-lands exception (a point Congress would have well understood, having enacted IGRA just eight months earlier). Coquille's reading is far superior.[11]

Plaintiffs also observe that other tribes have similarly structured restoration statutes that mandate acquisitions in certain areas and authorize discretionary acquisitions in a broader area, but that none of these tribes has gamed pursuant to the restored-lands exception on land acquired in the broader area. Plfs. MSJ Reply 25–26. But Plaintiffs do not point to a single case in which land was acquired in the broader area and the restored-lands exception was determined *not* to apply—because there are no such cases. So this history proves nothing.

Finally, Plaintiffs claim for the first time that Interior took the position in its 2020 denial of Coquille's application that the restored-lands exception was inapplicable, and has now arbitrarily reversed its interpretation of its own regulations. Plfs. MSJ Reply 29–31. This is incorrect.

[11] Plaintiffs argue that drafting history supports their account, Plfs. MSJ Reply 28, but their argument makes no sense. Plaintiffs note that an early draft of the Coquille Restoration Act stated that "[t]he Secretary shall accept real property within the service area for the benefit of the Tribe." *Id.* (quoting H.R. 881, 101st Cong., § 5 (1989) (reproduced at CC-24726)). It is true that Congress ultimately enacted a more nuanced version of this provision that made limited acquisitions in two counties mandatory, made additional acquisitions in five counties discretionary, and specified additional rules for the latter acquisitions. But none of this bears on the applicability of the restored-lands exception, as there is no evidence that anyone in Congress thought that the distinction between mandatory and discretionary acquisitions would affect gaming eligibility. *See* Coquille MSJ Br. 28–29.

The agency in 2020 determined that the IRA (not IGRA) regulations were not satisfied based on the incomplete information available at the time. *See* CC-20062; *see also* CC-26798 (noting 2020 decision was made without "relevant material" needed for "an informed decision"). That the agency *applied* the IRA regulations is not evidence of anything; all agree that discretionary acquisitions pursuant to the Coquille Restoration Act must comply with the IRA. *See* Coquille Restoration Act § 5(a), 103 Stat. at 92. And because the agency relied on the failure to satisfy *IRA* regulations, it had no cause to examine *IGRA's* restored-lands exception at all. Accordingly, the 2020 denial letter did not discuss 25 C.F.R. Part 292. *See* CC-20049–63.[12]

Therefore, Defendants are entitled to summary judgment on Count III.

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

Regarding Interior's compliance with its IRA implementing regulations, Plaintiffs retread the same grounds in reply as in their principal brief and ignore record evidence and binding precedent cited by Coquille to the contrary.

First, as discussed, Plaintiffs continue to claim that Interior "rel[ied] on outdated and inaccurate data," suggesting that the FEIS underreported the acreage of land held in trust by the United States for Coquille by nearly 4,000 acres. Plfs. MSJ Reply 19; *see* CC-26027 (identifying 6,434

[12] Plaintiffs' repeated reliance on *Eastern Band of Cherokee Indians v. United States Department of the Interior*, 534 F. Supp. 3d 86 (D.D.C. 2021), *see* Plfs. MSJ Reply 28–29, 32, is difficult to decipher. The acquisition at issue there was *outside* the geographic area identified by the restoration statute. *See E. Band of Cherokee Indians*, 534 F. Supp. 3d at 107. That is why 25 C.F.R. § 292.12's connections-based test was relevant; it was undisputed that Section 292.11(a)(1), the relevant regulation for Coquille's trust acquisition, could not be satisfied. Plaintiffs also suggest some lesson from the case about "IRA affirming language," Plfs. MSJ Reply 29, but this is also difficult to comprehend because the restoration statute at issue (the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993) had no provision akin to Section 5 of the Coquille Restoration Act. Plaintiffs' reliance on two Eighth Circuit cases involving the Ponca Tribe of Nebraska is similarly misplaced, as both cases concerned a parcel outside the statutorily specified geographic area. *See Nebraska ex rel. Burning v. U.S. Dep't of the Interior*, 625 F.3d 501, 512–13 (8th Cir. 2010); *City of Council Bluffs*, 11 F.4th at 858–60.

acres of tribal trust land). As discussed, this extra-record evidence should not be considered and, in any event, creates no inconsistency. *See* pp. 10–11 & n.6, *supra*. The acreage amount in the record expressly refers to land held *in trust*, while the extra-record acreage figure refers to all landholdings, including land held by the Tribe in fee.

