IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER, AND FOR A PRELIMINARY INJUNCTION

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I. INTRODUCTION

Plaintiffs Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek"), Karuk Tribe ("Karuk"), and Tolowa Dee-ni' Nation ("Tolowa")—a coalition of Tribal nations in Oregon and California—move for temporary and preliminary injunctive relief under Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705, until the Court can adjudicate the merits of Plaintiffs' claims for declaratory and injunctive relief brought under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

Plaintiffs seek judicial review of the unconstitutional final decision of Defendant U.S. Department of the Interior ("DOI") and its officers and sub-agencies (collectively, "Defendants") approving the Coquille Indian Tribe's ("Coquille") fee-to-trust application to take a 2.42-acre land parcel in Medford, Oregon into trust for the purpose of a second casino. Plaintiffs challenge Defendants' (1) Final Environmental Impact Statement ("FEIS") issued on November 22, 2024 pursuant to the National Environmental Policy Act of 1969 ("NEPA"), and (2) the Record of Decision ("ROD") issued last Friday, January 10, 2025, pursuant to the Indian Reorganization Act ("IRA"), the Coquille Restoration Act ("Act"), and Indian Gaming Regulatory Act ("IGRA"). Now that Defendants have issued the ROD, thereby "crystalizing" DOI's illegal final agency decision, this Motion is ripe for the Court's review.[1]

Defendants' issuance of the FEIS and ROD is *ultra vires* and must be vacated. The FEIS—and its underlying determination that Coquille's proposed Medford casino poses little to no environmental impact—was overwhelmingly based on the Council for Environmental Quality

[1] As the Court's January 2, 2025, Order makes clear, Plaintiffs' initial motion for a temporary restraining order ("TRO") (ECF No. 2) to enjoin the ROD from issuing was denied on the sole ground that the FEIS, standing alone, is not a "final agency action." ECF 27 at 1. Defendants' issuance of the ROD cures any deficiency in Plaintiffs' prior motion.

("CEQ")'s regulations implementing NEPA. But ten days before the FEIS was issued, the D.C. Circuit held the CEQ regulations are *ultra vires* and invalid under separation of powers principles. *See Marin Audubon Soc. v. Fed. Aviation Admin*., 121 F.4th 902 (D.C. Cir. 2024). In addition, Defendants refusal to engage in meaningful pre-decisional consultation with Plaintiffs regarding both the FEIS and the ROD, in violates NEPA, DOI's own regulations and policies, and other federal laws. Thus, Defendants not only ignored *Marin Audubon Society* before rushing both the FEIS and ROD ahead of the impending change of Administration; they also refused to consult with Plaintiffs or allow them and federal, state, local, and other Tribal officials an additional thirty days to comment on the FEIS before issuing the ROD.

Defendants' issuance of the ROD is also contrary to IGRA, among other federal statutes, and is otherwise arbitrary and capricious. In issuing the ROD, Defendants upended decades of federal court and agency precedent by ignoring the plain terms of the federal statute restoring Coquille to federal recognition, the spirit and purpose of IGRA, as well as the regulations governing IGRA's so-called "restored lands" exception to the general prohibition against gaming on lands not already in trust by October 17, 1988. 25 U.S.C. § 2719(b)(1)(B)(iii); 25 C.F.R. §§ 292.7–292.12. Defendants have concluded that land located 170 miles from Coquille's reservation, which lacks aboriginal or historical connections to Coquille, is eligible for gaming as "restored lands." *But see* 25 C.F.R. § 292.12.

Last night, on January 12, 2025, Plaintiffs learned that ***Coquille started illegally operating a casino with electronic gaming machines at the Medford parcel on Saturday, January 11, 2025***. Declaration of Vickie Camarena ("Camarena Decl."), ¶¶ 6–10 & Exs. 1–3. Coquille's actions are in violation of federal and state law, either because (1) the trust acquisition has not been completed through deed recordation under IGRA and its applicable regulations, *see* 25 U.S.C. § 2719(a); 25

C.F.R. §§ 151.12(c)(2)(iii), 151.14 (2013); or (2) the trust acquisition was somehow completed by Defendants ***over the weekend***, but the National Indian Gaming Commission ("NIGC") has not received proper notice of the new facility. *See* 25 C.F.R. § 559.2(a); *see also* 18 U.S.C. § 1955 (prohibition of illegal gambling businesses).[2]

Plaintiffs therefore have no choice but to seek an emergency TRO, which would convert to a preliminary injunction after 14 days, postponing the effective date of the FEIS and ROD and enjoining Defendants from taking the Medford parcel into trust, to the extent they have not already done so in violation of federal law. Plaintiffs are likely to prevail on the merits of their APA claims; but absent injunctive relief, Plaintiff Tribal nations will suffer severe, irreparable harm to their economies and abilities to fund essential government programs and services for Tribal members, as well as to their cultural, historical, environmental, and ecological interests and constitutional participatory and sovereign consultation rights. Plaintiffs further show that both the balance of hardships and the public interest weigh in favor of granting the requested injunctive relief.[3]

II. BACKGROUND

A. Factual Background

1. Coquille

Aboriginally, Coquille inhabited the watershed of the Coquille River system on the southern Oregon coast. ECF No. 2-2, Ex. 3 at p. 9 (Robert Whelan, *The Contributions of Indian*

[2] It appears that from last Thursday to Friday, January 9-10, 2025, DOI misrepresented to members of the Oregon Congressional Delegation that (a) the ROD would not be issued until Monday, January 13, 2025; and (b) the Medford parcel would not be taken into trust until at some point this week. Galanda Decl., Exs. 27–28.

[3] As with their first TRO Motion, Plaintiffs, whose lawyers reside on the west coast, request leave to virtually attend any hearing on this Motion and to file a reply brief. *See* ECF No. 10. Since last Friday, Plaintiffs have notified and sought to confer with, Defendants and non-party Coquille about this Motion and that request. *See* LCvR 7(m); LCvR 65.1(a)-(c); Galanda Decl., Exs. 28–29. A proposed Order allowing leave for virtual attendance and reply briefing accompanies this Motion.

Gaming to Oregon's Economy in 2018 & 2019 (3/18/22) ("Whelan Report")). Coquille's status as a federally recognized Indian tribe, like many other Oregon tribes, was terminated by Congress in 1954. Pub. L. No. 588, 68 Stat. 724 (Aug. 13, 1954).

Then, in 1989, the year after IGRA's enactment, Congress passed the Coquille Restoration Act ("CRA"), thereby restoring Coquille to federal recognition, establishing a service area "composed of Coos, Curry, Douglas, Jackson and Lane Counties," and providing for the establishment of a reservation in Coquille's aboriginal homelands, now known as Coos and Curry Counties. Pub. L. No. 101-42, 103 Stat. 91 (June 28, 1989). The CRA mandates that the U.S. Department of the Interior Secretary ("Secretary") acquire no more than 1,000 acres of land in Coos and Curry Counties for Coquille, a requirement that was satisfied in the early 1990s. *Id.* § 5(a); ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 2-28).[4] The CRA also permits the Secretary to acquire land in Jackson County (or other counties in Coquille's service area) for Coquille "pursuant to [the Secretary's discretionary] authority under the [IRA]." Pub. L. No. 101-45, § 5(a).

By 1995, Coquille negotiated a gaming compact with Oregon and opened the Mill Casino ("Coquille's Casino"), a Class III gaming facility and resort complex on Coquille's trust land in North Bend, Oregon. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 1-2). North Bend, with a population of about 9,925, is located about 170 miles from Medford. ECF No. 2-2, Ex. 3 at p. 9 (Whelan Report); ECF No. 2-3, ¶ 16. Coquille's Casino offers 690 slot machines and 12 table games in its 30,000 square foot gaming facility; it also offers highly competitive accommodations and various entertainment venues. ECF No. 2-2, Ex. 3 at pp. 9, 16 (Whelan Report). Coquille's Casino has

[4] The United States currently holds in trust a total of 6,434 acres for Coquille, including Coquille's 954-acre reservation, 80 acres of waterfront land, and 5,400 acres of timberland, all of which are located on or near Coquille's aboriginal land, now known as Coos and Curry Counties. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 2-28).

prospered due to its location on the southern Oregon coast. *Id.* at p. 9.

Additionally, in 2011, Coquille launched Tribal One, known as the Mith-ih-Kwuh Economic Development Corporation, a federally chartered corporation that is 100% owned by the Tribe. ECF No. 2-2 ¶ 6.[5] Tribal One is a large conglomerate made up of several limited liability companies, including T1 Construction, LLC; Tribal One Architecture and Engineer, LLC; Tribal One Technology, LLC; Tribal One Broadband Technologies, LLC; T1 Services, LLC; Tribal One General Contracting; and Tribal One Energy. *Id.* Since 2016, Tribal One has been awarded hundreds of millions of dollars in federal contracts and other government contracts and, like Coquille's other enterprises, has been very successful.[6] *Id.*, ¶ 7. Notably, the FEIS and ROD altogether ignore Tribal One as a significant source of revenue for Coquille. *See generally id.*, Exs. 1–2 (FEIS, Vols. I, II). Another source of revenue for Coquille is the sale of timber from the 5,410-acre Coquille forest. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 1-2).

Coquille, which has a total enrollment of 1,100 members, is responsible for providing public services to its membership to support their health needs, overcome education and employment obstacles, remedy deficiencies in housing and healthcare, and perpetuate their cultural identity. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 1-1). According to Defendants, their final decision to permit Coquille to construct a second casino in Medford is "necessary to facilitate Tribal self-determination and economic development" to provide these governmental services to its membership. Galanda Decl., Ex. 25 (ROD, p. 7). But, again, the FEIS and ROD fail to consider the success of Coquille's primary casino or mention its successful construction enterprise, Tribal One. *Compare id.* at pp. 7–8, *with* ECF No. 2-2 ¶¶ 6–7 & Ex. 3 at p. 9.

[5] *See also About Us*, TRIBAL1, *available at*: https://www.tribal.one/about-us/our-companies/.
[6] *See Our Portfolio*, TRIBAL1, *available at*: https://www.tribal.one/portfolio/.

2. Cow Creek

For more than 1,000 years, Cow Creek inhabited the inland areas of southern Oregon, in what is today Douglas County. ECF No. 2-2, Ex. 3 at p. 9 (Whelan Report). Like Coquille, Cow Creek's status as an Indian tribe was terminated by Congress in 1954; then restored by Congress in 1982. 25 U.S.C. § 691 *et seq.*; Pub. L. No. 97-391, 96 Stat. 1960 (Dec. 29, 1982).

In 1992, on Cow Creek's trust land within its reservation in Canyonville (just 72 miles from Medford), Cow Creek established a bingo hall; and two years later, it established its sole casino, which is now known as the Seven Feathers Casino ("Cow Creek's Casino"). ECF No. 2-3, ¶¶ 5–6. Cow Creek's Casino is located in a rural part of Oregon with fewer than 2,000 residents. *Id*. However, an interstate highway (I-5) and other highways (OR-62, OR-227, OR-238) connect Cow Creek's Casino to the greater Medford area, which (among other urban areas) serves as the heart of its primary market. *Id.*, ¶ 7. Under Cow Creek's compact with Oregon, Cow Creek Casino offers about 900 slot machines, 22 table games, and a 360-seat bingo hall in its 68,000 square foot gaming area. *Id.*, ¶ 8. Cow Creek's Casino likewise offers patrons several accommodations, including a hotel and a variety of restaurant and entertainment venues. *Id.*, ¶ 9.

Cow Creek's Casino employs about 780 tribal and non-tribal employees residing throughout Southern Oregon. *Id.*, ¶ 10. Cow Creek's Casino offers their employees competitive pay, benefits (e.g., 401k with 3.5% employer match), and other employment perks, including tuition reimbursement, certificate programs, and in-person or online learning resources. *Id.*

Cow Creek, which has a total enrollment of about 2,030 members, heavily relies on this gaming revenue to support two health and wellness centers, educational programs for Native American children and adults, a community economic development and recovery program ("CEDAR"), several environmental programs, cultural resources protection programs, community

services programs, behavioral health programs, nutritional programs, language programs, higher educational programs, occupational certification/license programs, and community events. ECF No. 2-3 ¶¶ 11–12. Cow Creek allocates a significant portion of its gaming revenue to community healthcare programs alone. ECF No. 2-3, ¶ 13; ECF No. 2-2, Ex. 3 at p. 19 (Whelan Report) (showing Oregon's tribal casinos allocate 34.5% of gaming dollars to healthcare programs); Declaration of Gregg Hervey ("Hervey Decl."), ¶¶ 3, 5.

3. Karuk

Since time immemorial, the Karuk people have inhabited the areas of southern Oregon and northeastern California, from the mountains through which the Klamath River flows and into the northern portion of the Sacramento Valley in what is now Siskiyou County and the southern-most portion of Jackson County, Oregon, along what is now the Oregon-California border. *See* ECF No. 2-6, ¶ 2. Karuk currently has 3,751 enrolled members and is headquartered in the remote town of Happy Camp, California, with a tribal housing project and the Tribe's sole casino, the Rain Rock Casino and Hotel ("Karuk's Casino"), located on trust land in Yreka, California. *Id*., ¶ 3.

In the past two decades, the forests in the Happy Camp area and elsewhere in Karuk's ancestral territory have been devastated by successive wildfires that have destroyed not only natural resources central to Karuk subsistence, culture and traditions, but also the homes of hundreds of tribal citizens, many of whom continue to reside in temporary trailer homes and have difficulty finding gainful employment as a result of the damage from wildfires and the general decline in the northern California timber products industry. *Id*., ¶ 4. Karuk's Casino is located in Yreka, California, a rural community with about 7,800 residents, about 52 miles and less than an hour's drive (barring winter weather) from the greater Medford area via the Interstate 5 highway,

which also links Karuk's Casino and its related hotel and facilities to more urban areas to the south, as well as to north- and south-bound truckers and travelers on heavily-traveled I-5. *Id*., ¶ 5.

Operated pursuant to a class III gaming compact with the State of California that explicitly recognizes the casino's critical role in providing for the needs of the Tribe's citizens, Karuk's Casino currently employs 62 members of federally recognized tribes (38 of whom are Karuk) among its total workforce of 207, and operates 349 slot machines and 8 table games in its 14,000 square foot gaming area. *Id*., ¶ 6. Adjacent to Karuk's Casino, the Tribe has constructed a hotel, two restaurants, and a variety of other amenities that facilitate patronage at Karuk's Casino, as well as generating significant revenues from activities other than gaming. *Id*., ¶ 7.

Karuk's government has already invested $81 million in the construction of its Casino, hotel and adjacent businesses, and is continuing to develop those facilities with its casino revenues as a long-term investment in assets that have and will continue to employ tribal citizens, and that will be an important source of revenue with which the tribal government can provide its 3,751 citizens and their family members with essential governmental services, including medical facilities, clean drinking water, educational programs, environmental stewardship and fire protection, economic development programs, a tribal court, and cultural/traditional resources protection programs, which otherwise would have to be funded with grants that may not be available annually. *Id*., ¶ 7.

4. Tolowa

Tolowa is a federally recognized Tribal nation organized under a Constitution. ECF No. 2-5, ¶ 3. Tolowa is the beneficial owner of federal trust land in Del Norte County, northern California, on which its reservation and Tolowa's Lucky 7 Casino ("Tolowa's Casino") and Lucky Seven Fuel Mart ("Fuel Mart") are located. *Id.*, ¶ 11. Tolowa's Lucky 7 Casino and Fuel Mart are approximately 118 miles from the site of Coquille's proposed Medford casino. *Id.*, ¶ 14.

An interstate highway (I-5) and other highways (US 101) and (US-199) connect Tolowa's Casino and Fuel Mart to the greater Medford area and other urban areas (e.g., Roseburg, Ashland, and Grants Pass), which serve as the heart of Tolowa's Casino's primary market. *Id.*, ¶ 15. Under Tolowa's compact, Tolowa operates just 336 gaming devices and 2 table games at Tolowa's Casino and 8 gaming devices in the Fuel Mart. *Id.*, ¶ 10. Tolowa's Casino offers patrons general accommodations, including a 71 room hotel, a restaurant, and a conference venue. *Id.*, ¶ 16. Like other tribes in the region, Tolowa, which has a total enrollment of 2,081 citizens, heavily relies on this gaming revenue to support their respective healthcare centers and clinics, educational programs, economic development programs, and several environmental and cultural/traditional resources protection programs. *Id.*, ¶ 19.

5. Cow Creek, Karuk, and Tolowa's Interests

In addition to the "here-and-now" harm to Plaintiffs' constitutional participatory and sovereign consultation rights resulting from Defendants' FEIS and ROD (*see infra*), the following Cow Creek, Karuk, and Tolowa governmental, economic, socio-economic, cultural, historical, environmental, and ecological interests (collectively, "Plaintiffs' Interests") have been and will be imminently and irreparably harmed by Defendants' unconstitutional and otherwise unlawful action.

a. Tribal Plaintiffs' Cultural and Historical Interests

The trust acquisition of Coquille land and creation of a second Coquille reservation in Medford, the aboriginal territory of other Tribal nations, will "abruptly . . . cause the public and local and state governments to misunderstand which Tribal people belong where" and thus to believe that Coquille has always belonged in that area, "which displaces and causes irreparable harm to . . . the aboriginal Indigenous peoples and Tribal nations" of southern Oregon and northern California, including Plaintiffs. ECF No. 2-3, ¶ 18. The public has already been confused to believe

that Coquille is "a tribe with historical connections to the Rogue River Valley." Declaration of Stephen Dow Beckham ("Beckham Decl."), ¶ 45; *id*., ¶ 80 ("the Coquille Tribe has created widespread confusion in the understanding of tribal history in southwestern Oregon by the public."). The trust acquisition of the 2.4 acre parcel will "create immediate irreparable to the public" and Plaintiff Tribal nations by creating a false impression that Coquille is aboriginally or historically connected to Jackson County and the Rogue River Valley. *Id*., ¶ 84.

Plaintiffs will also suffer harm to their Tribal cultural/traditional resource preservation and language revitalization programs, through the loss of millions of dollars of revenues outlined immediately below. ECF No. 2-3, ¶¶ 11, 21, 23; ECF No. 2-5, ¶¶ 19, 26; ECF No. 2-6, ¶ 3; Declaration of Troy Ralstin ("Ralstin Decl."), ¶¶ 6-7; Declaration of Michael Haskell ("Haskell Decl."), ¶ 7. Those programs will suffer layoffs and a reduction in cultural opportunities for Tribal members, which, at Tolowa for example, "will acutely harm Tolowa citizens' cultural continuity." *See id*.; Hervey Decl., ¶ 7.

b. Tribal Plaintiffs' Economic Interests

As the FEIS acknowledges, Plaintiffs will suffer substantial gross gaming revenue losses due to substitution effects, i.e., the loss of customers to Coquille's new second casino. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 4-21–4-23).

Tribe	**Substitution Effects – Gaming Revenue**	**Substitution Effects – Non-Gaming Revenue**
Cow Creek	21.3% – 28.5%	52.1%
Karuk	23.4% – 37%	51.7%
Tolowa	5.3% – 13.4%	n/a

Id.; ECF No. 2-4, Exs. 3 at pp. 2, 6; ECF No. 2-6, ¶¶ 6–7 & Ex. RA-2; ECF No. 2-5 ¶ 25. That is, once Coquille's second casino is operational—which is imminent (*see* ECF No. 17-4, ¶ 3)—Cow

Creek's gaming revenues are projected to decline by 21.3% to 28.5%; Karuk's are projected to decline by 23.4% to 37%; and Tolowa's are projected to decline by 5.3% to 13.4%. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 4-22–4-23); ECF No. 2-4, Ex. 3 at pp. 2, 6; ECF No. 2-6, Ex. RA-2; ECF No. 2-5, ¶ 25. Each Plaintiff will be forced to, *inter alia*, lay off hundreds of employees, including their own citizens. *See* ECF No. 2-2, Ex. 2 (FEIS, Vol. I, p. 3-16); ECF No. 2-3, ¶¶ 10, 20-21; Ex. 3; Ralstin Decl., ¶ 6; Hervey Decl., ¶ 7. The inevitable result of these layoffs will be Tribal member mental distress, unemployment compensation, housing insecurity, and poverty risk. *See id*.

c. Tribal Plaintiffs' Socio-economic and Community Interests

The loss of Tribal member jobs resulting from Coquille's new second casino will devastate each Plaintiffs' people and community. *See generally id*.; Ralstin Decl., ¶¶ 6, 9. At Tolowa, for example, "Coquille's Medford casino will have devastating socio-economic impacts" and "will worsen economic disparity in the Tolowa community, increasing poverty [and causing] emotional and spiritual distress" to Tolowa citizens. Ralstin Decl., ¶¶ 9-13. For Cow Creek, there will be significant cuts to Tribal member services and assistance, such as higher education tuition, emergency assistance, elder housing repair assistance, down payment housing assistance, foster care stipends, and food benefits. Hervey Decl., ¶ 5; *see also* Declaration of Loretta Corbett. Cow Creek has "already started discussing what kinds of cuts [the Tribe] will have to make" in its Education Department, "and the idea of it is devastating." Declaration of Jesse Jackson, ¶ 13.