Second, Plaintiffs restate their view that Interior "exclusive[ly] reli[ed] on 2013 economic projections" in determining that Coquille had established significant economic benefit from the trust acquisition. Plfs. MSJ Reply 20. But Plaintiffs' only purported evidence of this exclusive reliance comes from the 2020 Decision that Interior *withdrew* because Interior lacked "important information critical to making a final determination." CC-20338. Plaintiffs simply ignore everything else in the administrative record—including evidence cited by Coquille, *see* Coquille MSJ Br. 40—showing that Coquille's unmet needs persisted from the 2013 report up until Interior's final decision. *See, e.g.*, CC-25280–81, CC-25602–03, CC-25862–64, CC-25996.[13] That unrebutted evidence more than suffices to satisfy this Court's highly deferential arbitrary-and-capricious review under the APA.[14] *See Nat'l Ass'n of Mfrs. v. Perez*, 103 F. Supp. 3d 7, 21 (D.D.C. 2015) (rejecting argument that agency's "justification . . . reveal[ed] no evidence whatsoever to support" its challenged conclusion because even "an attenuated link" was sufficient).

Third, Plaintiffs criticize Interior for failing adequately to account for the fact that the Medford Parcel is located approximately 170 miles from Coquille's Reservation. Plfs. MSJ Reply 21; *see also id.* at 1–2, 18, 31, 33, 45. But the AS-IA considered the Parcel's location and concluded

[13] Plaintiffs suggest that Coquille's "aging . . . membership" means that the Tribe should require *less* funding. *See* Plfs. MSJ Reply 20. These record cites establish the contrary—the fact that Coquille's membership is aging means that the Tribe requires *additional* funding to support their needs. *See* CC-25280, CC-25996.

[14] Plaintiffs continue to offer rank speculation about Tribal One, as Cow Creek did before Interior. *See* CC-25215–16. But Plaintiffs make no effort to rebut Coquille's well-supported assertion that "Interior was entitled to disregard Cow Creek's say-so." Coquille MSJ Br. 40 (collecting cases).

that, though the Parcel was "approximately 167 miles south of the . . . Reservation," it nonetheless fell within "the Tribe's congressionally-designated Service Area." CC-26809. Given Congress's "plenary and exclusive" authority in Indian affairs, it was entirely reasonable—indeed, necessary—for Interior to defer to Congress's decision to specifically include Medford and Jackson County in Coquille's service area.[15] *Haaland v. Brackeen*, 599 U.S. 255, 272–73 (2023) (quoting *United States v. Lara*, 541 U.S. 193, 200 (2004)).

Plaintiffs' account ignores the AS-IA's express findings that the Medford Facility would serve as "an essential component of the Tribe's self-determination and . . . long-term revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development." CC-26804. The AS-IA considered Coquille's analysis regarding the extent of these economic benefits. CC-26809. The AS-IA also considered the real possibility that a natural disaster could end Coquille's existing gaming operations at the Mill Casino, as well as the declining revenue from those existing operations. CC-26804. Interior plainly "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 567 (2025) (quotation marks omitted).

Fourth, Plaintiffs argue that Interior failed to consider the negative impact of the acquisition

[15] Congress identified in the Coquille Restoration Act a specific five-county area in which the Secretary is authorized to take lands into trust for Coquille: the Counties of Coos, Curry, Douglas, Jackson, and Lane. Those counties were selected because they were home to Coquille tribal populations at the time of restoration. *See* CC-436; CC-20071; CC-20105. That Congress did not include Josephine County—which adjoins Curry County and is closer to what Plaintiffs contend is "Coquille's ancestral territory, Coos and Curry Counties," Plfs. MSJ Reply 31, than is Jackson County—makes clear that Congress intentionally selected Jackson County as part of Coquille's service area notwithstanding its distance from the Tribe's Reservation.

on Oregon lottery revenue, as well the "the Governor of Oregon's concerns about the expansion of gaming throughout the state." Plfs. MSJ Reply 22 (internal quotation marks omitted). But the record plainly establishes that the Governor was "neutral on the Tribe's application" when Interior issued its decision and did not intend the correspondence on which Plaintiffs rely "to be weaponized . . . against Coquille." CC-26505. And Plaintiffs' concerns about lottery revenue rely on the withdrawn 2020 Decision, which assumed a "less than one percent" decrease in that revenue due to the proposed gaming facility. CC-20058. Since then, the AS-IA found that state and municipal monetary losses would be "offset by increased revenue from project related indirect and induced activity." CC-26806. The FEIS, for its part, comprehensively addressed possible negative impacts to the economies surrounding the Medford Parcel and weighed those impacts against each alternative's benefits. *See* CC-26133–234. Nothing more was required. This Court "considers the whole administrative record," and if "Interior's succinct explanation" is not Plaintiffs' "preferred interpretation," that "does not render it insufficient." *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, 659 F. Supp. 3d 33, 53–54 (D.D.C. 2023), *aff'd*, No. 23-5076, 2024 WL 3219481 (D.C. Cir. June 28, 2024), *cert. denied*, 145 S. Ct. 1960 (2025).