In addition, Plaintiffs' community grants to non-tribal organizations promoting the general public's health, safety, education, and welfare will be significantly reduced. ECF No. 2-3, ¶¶ 14–15; ECF No. 2-5, ¶ 21; Ralstin Decl., ¶ 8. Since 1997, for example, Cow Creek's foundation has invested more than $20 million in Jackson County and six other counties by awarding grants to community nonprofit organizations advocating for healthcare, food security, child abuse prevention, and education. ECF No. 2-3¶ 15. Yet, as revenues from Cow Creek decline, so will funds available for these Tribal community grants that benefit the greater community. *See id*.

d. Tribal Plaintiffs' Governmental and Taxation Interests

Plaintiffs' governments will receive declining gaming and related revenues from their casinos, as detailed above, thereby reducing the funding available to each Tribal governmental for programs and services essential to the health, safety, and welfare of Tribal members and others residing or working on their respective trust lands. *Id.;* ECF No. 2-3, ¶¶ 11–12, 21; ECF No. 2-6, ¶ 9; ECF No. 2-5, ¶¶ 17–20. For example, "Tolowa government budget cuts due to the loss of $1.2 million annually will irreparably harm key governmental departments and programs," including Head Start, K-12, and higher education; water quality, ocean protection, and emergency management; drinking water and wastewater treatment; family wellness, elder assistance, and cemetery upkeep. Ralstin Decl., ¶ 7. Likewise, Cow Creek imposes gaming and related taxes that result in 100% of its net gaming, hotel, and business revenues being paid to the Tribal government, which uses them to fund essential health care, educational, environmental, and other government services and benefits. Hervey Decl., ¶ 3; ECF No. 2-3, ¶ 11. A 12.3% reduction to those Tribal tax dollars and government funds will be "substantial" and will likely cause "significant cuts to community health care and other services and benefits for Tribal and community members." Hervey Decl., ¶ 4-5.

e. Tribal Plaintiffs' Environmental & Ecological Interests

For Karuk, millions of dollars in lost gaming revenues will reduce governmental revenues needed to provide Karuk members clean water; to restore the Klamath River and its "runs of endangered salmon"; and "to combat climate change and mitigate the impacts from and dangers of wild land fires," which have "destroyed" Karuk natural resources in recent years. Haskell Decl., ¶¶ 4, 7, 9. Likewise, Tolowa and Cow Creek will face substantial cuts to Tribal governmental natural resource and environmental protection efforts. ECF No. 2-3, ¶¶ 11, 21, 23; ECF No. 2-5, ¶¶ 19, 26; ECF No. 2-6, ¶ 3; Ralstin Decl., ¶¶ 6-7; Haskell Decl., ¶ 7.

B. Procedural Background

1. Coquille's application to establish a second casino in Medford, which has been pending since 2012.

In November 2012, Coquille submitted a letter application to Defendants, asking the agency to exercise its discretionary authority under the IRA to take into trust an additional 2.42-acre parcel located in Medford, Oregon (in addition to 6,434 acres of land the federal government already holds in trust for Coquille). ECF No. 2-2, Ex. 2 (FEIS, Vol II., p. 1-3). Coquille stated its intent to use the Medford parcel, which it had recently acquired, for the purpose of establishing a second casino for the Tribe, and asked that its application be processed under IGRA's "restored lands" exception, which prohibits gaming on lands acquired by a tribe after 1988 unless one of four enumerated exceptions apply. Since then, Coquille has acquired or developed over forty acres of land contiguous to the 2.42-acre parcel, for a total of at least 45.3 acres. ECF No. 2-3 at 30.[7]

The agency began processing Coquille's application under the IRA, 25 U.S.C. § 5101 *et seq.*, and its implementing regulations, issuing letters in February 2013 to the Governor of Oregon, the Jackson County Board of Commissioners, and the Mayor of the City of Medford pursuant to 25 C.F.R. §§ 151.10 and 151.11(d) (1995).[8] In furtherance of Coquille's request that the restored lands exception apply, the agency also issued correspondence to Coquille requesting that it provide evidence of its modern, historical, and temporal connections to the Medford parcel.[9] In response to the agency's request for evidence that the Medford parcel meets the connections-based restored lands exception, Coquille changed the basis of its application, claiming instead that the Medford

[7] The FEIS concedes that the scope of Coquille's Medford project has increased to from 2.42 to 7.24 acres but fails to consider the environmental effects of Coquille's acquisition and development of another 38 acres of contiguous land—a total of 45.3 contiguous acres—in Medford. ECF No. 2-2, Ex. 2 (FEIS, Vol II., p. 2-1).

[8] In response, an overwhelming number of government officials, including the Governor of Oregon, city and county councilmembers, Tribal chairpersons, and other federal and state lawmakers, opposed Coquille's application, as below. *See* ECF No. 2-2, ¶¶ 8–16 & Exs. 4–10.

[9] For clarity, these two exceptions are referred to hereinafter as the "statute-based restored lands" exception (under 25 C.F.R. § 292.11(a)(1)) and the "connections-based restored lands" exception (under 25 C.F.R. § 292.12).)

parcel would qualify as statute-based restored lands under the CRA. Galanda Decl., Ex. 24.

In 2015, the agency started preparing an environmental impact statement ("EIS"), as required under NEPA. 80 Fed. Reg. 2120, 2120 (Jan. 15, 2025).

On January 19, 2017, at 4:27 PM ET, mere hours before the inauguration of the forty-fifth U.S. President, Defendants indicated for the first time that Coquille's application could qualify as statute-based restored lands under IGRA, "***if*** the land is acquired in trust pursuant to the CRA" and "proceed[ed] to process the [Coquille's] application pursuant to the Restored Lands Exception analysis." *See id*. § 2719(b)(1)(B)(iii); 25 C.F.R. §§ 292.11–292.12; Galanda Decl., Ex. 24 (emphasis added). Before that time, the agency suggested Coquille's application would be processed under the connections-based restored lands regulations.

Then, in May 2020, DOI clarified that the CRA explicitly made acquisition of the Medford parcel discretionary and "pursuant to [the Secretary's] authority under the [IRA]"—i.e., *not* the CRA—rendering the statute-based restored lands exception, 25 C.F.R. § 292.11(a)(1), inapplicable to Coquille's application. The agency denied Coquille's application to take the Medford parcel into trust and later discontinued preparation of an environmental impact statement ("EIS"). *See* 85 Fed. Reg. 55026, 55026 (Sep. 3, 2020).

In December 2021, however, the agency reversed itself (yet again), withdrawing its previous denial of Coquille's trust application and resuming EIS preparation. 86 Fed. Reg. 73313, 73313 (Dec. 27, 2021); 87 Fed. Reg. 11084, 11084 (Feb. 28, 2022).

In November 2022, the agency published a Draft Environmental Impact Statement ("DEIS") for Coquille's proposed project and extended the period for interested persons to submit comments until February 23, 2023. 87 Fed. Reg. 72505, 72505 (Nov. 25, 2022); 87 Fed. Reg. 77877, 77877 (Dec. 20, 2022). Despite the significant passage of time since Coquille's original

application in 2012, the agency did not update or request updates to any of the underlying reports on which the DEIS is based.[10] ECF No. 2-3, Ex. 2. Throughout the NEPA process, Defendants received numerous comments in opposition to Coquille's application, as discussed below.

2. Since 2013, the State of Oregon, local governments, and tribal governments have opposed Coquille's application to establish a second casino in Medford.

Beginning in 2013 and continuing through today, nearly all governments with jurisdiction over the Medford parcel, including the State of Oregon and Jackson County, have unambiguously opposed Coquille's proposal to establish a second casino in Medford. ECF No. 2-2, Ex. 4 (Gov. Kotek Opp. Letter dated 4/13/23); *id.*, Ex. 5 (Jackson Cnty. Comm. Opp. Letter dated 4/30/13). Federal and state legislators who represent constituents in the greater Medford region have also vigorously opposed Coquille's proposed casino project. *See, e.g.*, *id.*, Ex. 6 (U.S. Sen. Wyden (OR) & Merkley (OR) Opp. Letter dated 12/1/23); Ex. 7 (U.S. Reps. Salinas (OR), Blumenauer (OR), & Huffman (CA) Opp. Letter dated 1/16/24); Ex. 8 (Or. Leg. Assembly Opp. Letter dated 9/21/18).

To politically justify its "restored lands" application for the 2.42-acre parcel, Coquille has, since at least 2013, falsely claimed to the public that Medford and Jackson County sit within Coquille's aboriginal and historical territory. *See* "Medford council hears debate over Coquille tribe's casino plan," *The Oregonian* (April 26, 2013) ("The Coquille tribe claims it has historic roots in the Medford market . . ."); Beckham Decl. (documenting Coquille's lack of aboriginal or historical connection to Medford). "The Coquille Medford casino plan moves ahead, again," *Jefferson Public Radio* (May 15, 2024) (Coquille Vice Chair Jen Procter Andrews said of Medford:

[10] This is particularly troubling given Coquille's Unmet Needs Report was prepared in 2013, over 11 years ago and prior to Coquille's construction company, Tribal One, began receiving millions of dollars through federal and other construction contracts in 2016. The failure to require an updated Tribal Unmet Needs Report reflecting the 1,000 member Tribe's far better financial condition than it was in 2013 means that the FEIS is based on unreliable and outdated Tribal need documentation, a cornerstone of the ROD's determination that a second casino is "necessary."

"we've been a part of this community before Oregon was a state."). Coquille also expressed its plans to "build" a second reservation in Jackson County, if its Medford lands—45.3 contiguous acres—are taken into trust. *See* Coquille Chair Brenda Meade, "Attacks on Coquille tribe's casino proposal undermine tribal sovereignty," *The Oregonian* (July 2, 2024). As a result, multiple Tribal nations aboriginal to Oregon and California expressed existential and territorial concerns to the BIA about Coquille's falsification of its history and "restored lands" application. *See* ECF No. 2-2, ¶ 14; *id.*, Ex. 9 (Karuk Opp. Letter dated 4/14/2016); *id.*, Ex. 10 (Tolowa Opp. Letter dated 2/23/2023); ECF No. 2-2, Ex. 1 (Cow Creek Opp. Letter dated 3/15/2021); accompanying Declaration of Gabriel S. Galanda ("Galanda Decl."), Ex. 5 (Lytton Opp. Letter dated 12/16/24); *id.*, Ex. 6 (Dry Creek Opp. Letter dated 12/16/24).

Continuing through 2024, an overwhelming number of Tribal governments and organizations both in and beyond Oregon and California have publicly opposed Defendants' final decision for cultural, historical, economic, and other reasons, including not only Plaintiffs, but also Shasta Nation; Klamath, Modoc and Yahooskin-Paiute Tribes; Confederated Tribes of the Grand Ronde; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; Elk Valley Rancheria; Shingle Springs Band of Miwok Indians; Dry Creek Rancheria; Lytton Rancheria; Cachel Dehe Band of Wintin Indians; Northern California Tribal Chairpersons Association ("NCTCA"); Tribal Alliance of Sovereign Indian Nations ("TASIN"); California Nations Indian Gaming Association ("CNIGA"), and Saginaw Chippewa Indian Tribe of Michigan. *See id.; see also* ECF Nos. 19-1-19-3 (Exs. 13-15); Galanda Decl., Ex. 17; Ex. 18; Ex. 19; Ex. 26.

Federal lawmakers challenged Defendants' misapplication of IGRA's restored lands exception and the agency's intentional decision to bypass IGRA's two-part determination

process.[11] As both U.S. Senators from Oregon explained in December 2023:

> [W]hen Congress passed the [CRA] . . . it allowed the Coquille . . . to open one gaming facility, in Coos or Curry Counties, pursuant to the restored lands exception. The Tribe opened its Mill Casino in Coos County in 1995 and continues to operate the casino usefully today. . . .
>
> Nothing in the CRA supersedes the requirements of IGRA, which requires [Defendants] to apply a two-part determination process to the Coquille['s] application . . . .
>
> To suggest that it was the intent of Congress to [also] allow the Coquille . . . to open a second casino in Medford requires *willful disregard of the legislative history of the CRA and abuse of the restored lands exception*.

ECF No. 2-2, Ex. 6. Federal lawmakers have also recently emphasized the devastating impacts of Defendants' decision, explaining that "[a]llow[ing] the Coquille . . . to obtain a second casino in Medford by circumventing the customary two-part determination" would create a "grotesque outcome," as it "would result in significant harm to five other Tribes in Oregon and California." ECF No. 2-2, Ex. 7. By "irreparably" depriving other Tribal nations of significant gaming revenue, the agency's decision would "directly impair their ability to provide critical services to their Tribal members"; and as a result, the "devastating" economic impact of the decision "would pit some of our country's most marginalized communities against each other, forcing them to compete in a 'race to the bottom.'" *Id.*, Ex. 6 (U.S. Sen. Ron Wyden (OR) & Jeff Merkley (OR) dated 12/1/23).

Similarly, in April 2023, Oregon Governor Tina Kotek, like her predecessors, Governors Barbara Roberts, John Kitzhaber, and Kate Brown, opposed Coquille's proposed second casino in Medford because it "would not only lead to the expansion of gaming in that area but would create many more concerns about the expansion of gaming statewide." ECF No. 2-2, Ex. 4 (Gov. Kotek

[11] The so-called "two part determination" requires (1) the Secretary to determine, after state, local, and Tribal consultation, that a gaming establishment would be in the best interest of the applicant tribe and would not be detrimental to the surrounding community, and (2) the Governor of the state in which the land is situate concurs. 25 U.S.C. § 2719(b)(1)(A) and 25 C.F.R. §§ 292.13-.18.

Opp. Letter dated 4/13/23); *see also id.*, Ex. 8 (Or. Leg. Assembly Opp. Letter dated 9/21/18).

3. Defendants nevertheless issued the FEIS indicating the agency's intent to acquire the Medford parcel for the purpose of establishing Coquille's second casino.

Despite the tremendous opposition to Coquille's application, on November 22, 2024, Defendants published notice of availability of the FEIS regarding Coquille's application to transfer the Medford parcel into trust. *See* ECF No. 2-2, Exs. 1–2 (FEIS, Vols. I & II); 89 Fed. Reg. 92717, 92717 (Nov. 22, 2024). Defendants again received comments in opposition to the FEIS and/or requests for thirty additional days to comment on the voluminous FEIS, from Plaintiffs and other Tribal nations in Oregon as well as federal, state, and local officials (e.g., Oregon U.S. Senators and Governor Tina Kotek). *See, e.g.*, ECF Nos. 2-3 (Ex. 11); 19-1–19-8; Galanda Decl., Exs. 2, 7-9; *see also id.,* Ex. 22 at 3 (Governor Gavin Newsom on 12/16/24: urging "thorough and careful consultation [and] a willingness to hear, understand, and respond to" affected Tribal nations and communities). Defendants refused to allow one additional month past the holidays for FEIS commentary, and ignored those Tribal, federal, state, and local government letters. *See id.*, Ex. 14.

Defendants also ignored Plaintiffs' requests for pre-decisional consultation about the ROD. *See* ECF Nos. 19-1–19-4; Galanda Decl., Exs. 10-13; Ex. 14; Ralstin Decl., ¶ 11. Then, after Plaintiffs initiated this action on December 23, 2024 (ECF No. 1) and unsuccessfully moved to temporarily enjoin the ROD from issuing (ECF No. 27), Defendants issued the ROD, approving Coquille's request to take the Medford parcel into trust for gaming purposes pursuant to the IRA, CRA, and IGRA, on January 10, 2025. *See* Galanda Decl., Ex. 25. The capricious timing of the FEIS's issuance over the holidays and the ROD's issuance days before a change in Presidential Administrations does not escape Plaintiffs, Senators Wyden and Merkley, or state or local officials. *See e.g.* ECF No. 2-3, Ex. 11 ("The strategic timing of the publication of the FEIS ensures the majority of the public comment period will occur during the holidays."); Galanda Decl., Ex. 8

("[A] rushed decision for the outgoing [Presidential] Administration should not be prioritized over the voice of those elected to serve and represent the people in Jackson County who will be directly impacted by this project if approved."); ECF No. 19-8 (Senators Wyden and Merkley: the FEIS and ROD "should not be rushed merely because of the upcoming Presidential transition."); *see also id.,* Ex. 22 at 3 (Governor Gavin Newsom: urging DOI not to "rush forward" with a decision on the Coquille Medford project). This is the second time DOI has rushed agency action on the Coquille Medford in the hours before a change in Presidential Administrations. *See id*., Ex. 25 (January 19, 2017, 4:27 PM ET, OIG email to BIA).

Moreover, rather than follow the D.C. Circuit's recent finding that the CEQ regulations on which the FEIS relies are *ultra* vires, the ROD announces DOI's decision to knowingly rely on an unconstitutional NEPA regulatory process. *See id*. (ROD at p. 24 n.1; ROD Responses to Comments at § 2.4). Specifically, the ROD states:

> The BIA is aware of the November 12, 2024 decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To 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 [CEQ] regulations, in addition to the Department of Interior's procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook . . . to meet the agency's obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

Galanda Decl., Ex. 25 (ROD at p. 24 n.1). As outlined below, Defendants' attempts to "cure" the FEIS's and ROD's reliance on the invalid CEQ regulations fail; and more critically, such reliance will cause immediate and irreparable injury to Plaintiffs' interests.

III. LEGAL STANDARD

Both the APA and Federal Rule of Civil Procedure 65 permit the Court to stay the effective date of Defendants' final decision pending this Court's review of the FEIS and ROD for compliance with the U.S. Constitution and other federal laws. 5 U.S.C. § 705; Fed. R. Civ. P. 65(a).

Temporary and preliminary injunctive relief are appropriate where the Plaintiffs establish that (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [their] favor," and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "The likelihood of success and irreparability of harm 'are the most critical' factors." *Trump v. Thompson*, 20 F.4th 10, 31 (2021) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). "The balance of harms and the public interest factors merge when the government is the opposing party." *Id.* (citing *Nken*, 556 U.S. at 435). That is, "the government's interest *is* the public interest." *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 102 (D.C. Cir. 2021) (quoting *Nken*, 556 U.S. at 435).

IV. ARGUMENT

A. Plaintiffs Have Standing to Challenge the Final Agency Decision.

Plaintiffs have standing under Article III to challenge the final agency decision, the FEIS and ROD, because (1) they have suffered a "concrete, particularized, and actual or imminent" injury due to Defendants' assertion that the FEIS and ROD are valid and fulfill their consultation obligations under NEPA and other federal laws to consult affected Tribal nations; (2) Plaintiffs' severe economic and other injuries are "fairly traceable" to Defendants' conduct; and (3) a favorable court decision would likely redress the injury. *See Davis v. Fed. Election Com'n*, 554 U.S. 724 (2008); *United States v. S.C.R.A.P.*, 412 U.S. 669, 686 n.12 (1973) (under the APA, "[a] person suffering legal wrong because of agency action . . . is entitled to judicial review thereof").

In cases involving alleged procedural errors, as here, a plaintiff need only "show that the government act performed without the procedure in question will cause a distinct risk to a particularized interest of the plaintiff." *Wy. Outdoor Council v. U.S.F.S.*, 165 F.3d 43, 51 (D.C. Cir. 1999) (citation omitted); *see also Lujan v. Defenders of Wildlife,* 504 U.S. 555, 572 n.7 (1992) ("The person who has been accorded a procedural right to protect his concrete interests can

assert that right without meeting all the normal standards for redressability and immediacy."). In *Electric Power Supply Association v. F.E.R.C.*, 391 F.3d 1255 (D.C. Cir. 2004), for example, the D.C. Circuit concluded that a plaintiff had standing to challenge the Federal Energy Regulatory Commission's ("FERC") violation of the plaintiff's right to participate in administrative hearings, as the plaintiff and its members had "a right to participate in contested FERC hearings when their financial interests [were] at stake," and the plaintiff regularly exercised that right in other hearings. *Id.* at 1261–62. There, the D.C. Circuit explained that the plaintiff suffered "concrete and particularized" harm when FERC failed to conduct "fair decisionmaking" in violation of the APA—regardless of whether the "financial interests" of the plaintiff and its members would be harmed by the agency's failures. *Id.* at 1262 (concluding petitioner's "standing is not defeated by the fact that it cannot show, with any certainty, that its or its members' financial interests will be damaged by" the outcome of the hearing where procedural violations occurred).

More recently, the Supreme Court found Article III standing where a party asserted a "here-and-now injury" from "subjection to an illegitimate proceeding" based on a separation-of-powers violation. *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 191 (2023); *accord Sidak v. U.S. Int'l Trade Com'n*, 678 F. Supp. 3d 1, 11 (D.D.C. 2023) (plaintiff asserted a "here-and-now injury" from "subjection to an illegitimate proceeding," which is sufficient to show an Article III injury).

Here, Plaintiffs easily demonstrate they have suffered a concrete, particularized, imminent set of injuries. *See* Section II(A)(5), *supra*. Plaintiffs undoubtedly suffered procedural injury based on Defendants' issuance of the *ultra vires* FEIS and ROD, in violation of separation-of-powers principles *and* from Defendants' repeated failures to meaningfully consult with Plaintiffs. *See infra,* Sections IV(B)(1) & (3); *Elec. Power Supply Ass'n*, 391 F.3d 1255, 1261–62 (concluding plaintiffs have standing based on their "right to participate in contested FERC hearings when their

financial interests are at stake"). Plaintiffs suffer far more than "injury to . . . participatory rights." *Nat. Resources Def. Council v. Lujan*, 768 F. Supp. 870, 874 (D.D.C. 1991). Plaintiffs are owed a greater right of federal consultation—"robust, interactive, pre-decisional, informative, and transparent consultation"—in recognition of their status as constitutionally and federally recognized Tribal nations and in fulfillment of the United States' unique trust responsibility to Tribal nations. Department Manual, 512 DM 4 § 4.4 (Nov. 30, 2022)[12]; *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831); *Seminole Nation v. U.S.*, 316 U.S. 286, 296–97 (1942) (the U.S. "has charged itself with moral obligations of the highest responsibility and trust" to Indian tribes). DOI violated Plaintiffs' sovereign consultation rights. *See infra,* Sections IV(B)(1) & (3).