Nor is Plaintiffs' argument on this score consistent with the IRA's purposes or Part 151. Congress enacted the IRA for the purpose of, among other things, "providing land for Indians," with "lands or rights" acquired in trust "be[ing] exempt from State and local taxation." 25 U.S.C. § 5108. And Interior's Part 151 regulations similarly adopt a "policy to acquire land in trust status . . . to strengthen self-determination and sovereignty" and to "ensure that . . . [tribal] citizens can maintain their tribal existence and way of life." 25 C.F.R. § 151.3 (2024). In other words, both the statute and regulations weigh tribal and federal interests more heavily than state interests. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 & n.10 (1980); *City of Sherrill v.*

*Oneida Indian Nation of N.Y.*, 544 U.S. 197, 220 (2005). And the Governor's concerns regarding hypothetical future gaming expansion beyond Coquille's Medford application has no place in land-into-trust proceedings. *See, e.g.*, *Capay Valley Coal. v. Jewell*, No. 2:15-cv-02574, 2017 WL 4124182, at *5 (E.D. Cal. Sept. 15, 2017).

Fifth and finally, Plaintiffs insist that Interior failed to adequately explain its withdrawal of the 2020 Decision. They simply ignore Coquille's detailed account. Coquille MSJ Br. 36 (citing CC-26798). As Coquille has established, Interior's explanation satisfied its obligation under any applicable legal test. *See id.* at 36 & n.11 (collecting authorities).

## IV. Interior Did Not Violate the IRA's Privileges and Immunities Clause (Count V)

As to the IRA's privileges-and-immunities clause, 25 U.S.C. § 5123(f), Plaintiffs continue to misrepresent the law. They again rely primarily on *Koi Nation of Northern California v. United States Department of the Interior*, 361 F. Supp. 3d 14, 41–42 (D.D.C. 2019), *judgment amended*, No. CV 17-1718, 2019 WL 11555042 (D.D.C. July 15, 2019)—where the court held that Interior's failure to treat all tribes that were "de facto terminated" and then later reinstated to recognition as "restored" violated Section 5123(f). But Coquille has already distinguished *Koi Nation*. *See* Coquille MSJ Br. 42.

Plaintiffs cannot refute that *Koi Nation* is distinguishable on multiple grounds. For one, Interior's decision here does not affect Plaintiffs' legal ability to apply to have land taken into trust for gaming purposes consistent with applicable statutes and regulations. *See* Coquille MSJ Br. 42. For another, none of the Plaintiff tribes here is subject to a restoration act like the Coquille Restoration Act or any similarly worded restoration statute that Plaintiffs identified in their initial brief. *See* Coquille MSJ Br. 42–43. That Interior accords different interpretations to different tribes' statutes featuring different wording does not constitute disparate legal treatment of those tribes "*by virtue of their status as Indian tribes*." 25 U.S.C. § 5123(f) (emphasis added). Rather, it is a direct consequence of Congress's different choices, and the basic rule that courts "presume differences in language like this convey differences in meaning." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017).[16]

Accordingly, Defendants are entitled to summary judgment on Count V.

## V. Defendants Are Entitled to Summary Judgment on Count VI.

Plaintiffs failed to move for summary judgment or to respond to Coquille's arguments on their disparate-treatment claim, Count VI, so Defendants are entitled to summary judgment on it. *See VanderKam v. Pension Ben. Guar. Corp.*, 943 F. Supp. 2d 130, 146 n.11 (D.D.C. 2013) (granting the defendants summary judgment on the plaintiffs' APA claim where the plaintiffs "fail[ed] to affirmatively move for summary judgment" and otherwise "failed to respond to [a defendant's] argument seeking summary judgment on [the] claim"), *aff'd sub nom. VanderKam v. VanderKam*, 776 F.3d 883 (D.C. Cir. 2015). That makes sense given that Plaintiffs, as the party challenging Interior's action as arbitrary and capricious "bear[] the burden of proof." *Abington Crest Nursing & Rehab. Ctr. v. Sebelius*, 575 F.3d 717, 722 (D.C. Cir. 2009) (quotation marks omitted).

Plaintiffs barely even join issue on this claim, flatly asserting that Interior treated Coquille and the Ponca Tribe differently. Plfs. MSJ Reply 29 & n.24. As Coquille explained, Coquille MSJ Br. 43–44, Interior *granted* the Ponca Tribe's application, and the land at issue was indisputably *not* within the counties listed in the Tribe's restoration statute. Plaintiffs' nonsensical reference to "IRA affirming language" does not save this claim, Plfs. MSJ Reply 29 n.24 (emphasis

[16] Also, Plaintiffs again cite *Redding Rancheria v. Jewell*, 776 F.3d 706 (9th Cir. 2015), *see* Plfs. MSJ Reply 35, but that decision did not discuss or even reference Section 5123(f). Instead, it held that Interior's regulatory criteria for implementing the connections-based restored-lands exception were reasonable; and it did not mention the statute-based exception (which applies to Coquille), presumably because the statute-based exception was irrelevant to *Redding Rancheria*. *See* 776 F.3d at 711–12.

omitted), let alone carry their burden under the APA. Defendants are therefore entitled to summary judgment on Count VI.

## CONCLUSION

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

Dated: December 29, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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

Dated: December 29, 2025

*/s/ Keith M. Harper*
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