Once the FEIS and ROD are enforced, Plaintiffs will also suffer immediate, irreversible injury to Plaintiffs' Interests. *See* Section II(A)(5), *supra*. Further, Defendants' failures to meaningfully consult Plaintiffs precluded them from identifying alternatives to Defendants' proposed action and methods to mitigate the devastating harm to Plaintiffs' Interests. *See* Section II(A)(5), *supra*; ECF No. 2-3, ¶¶ 25–51 & Exs. 1–11; Galanda Decl., Exs. 10-14; Ralstin Decl., ¶ 11; *S.C.R.A.P.*, 412 U.S. at 686 n.12 (standing under the APA is "not confined to those who could show 'economic harm,' as "[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society"); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156 (2010) ("The mere fact that [Plaintiffs] also seek to avoid certain economic harms that are tied to the risk of [environmental harm] does not strip them of prudential standing" to bring a NEPA challenge); *Narragansett Indian Tribe v. Bhatt*, No. 22-2299, 2024 WL 3509491, at *5 (D.D.C. July 23, 2024) (finding injury in fact where the undertaking would affect the plaintiff's "historic, cultural, and religious tribal property").

[12] *Available at*: https://www.bia.gov/sites/default/files/dup/tcinfo/512-dm-4-final_508.pdf

As for the second element, Plaintiffs can trace these injuries directly to Defendants' FEIS and ROD. "To establish traceability in a procedural-injury case, an adequate causal chain must contain at least two links: (1) a connection between the omitted procedure and a government decision and (2) a connection between the government decision and the plaintiff's particularized injury." *Hawkins v. Haaland*, 991 F.3d 216, 224 (D.C. Cir. 2021); *see also Eagle County v. Surface Transp. Bd.*, 82 F.4th 1152, 1169 (D.C. Cir. 2023) (when assessing causation, courts must "assume" that the tribe "will prevail on the merits"). The harms to Plaintiffs are directly traceable to Defendants' disregard of their legal obligations, including to consult affected Tribal nations *before* the FEIS or ROD was issued; and once the FEIS and ROD are enforced, Plaintiffs have shown a substantial likelihood Plaintiffs' Interests will be harmed. *See* Section II(A)(5), *supra*.

Defendants have precluded Plaintiffs from participating in the NEPA process, as required by law, which has directly put Plaintiffs' sovereign interests at risk. *See* ECF No. 2-3, ¶¶ 25–51 & Exs. 1–11; *see also Narragansett Indian Tribe*, 2024 WL 3509491, at *6 ("Assuming that the Tribe is correct on the merits that the Agency unlawfully failed to consult with and obtain the tribe's prior consent prior to [taking final agency action], that failure 'was plainly connected to' the Agency's ultimate decision to execute the [final agency action]."). Indeed, had DOI conducted meaningful (or any) consultation with Plaintiffs and other affected Tribal nations before issuing the FEIS and ROD, the agency "*could* have arrived at a different substantive decision." *Id.* (citing *Eagle County*, 82 F.4th at 1169)). Defendants' issuance of the FEIS and ROD will result in inadequate mitigation of the severe harm to Plaintiffs' Interests. *Id.*; *see* Section II(A)(5), *supra*.

Plaintiffs, among other Tribal nations, repeatedly informed Defendants, both before and after they issued the FEIS, of the devastating harm they will face if Defendants did not adequately mitigate the harm that will result if Coquille is permitted to establish a second casino in Medford.

Id. But Defendants refused to consult or listen. *See e.g.* ECF No. 2-3, ¶¶ 25–51 & Exs. 1–11; Galanda Decl., Exs. 10-14; Ralstin Decl., ¶ 11. Notably, Defendants admit in the FEIS that "[w]ithout confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined." ECF No. 2-2, Ex. 2 (FEIS Vol. I, at p. 3-16). Had the agency fulfilled its obligation to consult with the affected Tribal nations, it would have been able to engage with them on this topic and obtain the confidential and proprietary information it states it needs in order to determine "the environmental justice impact on governmental and social services." *Id*.

Finally, Plaintiffs can also show redressability, given the reality that proper consultation with Plaintiffs "*could*" have led Defendants to "reach a different conclusion." *Narragansett Indian Tribe*, 2024 WL 3509491, at *6. "Claims for procedural violations . . . receive a 'relaxed redressability requirement' in which the plaintiff need only show that 'correcting the alleged procedural violation could still change the substantive outcome in the [plaintiff's] favor"—not that it "would effect such a change." *Hawkins*, 991 F.3d at 225; *see also Ctr. for Bio. Diversity v. Mattis*, 868 F.3d 803, 818 (9th Cir. 2017) ("Plaintiffs alleging procedural injury can often easily establish redress[a]bility with little difficulty, because they need to show only that the relief requested—that the agency follow the correct procedures—may influence the agency's ultimate decision of whether to take or refrain from taking a certain action.").

Plaintiffs have constitutional standing to bring this suit.

B. Plaintiffs Are Likely to Succeed on the Merits.

1. Defendants' FEIS issuance is ultra vires *under separation of powers principles.*

The FEIS, on which the ROD that will imminently destroy Plaintiffs' governmental, economic, and socio-economic interests once implemented is based, violates the U.S. Constitution

because the FEIS on its face is based as the D.C. Circuit recently held in *Marin Audubon Society v. Federal Aviation Administration*, 121 F.4th 902 (D.C. Cir. 2024), on regulations implementing NEPA that are *ultra vires* and invalid under separation of powers principles.

Federal agencies, like DOI, are creatures of statute and "literally ha[ve] no power to act except to the extent Congress authorized them." *Fed. Election Com'n v. Cruz*, 596 U.S. 289, 301 (2022). For regulations to be legally binding, there must be an established nexus between the regulations and some delegation of the requisite legislative authority by Congress to issue the regulations. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 304 (1979). A separation of powers issue arises when an executive or independent agency lacks statutory authority from Congress to issue those regulations. *See Mexichem Fluor v. Env't Prot. Agency*, 866 F.3d 451, 453 (D.C. Cir. 2017).

With respect to the CEQ regulations at issue, 40 C.F.R. Part 1500, "[t]he provisions of NEPA provide no support for CEQ's authority to issue binding regulations," as "[n]o statutory language states or suggests that Congress empowered CEQ to issue rules binding on the other agencies." *Marin Audubon Soc.*, 121 F.4th at 912. Nor does any "statute confer[] rulemaking authority on CEQ." *Id.*[13] Instead, CEQ promulgated its regulations pursuant to Executive Order 11991. However, an Executive Order alone cannot result in regulations validly governing the administration of statutes; thus Executive Order 11991 did not result in CEQ's lawful exercise of authority to issue regulations binding other agencies. *Marin Audubon Soc.*, 121 F.4th at 912.

Although the Supreme Court, in *Andrus v. Sierra Club*, 442 U.S. 347 (1979), stated CEQ's regulations are "entitled to substantial deference," "that *Chevron*-like statement did not result from

[13] While the CEQ's Chairperson was granted statutory authority, *see, e.g.*, 42 U.S.C. §§ 4372, 4375, the Chairperson's authority is limited to "assist[]" other federal agencies and to "promulgate regulations" related only to funding to finance CEQ's other projects and research studies. *Marin Audubon Soc.*, 121 F.4th at 912.

an examination of CEQ's authority to issue judicially enforceable regulations and cannot be credited in light of the Supreme Court's ruling in" *Loper Bright Enterprises v. Raimondo,*— U.S. —, 144 S. Ct. 2244 (2024). *Marin Audubon Soc.*, 121 F.4th at 913.

Accordingly, the D.C. Circuit unambiguously held "the CEQ regulations, which purport to govern how all federal agencies must comply with [NEPA], are *ultra vires*" and thus invalid under separation of powers principles. *Marin Audubon Soc.*, 121 F.4th at 908–915.

The FEIS was unambiguously based on the unconstitutional CEQ regulations, despite the D.C. Circuit's invalidation of those very regulations ten days earlier, on November 12, 2024. *Id.* Defendants relied on and cited the invalid CEQ regulations throughout the FEIS, citing the regulations at least **52 times**: 34 times in Volume I and at least 18 times in Volume II. *See, e.g.*, ECF No. 2-2, Ex. 2 (FEIS, Vol I, pp. 1-1–1-2, 2-1, 3-2, 3-14, 3-18, 3-21, 3-32–3-35, 3-40–3,41; Vol. II, pp. 1-3–1-4, 2-1, 2-26, 2-29, 2-31–2-32, 3-1, 4-1, 4-70, 5-1, 5-5–5-6). The ROD did not alter or amend the FEIS's invalid reliance upon the CEQ regulation at least 52 times. *See generally,* Galanda Decl., Ex. 25. Instead, the ROD continues to rely on the invalid CEQ regulations, at least thirteen times, and announces the agency will continue to knowingly rely on *ultra vires* CEQ regulations, cavalierly ignoring the constitutional rights of the millions of Americans who are subject to its decision making. *Id.* (ROD at pp. 22–24 & 24 n.1; ROD – Responses to Comments at § 2.4).[14] Quite simply, Defendants' entire NEPA process was—both procedurally and

[14] The ROD asserts the Mitigation Monitoring and Compliance Plan ("MMCP") cures the FEIS's and ROD's improper reliance on the CEQ regulations because "the MCP identifies mitigation enforcement through compliance with federal laws . . . and as a matter of tribal law." Galanda Decl., Ex. 25 (ROD - Responses to Comments at § 2.4). Yet the MMCP itself states it "has been prepared consistent with the requirements of 40 CFR § 1501.6(d) and 1505.3(c)" and will only look to other federal and Tribal law for enforcement of the MMCP—again, which is based exclusively on the invalid CEQ regulations. *Id.* (MMCP at 1).

substantively—"completed in accordance with . . . the [CEQ] Regulations for Implementing NEPA." *Id.* (FEIS, Vol. II, pp. 1-3), and is therefore constitutionally invalid.

From providing notice to the public and affected Tribal nations, to reviewing and responding to their comments, to considering mitigation measures and proposed alternatives, to suspending and resuming the EIS, to scoping and preparing the DEIS and FEIS, to issuing the ROD—DOI's process was conducted pursuant to the CEQ's unconstitutional regulations. *Id*. (FEIS, Vol. I, p. 1-1) ("the lead agency shall consider and respond to all **'substantive comments'** received on the draft EIS (40 Code of Federal Regulations [CFR] § 1503.4."); FEIS, Vol. I, p. 1-2 ("a concise public **Record of Decision** will be prepared that states what the decision is, identifies all the alternatives, considered in reaching the decision, and discusses preferences based on relevant factors, including economic and technical considerations . . . (40 C.F.R. § 1505.2."); FEIS, Vol. I, p. 3-2 ("**The EIS process** described above was conducted in compliance with . . . the CEQ NEPA Implementing Regulations (40 parts 1500 through 1508) . . ."); FEIS, Vol. I, p. 3-33 ("**the Draft EIS** satisfies the purpose of an EIS as set forth in 40 CFR 1502.1 . . ."); FEIS, Vol. I, p. 3-35 ("With regards to **the 'hard look,"** the Draft EIS satisfies the requirements of 40 CFR 1502.23 . . ."); *id.* (FEIS, Vol. II, p. 1-4) (CEQ regulations "require a **'scoping' process** to determine and narrow the range of issues to be addressed during the environmental review"); *id.* (FEIS, Vol. II, p. 2-26) (CEQ regulations "require[] a **discussion of alternatives** that were eliminated from further study"); *id*. (FEIS, Vol. II, p. 5-1) ("[T[he CEQ[] NEPA regulations require that **mitigation measures** be developed for all of a proposed action's effects on the environment where it is feasible to do so" (citing 40 C.F.R. §§ 1502.14(f) and 1502.16(h)) (emphasis added).

Defendants failed to apply DOI's own regulations implementing NEPA, 43 C.F.R. Part 46, which they *do* have statutory authority to establish, apart from one fleeting reference in the FEIS.

See ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-35). This is likely because CEQ's regulations instruct agencies like DOI to "confine themselves" to issuing only "implementing procedures" that "comply with [CEQ's] regulations." 40 C.F.R. § 1507.3(a)–(b) (1978). As a result, DOI obeyed CEQ's command and accepted CEQ's regulations as a stand-alone body of law it must "obey." *Marin Audubon Soc.*, 121 F.4th at 915. DOI's own regulations implementing NEPA provide they are to be used "for compliance with," to "supplement," and "to be used in conjunction with the CEQ regulations." 43 C.F.R. §§ 46.10(a)(2), 46.20(a); *see id.* § 46.415. And although DOI once stated it was "incorporat[ing]" certain CEQ guidance documents, it never stated the same of the regulations. 73 Fed. Reg. 61,292, 61,292 (Oct. 15, 2008); *Marin Audubon Soc.*, 121 F.4th at 915.

Notably, Defendants neither represented in the FEIS that they were "required" to rely on their own NEPA-implementing regulations, 43 C.F.R. Part 46, nor did they cite those regulations anywhere in the FEIS. *See generally* ECF No. 2-2, Ex. 2 (FEIS, Vol. II). Defendants' issuance of the FEIS and ROD, and their determination that Coquille's proposed casino development will have little to no environmental impact, is based overwhelmingly on the CEQ regulations, 40 C.F.R. Part 1500, which are *ultra vires* and invalid. Defendants therefore "will now need to take a completely different tack to complete their NEPA review." *Marin Audubon Soc.*, 121 F.4th at 918. When Plaintiffs presented DOI with *Marin Audubon Society* and requested pre-decisional consultation regarding the ROD, Defendants ignored them, and issued the ROD without any amendment of the FEIS's great many references to the unconstitutional CEQ regulations. Galanda Decl., Ex. 25 (ROD at p. 24 n.1; ROD – Response to Comments at § 2.4); *see also* Ralstin Decl., ¶ 11.

Defendants simply cannot show "at least a serious possibility" that they would be able to reach the same outcome on remand. *Marin Audubon*, 121 F.4th at 918. Plaintiffs are likely to prevail on their claim that the FEIS and ROD are *ultra vires* as based almost exclusively on the

ultra vires CEQ regulations. Defendants "will now need to take a completely different tack to complete their NEPA review." *Id.* At the very least, this Court must preserve the status quo by enjoining Defendants from taking any actions to enforce the FEIS and ROD, so that this Court can review the lawfulness of the FEIS and its reliance on the unconstitutional CEQ regulations.

2. Defendants' issuance of the ROD is also contrary to IGRA.

In issuing the ROD, Defendants have also acted contrary to IGRA and upended decades of federal court and agency precedent applying the so-called "restored lands" exception. *See* 25 U.S.C. § 2719(b)(1)(B)(iii). Defendants have concluded that land located 170 miles from Coquille's reservation and lacking aboriginal or historical connections to Coquille, is eligible for gaming under IGRA's restored lands exception. *See, e.g.*, 25 C.F.R. § 292.12.

Congress passed IGRA in 1988 for the purpose of, among other things, regulating a growing Indian gaming industry sanctioned by the Supreme Court's holding in *California v. Cabazon Band of Indians*, 480 U.S. 202 (1987). IGRA prohibits gaming on "lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless" an enumerated statutory exception applies. 25 U.S.C. § 2719(a). The "restored lands" exception, which DOI applied to Coquille's fee-to-trust application, applies when land is taken into trust as part of the restoration of lands for an Indian Tribe that was previously recognized, terminated, and later restored to federal recognition. *Id.* § 2719(b)(1)(B)(iii).

However, a Tribe cannot satisfy this exception simply because it has been restored. Since Congress passed IGRA, DOI and federal courts have limited the restored lands exception to fee-to-trust applications that promote parity between Tribes, particularly among historically disadvantaged Tribes, i.e., Tribes that were terminated and later restored to federal recognition. *See, e.g., Redding Rancheria v. Jewell,* 776 F.3d 706, 711 (9th Cir. 2015) ("The [restored lands] exception was not intended to give restored tribes an open-ended license to game on newly

acquired lands. Rather, its purpose was to promote parity between established tribes, which had substantial land holdings at the time of IGRA's passage, and restored tribes, which did not."); *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S Attorney for the W.D. Mich.,* 198 F. Supp. 2d 920, 935 (W.D. Mich. 2002) (The term "restoration may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after acquired property in some fashion."). Critically, the Tribe submitting the fee-to-trust application must have significant historical, modern, and temporal connections to the land in question. *See, e.g.,* 25 C.F.R. § 292.12 ((1) "modern connections to the land," (2) "significant historical connection to the land," and (3) "a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration" (*e.g.,* the Tribe submitted an application to take the land into trust within 25 years after it was restored to federal recognition and, if it already has land in trust, is not already gaming on the previously acquired land)).

Here, to justify its unprecedented expansion of the restored lands exception (to Tribes that cannot meet 25 C.F.R. § 292.12's requirements), Defendants adopted an untenable interpretation of the Coquille Restoration Act ("CRA"), Pub. L. No. 101-42, 103 Stat. 91 (1989) (codified at 25 U.S.C. § 715 *et seq*. (omitted 2016)). Specifically, the ROD concludes that the CRA—and not the IRA—requires or authorizes the Secretary to take the Medford parcel into trust for gaming purposes. *See* 25 C.F.R. § 292.11(a)(1). Defendants' reading of the CRA cannot be squared with its plain terms, as the CRA expressly states "[t]he Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the ***[Indian Reorganization] Act of June 18, 1934 (48 Stat. 984)," i.e., not the CRA itself***." Pub. L. No. 101-42, § 5(a), 103 Stat. 91 (1989) (codified at 25 U.S.C. § 715 *et seq*. (omitted 2016)) (emphasis added).

Defendants' flawed reading of the CRA not only offends its plain terms, its use permitted

Coquille to bypass otherwise applicable "restored lands" regulatory requirements to demonstrate Coquille has significant historical, modern, and temporal connections to the Medford parcel, 25 C.F.R. § 292.12, and a "two-part determination" under which it is clear the Governor of Oregon would not concur. Coquille effectively concedes it cannot meet these requirements: Coquille aims to develop a second casino on land it purchased nearly 23 years after Coquille's restoration, which is not contiguous to Coquille's existing reservation (as it is located nearly 170 miles away). Coquille originally submitted its application to take the Medford Parcel into trust "pursuant to the IRA." Galanda Decl., Ex. 20 (Coquille "requests the United States to accept title to approximately 2.4 acres of land and improvements (the 'Subject Property') to be held in trust for the Tribe . . . **The Tribe makes this request under the provisions of the Indian Reorganization Act**…") (emphasis added). Moreover, in prior Interior Board of Indian Appeals briefing, Coquille took the position that its acreage in Medford, for example, "**is expressly subject to the normal IRA and 25 C.F.R. Part 151 process**." *Id.*, Ex. 15 (emphasis added).

When the BIA asked Coquille to provide documentation showing it qualifies for the Connection-Based Restored Lands Exception, Coquille, likely because it realized it could not do so,[15] changed its legal theory. On January 23, 2013, Coquille counsel wrote to the Office of Indian Gaming ("OIG") to request an opinion that the Medford Parcel qualifies as "restored lands" under IGRA. While continuing to emphasize that its application was made pursuant to the IRA, Coquille then abandoned the IRA entirely and asserted the legal fallacy Defendants now rely on: that the CRA's language alone qualifies the Medford Parcel as Statute-Based Restored Lands. *Id.*, Ex. 1

[15] Coquille cannot meet the connection-based restored lands exception because it cannot demonstrate "significant historical connection to" the Medford parcel; this is not Coquille's "first request for newly acquired lands since the tribe was restored to Federal recognition"; and Coquille is already "gaming on other lands" in Coos Bay and evinces no intention to close its successful Mill Casino. *See* 25 C.F.R. § 292.12(b)–(c).

(January 23, 2013 Letter from Coquille counsel to Paula Hart, Office of Indian Gaming, and Stan Speaks, Regional Director of the Bureau of Indian Affairs, "By this letter, the Coquille Indian Tribe (the 'Tribe') requests an opinion that certain lands described below (the 'Coquille Parcel') will qualify as 'restored lands' eligible for gaming purposes . . . As summarized below, the Restoration Act decisively resolves all questions regarding the Tribe's eligibility for the fee-to-trust process.") A plain reading of the CRA and a review of its legislative history belie this fallacy.

As originally proposed, the CRA *would* have allowed for the reading Defendants now give it. The original bill provided "The Secretary shall accept real property within the service area for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary" and made no reference to the IRA. *Id.*, Ex. 23 (Original H.R. 881). The bill was referred to the House Committee on Interior and Insular Affairs, where it was revised to clarify "the Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres . . . The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under [the IRA]." *Id.*, Ex. 3 (H. Rept. 101-61 (May 23, 1989)). The Senate Select Committee on Indian Affairs also issued a report on revised H.R. 881, stating that the purpose of this language is "to provide for the transfer of certain lands within Coos and Curry Counties to the Secretary of the Interior in trust for the benefit for the Coquille Tribe," but that additional acreage within Coquille's service area could only be taken into trust pursuant to the Secretary's discretionary authority under the IRA. *Id.*, Ex. 4 (S. Rept. No. 101-50 (June 13, 1989)). As U.S. Senator Wyden and Representative DeFazio, two of the authors of the CRA, have explained to the Secretary, "This discretionary language was added to ensure that the Secretary could use the authority under the IRA to take land into trust for the Coquille Indian Tribe, the same way it can for other Oregon

tribes, to be in addition to the original one thousand acres of restored lands that were taken into trust under the CRA." *Id.*, Ex. 21 (January 24, 2016 letter to former DOI Secretary Jewell).

Because Coquille is already gaming on Indian lands under the restored lands exception, it is contrary to IGRA to permit Coquille to use that exception to establish a second casino on newly-acquired land *anywhere* in five southern Oregon counties. Clearly, Defendants' approval of Coquille's application under the guise of "restored lands" was not intended to promote parity between Tribes; it gives Coquille "an open-ended license to game on newly acquired lands," an outcome federal courts have repeatedly rejected. *See Redding Rancheria,* 776 F.3d at 711; *Grand Traverse Band of Ottawa and Chippewa Indians*, 198 F. Supp. 2d at 935.

Because the ROD is contrary to IGRA, and its regulatory requirements, Plaintiffs will likely prevail on their claim that the ROD must be vacated and set aside under 5 U.S.C. § 706(2).

3. Defendants' issuance of the FEIS and ROD is arbitrary and capricious for failure to meaningfully consult with affected Plaintiffs.

Plaintiffs are also likely to prevail on their failure to consult claim brought under the APA, NEPA, and other binding federal law. NEPA requires Defendants to assess environmental impact "*in cooperation with* State and local governments[]." 42 U.S.C. § 4331(a) (emphasis added). "NEPA establishes the [EIS] requirement . . . in part to ensure that the public has an opportunity to participate *meaningfully* in decisionmaking at the administrative and legislative levels." *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 365 (D.C. Cir. 1981) (emphasis added).

Further, under DOI's regulations implementing NEPA, 43 C.F.R. Part 46—again, which the agency had express statutory authority to issue—Defendants "must whenever possible consult, coordinate, and cooperate with . . . tribal governments . . . concerning the environmental effects of any Federal action within the jurisdiction or related to the interests of these entities." 43 C.F.R. § 46.155. The agency's own NEPA Guidebook likewise mandates that "Tribal governments . . .

should not only be consulted but should be *partners* with the BIA in the NEPA process, and invited to serve as *cooperating agencies*." ECF No. 2-2, Ex. 11 (59 IAM 3-H (Aug. 2012), § 2.3, p. 6). DOI has also adopted agency policy requiring "robust, interactive, pre-decisional, informative, and transparent consultation" with affected Tribal nations "whenever there is a Department action with Tribal implications." 512 DM 4 § 4.4; *see also* ECF No. 2-3, Ex. 5 (White House: "the Biden-Harris Administration is committed to regular, meaningful, and robust consultation and engagement with Tribal leaders."). Defendants failed to make a reasonable or good faith effort to consult with Plaintiffs before issuing the FEIS or the ROD. *See* ECF No. 2-3, ¶¶ 25–51 & Exs. 1–11; ECF No. 2-6, ¶ 4; Ralstin Decl., ¶ 11.

Yet, the FEIS and ROD do not meaningfully address the agency's own regulations, policies, and procedures requiring Defendants to "consult, coordinate, and cooperate" with Tribal governments, particularly ones that will be economically devastated by the proposed action. *See* Section II(A)(5), *supra*; 43 C.F.R. § 46.155; ECF No. 2-2, Ex. 11 (BIA NEPA Guidebook); *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) ("[T]he Tribe was entitled to be consulted under NEPA . . . and its claims in this respect also raise 'serious questions'" for purposes of injunctive relief). The FEIS claims the BIA provided notice to each of the three Plaintiffs (also pursuant to the unlawful CEQ regulations), and Defendants otherwise claim certain meetings with Plaintiffs since 2022 satisfy federal consultation requirements, but "[c]ontact, if course, is not consultation." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 205 F.Supp. 3d 4, 7 (D.D.C. 2016); *See, e.g.*, ECF No. 2-2, Ex. 2 (FEIS, Vol I, pp. 3-33). Notices, and meetings without "answer to any questions or . . . any information about the status of the project," are contact without consultation—and unlawful under applicable federal laws and policies. *Id*; ECF No. 2-3, ¶ 27.

Further, based on Defendants' misreading of the relevant statutory authority, Defendants completely bypassed their statutory duty under IGRA, 25 U.S.C. § 2719(b)(1)(A), to perform a two part determination, under which they would have to consult with Tribal nations, as well as with the Governor of Oregon, the Jackson County Board of Commissioners, and other federal and state lawmakers, all of whom oppose Defendants' proposed action, and obtain the concurrence of the Governor. *See* ECF No. 2-2, Exs. 4–10. The ROD concludes that DOI is permitted to take the Medford parcel into trust for Coquille under IGRA's so-called restored land exception., *Id*., Ex. 2 (FEIS, Vol. II, p. 2-9). The ROD's application of that exception here—based on a reading of the CRA and IGRA that is divorced from the statutory text—allowed Defendants to justify their refusal to consult Tribal nations regarding the "detrimental" impacts "to the surrounding community," and improperly deprived the Governor of a voice in this decision. 25 U.S.C. § 2719(b)(1)(A).

Defendants' consultation failures are evidenced by the numerous comment letters submitted by Tribal nations in Oregon, California, and beyond, beginning in 2013. *See e.g.* ECF No. 2-2, ¶ 14 & Exs. 9–10; Galanda Decl., Exs. 10-14; *see* Ralstin Decl., ¶ 11. These Tribal nations each raised objections to Defendants' inadequate consultations, citing the federal authority that obliged them to engage in such consultation, but each objection was ignored. *See, e.g.*, *id.*; ECF No. 2-3, ¶¶ 25–51 & Exs. 1–11; ECF No. 2-6, ¶ 4. To illustrate, Defendants failed to consult with Cow Creek even despite direction from the White House in July. ECF No. 2-3, ¶¶ 34–37 & Ex. 5.

On August 2, 2024, Cow Creek followed the White House's direction and wrote Interior Secretary Deb Haaland asking for consultation and information regarding the DEIS, and requesting a response before DOI published the FEIS. *Id.*, ¶¶ 35–37 & Ex. 6 ("We hope for your earliest response to our questions so we can ascertain if a consultation meeting is needed with DOI in the

near term, particularly if the Assistant Secretary of Indian Affairs is readying a[n FEIS] decision on that project."). Neither Secretary Haaland nor DOI ever responded to that request. *Id.*, ¶ 37.

After Cow Creek Chair Keene emailed Secretary Haaland on September 4, and October 2 and 21, 2024, in search of a response to her August 2, 2024 request, the Secretary's Chief of Staff, Rachael Taylor, finally replied, on October 23, 2024. *Id.*, ¶¶ 38–39 & Ex. 7. She "apologize[d] for the delay in responding," explained that AS-IA was "preparing a response on behalf of the Department to [Cow Creek's] inquiry," and promised that DOI Principal Deputy Assistant Secretary Wizi Garriott would "be in touch with [Cow Creek's Chair] directly." *Id.*, Ex. 7. But neither Secretary Haaland nor Deputy Assistant Secretary Garriott ever responded to Cow Creek—despite both the White House's direction and Chief of Staff Taylor's promise. *Id.*, ¶ 40.

> On November 13, 2024, Cow Creek's Chair once again wrote Secretary Haaland and DOI:
>
> Three more weeks have passed without any response to our August 2, 2024 letter to Secretary Haaland, which we sent at the White House's direction. . . .
>
> When will we receive the promised response from Mr. Garriott?
>
> Because, as you acknowledge in your apology, we have not been properly consulted with in accordance with the White House's request of Interior, we demand that Secretary Haaland halt any decision on Coquille's Medford application until we receive the promised response from Mr. Garriott and related consultation.

Id., ¶ 44 & Ex. 10 (emphasis added). Cow Creek detrimentally relied on Chief of Staff Taylor's promise (and apology) and expected some form of consultation regarding the DEIS prior to its issuance. *Id.* But Cow Creek never got what they were owed and promised—Defendants published the FEIS the following week without consultation or a response to Cow Creek's correspondence. *Id.,* ¶¶ 41-51 & Exs. 7–11; Galanda Decl., Exs. 19, 13-14 (documenting Cow Creek's failed efforts to obtain consultation or information from DOI between October 2, 2024 and January 3, 2025).

At the very least, Plaintiffs' claim that they were entitled to pre-decisional consultation about the FEIS and ROD under NEPA, but that Defendants failed to undertake such consultation, raises "serious questions" going to the merits of this claim, which is sufficient for purposes of injunctive relief. *See id.; Quechan Tribe*, 755 F. Supp. 2d at 1120.

C. Plaintiffs Will Be Irreparably Harmed Absent Injunctive Relief.

Plaintiffs will suffer immediate irreparable harm in the absence of emergency relief. A party seeking a preliminary injunction must make two showings to demonstrate irreparable harm. First, the harm must be "certain and great," "actual and not theoretical," and "so imminent that there is a clear and present need for equitable relief to prevent irreparable harm." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 7–8 (D.C. Cir. 2016). Second, the harm "must be beyond remediation." *Id.* Plaintiffs make both showings.

The Supreme Court has recognized that plaintiffs bringing separation-of-powers claims that they were subjected to "unconstitutional agency authority," amount to a "here-and-now injury" that is "impossible to remedy once the proceeding is over." *Axon Enter.*, 598 U.S. at 191. Although "not every 'here-and-now injury' . . . clears the high bar for establishing irreparable injury," this such injuries are irreparable in this Circuit when they "would put [the plaintiff] out of business," as here. *Meta Platforms, Inc. v. Fed. Trade Comm'n*, 723 F. Supp. 3d 64, 82 (D.D.C. 2024) (citing *Alpine Sec. Corp. v. FINRA*, No. 23-5129, 2023 WL 4703307 (D.C. Cir. July 5, 2023)).

In *Alpine Securities Corp.*, the D.C. Circuit granted an emergency motion for injunction pending appeal, enjoining the agency from continuing an enforcement proceeding against the appellant, in part because the appellant

> would suffer an irreparable harm without an injunction because the ongoing FINRA enforcement proceeding would *put it out of business*. *Plus*, the resolution of claims by an unconstitutionally structured adjudicator is a '*here-and-now injury' that cannot later be remedied*.'

Alpine Sec. Corp., 2023 WL 4703307, at *1; *id.* at *2 (Walker, J., concurrence) (citing *Axon Enter.*, 598 U.S. at 191). The Seventh Circuit has likewise found that

> [s]ubmission to a fatally biased decisionmaking process is itself a constitutional injury sufficient to warrant injunctive relief, where the irreparable injury will follow in the due course of events, *even though the party charged is to be deprived of nothing until the completion of the proceedings*.

United Church of the Med. Ctr. v. Med. Ctr. Comm'n, 689 F.2d 693 (7th Cir. 1982) (citing *Gibson v. Berryhill,* 411 U.S. 564, 570 (1973)) (emphasis added).

If Defendants enforce the ROD, Plaintiffs will not only suffer "here-and-now" injuries of being subjected to DOI's unlawful NEPA process, these Tribal nations will receive substantially diminished gaming revenues—as the FEIS acknowledges—thereby devastating Plaintiffs' Interests—indeed, their Tribal governments writ large. *See* Section II(A)(5), *supra*; ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 4-22–4-23). Critically, Plaintiffs' enterprises risk *going out of business*, which will decimate core Tribal governmental services and programs in all three communities. *See id.; cf.* ECF No. 2-6, ¶ 7. This Court has recognized that plaintiffs who demonstrate a final agency action resulting in substantially diminished funding to Tribal governments for "core public services" makes a "very strong showing of irreparable harm." *Confederated Tribes of Chehalis Reservation v. Mnuchin*, 456 F. Supp. 3d 152, 164 (D.D.C. 2020).[16]

As to Plaintiffs' imminent economic harm, both U.S. Senators from Oregon opined that Defendants' decision to take the Medford parcel into trust for Coquille's second casino "will irreparably deprive at least three other Tribes of significant gaming revenues from their existing casinos" and "would pit some of our country's most marginalized communities against each other,

[16] This Court later terminated the injunction on other grounds, finding the injunction was inappropriate because plaintiffs could not prevail on the merits, as ANCs were "Indian Tribes" under certain federal statutes. *Confederated Tribes of Chehalis Reservation v. Mnuchin*, 471 F. Supp. 3d 1 (D.D.C. 2020); *see also Yellen v. Confederated Tribes of Chehalis Reservation*, 594 U.S. 338 (2021) (affirming this Court's finding that ANCs were "Indian Tribes").

forcing them to compete in a 'race to the bottom.'" ECF No. 2-2, Ex. 6); *see Wash. Metro. Area Transit Com'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 & 843 n.2 (D.C. Cir. 1977) (concluding "the destruction of a business is, of course, an essentially economic injury" that amounts to irreparable harm); *Alpine Sec. Corp.*, 2023 WL 4703307, at *2 (Walker, J., concurring) (finding irreparable harm where agency action would put appellant "out of business" and constitute a "here-and-now" injury to its constitutional rights); *see also John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc.*, 588 F.2d 24, 28 (2d Cir. 1978).

On a practical level, now that the FEIS and ROD issued, Defendants can immediately transfer title to the Medford parcel into trust, and Coquille admits it will immediately conduct gaming in the existing bowling alley facility[17]; and the FEIS assumes that Coquille will initially introduce at least 150 gaming machines as part of "Phase I." ECF No. 17 at 26; ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-15). And as Defendants acknowledge, once Coquille begins gaming on the Medford parcel, it will cause considerable declines in revenues for Cow Creek (21.3%, but as high as 28.5%), Karuk (23.4%, but as high as 37%), and Tolowa (5.3%, but as high as 13.4%). *Id.*; ECF No. 2-4, Ex. 3 at pp. 2, 6; ECF No. 2-6, Ex. RA-2; ECF No. 2-5, ¶ 25.

Once the land is taken into trust for Coquille based on an unlawful FEIS and ROD, Coquille will likely invoke its Tribal sovereign immunity, which could later "prevent a court from enjoining" Coquille's pre-construction activities to convert the Medford parcel into its proposed second casino. *Stand Up for California! v. U.S. Dep't of Interior*, 919 F. Supp. 2d 51, 82 (D.D.C. 2013). Although Coquille has represented that it will not attempt to dismiss Plaintiffs' instant action under Fed. Civ. P. Rules 19 or 12(b)(7), Coquille has not expressly waived its sovereign

[17] Notably, Coquille does not indicate it intends to follow federal law by providing as much as 120 days' notice to the NIGC prior to opening its Class II casino in Medford. *See* ECF No. 17-4, ¶ 3; 25 C.F.R. § 559.2(a).

immunity as it relates to all claims, current or future, related to this action. *Cf. id* at 82 (rejecting plaintiffs' claim of irreparable harm incurred as a result of DOI's decision to take land into trust for gaming purposes in part because of the Tribe's explicit waiver of sovereign immunity); ECF No. 15 at 2. Nor has Coquille expressly represented that once the Medford parcel is taken into trust, Coquille will wait to execute on their Class II gaming plan for the land, including providing the NIGC proper notice of its intent to open its gaming facility. *Id.* at 83 (same, in part because of and that tribe's "numerous" representations that a number of steps must be taken before any actual construction of gaming facilities can begin); 25 C.F.R. § 559.2(a). To the contrary, as of January 11, 2025, ***Coquille has already commenced Class II gaming on the Medford parcel***, by operating at least 14 machines. Camarena Decl., ¶¶ 6–10 & Exs. 1–3; *see also* ECF No. 17-4, ¶ 3.

In response to these irreparable declines in gaming revenue, Defendants' FEIS and ROD dismisses the possibility of significant impacts to Plaintiffs' casinos by emphasizing the purportedly negligible impacts from "Phase 1," during which Coquille would purportedly introduce only 150 gaming machines at the Medford site. ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-15). Yet, apart from this cursory statement in the FEIS, there is no basis to assume Coquille will conduct its gaming operation in "phases" (initially introducing 150 gaming machines, until it reaches 650); and even if it did, the FEIS appears to assume that the "full build" phase (650 gaming machines) will be completed within one year. *Id.*; *see* ECF No. 2-4, Ex. 3 at p. 2.

The agency's unlawful FEIS and ROD further attempts to minimize the long-term adverse effects to Plaintiffs' casinos by finding that these substantial declines in gaming revenue will "diminish after the first year of the project operations because local residents will have experienced the casino and will gradually return to more typical and more diverse spending patterns." ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-15). The FEIS, however, relies exclusively on the undisclosed data

(as it is allegedly "proprietary and confidential") of a consultant hired and paid by Coquille, *id.*; and the FEIS's finding is flatly contradicted by other expert analysis finding that "the substitution effect is going to be *permanent*." ECF No. 2-4, Ex. 3 at 11 (emphasis added).

Nor does the FEIS meaningfully account for the budgetary needs of Plaintiffs' governments or the substantial impact to governmental and social services provided to their members. Indeed, in the FEIS, Defendants dismissed any impact to government services on the ground that DOI purportedly could not "determine[]" such impacts without "confidential and propriety information" regarding distribution of gaming revenue to tribal governments and members and because tribal governments also "use funds from grants and/or other tribal economic enterprises." ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-16). Defendants' position, however, is directly contradicted by Plaintiffs' evidence showing their heavy reliance on gaming revenue (and related non-gaming revenue derived from other services at their gaming facilities) to fund core public services to their members.[18] *See* Section II(A)(5), *supra;* ECF No. 2-3, ¶¶ 11–12, 21; ECF No. 2-6, ¶ 7, Ex. RA-2; ECF No. 2-5, ¶¶ 17–20, 23; Ex. 3 at p. 19. Likewise, the unconstitutional FEIS altogether fails to account for the adverse impacts that non-tribal organizations and citizens would endure, such as employment and charitable giving from Plaintiffs' casinos. *See* Section II(A)(5)(c), *supra*. As this Court has found, to characterize funding "to assist Tribal governments in providing core public services" as "merely 'economic' is terribly misguided." *Confederated Tribes of Chehalis Reservation*, 456 F. Supp. 3d at 163–64. Had Defendants taken a "hard look" at the anticipated severe and irreversible impacts of Coquille's second casino in Medford, as required by NEPA,

[18] Because Defendants failed to meaningfully consult with Plaintiffs or ask for more information regarding Plaintiffs' reliance on gaming and related non-gaming revenue to fund their Tribal governments and public services, Plaintiffs would have provided this information (and any other requested information) to the agency before the final agency decision was made.

Defendants would have understood the significant threats and likely irreversible harm to Plaintiffs' ability to fund the core public services on which their Tribal citizens depend.

Accordingly, despite Defendants' preemptory attempts to disregard any harm to Plaintiffs, or attempts to characterize such harm as merely "economic," Plaintiffs can easily show that they will suffer severe, irreparable harm to Plaintiffs' Interests in the absence of an injunction.

D. The Balance of Hardships and Public Interest Tip in Plaintiffs' Favor.

Because Plaintiffs will suffer severe, irreparable damage if Defendants are not enjoined from enforcing the unlawful final decision to take the Medford parcel into trust, and any delay in executing on Defendants' final agency decision would result in minimal and purely commercial harm to the proposed project's promoters, the balance of hardships weighs in favor of granting Plaintiffs' requested injunction. This fact also demonstrates that the injunction is in the public interest. *See Shawnee Tribe*, 984 F.3d at 102 ("'Where, as here, 'the Government is the opposing party,' the last two factors"—the balance of harms and the public interest—"'merge': 'the government's interest *is* the public interest.'").

Initially, Defendants' decision to issue the FEIS based on unconstitutional regulations notwithstanding the D.C. Circuit's decision in *Marin Audubon Society*, 121 F.4th 902, precluded Plaintiffs from anticipating that Defendants would proceed on enforcing the FEIS and ROD to permit an economically thriving tribe like Coquille—which already possesses over 6,400 acres of restored lands from which Coquille operates a large casino *and* other successful enterprises—to establish a second casino more than 170 miles from its reservation and ancestral land. More critically, Defendants have permitted Coquille to establish the second casino in the heart of Medford, which is in closer proximity to each of Plaintiffs' casinos and from which Plaintiffs draw many, if not most, of their patrons, than it is to Coquille's existing Mill Casino. ECF No. 2-3¶¶ 6,

19; ECF No. 2-6 ¶ 7. Coquille's proposed second casino will inevitably result in net revenue losses to Plaintiffs' casinos, *see* ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-15), thereby depriving Plaintiffs' of funding for their entire Tribal government operations. *See* Section II(A)(5), *supra*.

Again, Defendants' final decision to take the Medford parcel into trust is opposed by nearly all governments with jurisdiction over the land, including the State of Oregon and Jackson County, and many governments in the surrounding area, including Cow Creek, Karuk, and Tolowa tribal governments and many others. ECF No. 2-2, Ex. 4 (Gov. Kotek); *id.*, Ex. 5 (Jackson Cnty.); *id.*, Ex. 9 (Karuk); *id.*, Ex. 10 (Tolowa); *see also id.*, Ex. 6 (U.S. Sen. Wyden & Merkley). Because Defendants did not meaningfully consult with these governments, in violation of NEPA and other federal laws, Defendants disregarded the devastating socio-economic impacts that the acquisition will have on Plaintiffs as well as the larger community. ECF No. 2-3¶¶ 11–14, 19–21; ECF No. 2-6, ¶ 7; ECF No. 2-5 ¶¶ 17–23; *see also* ECF No. 2-2, Ex. 1 (FEIS, Vol. I, pp. 3-15–3-16).

Coquille is now illegally operating a Class II casino in Medford. ECF No. 17-4, ¶ 3; Camarena Decl., ¶¶ 4, 6–10 & Exs. 1–3; ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-15); *but see* 25 U.S.C. § 2791(a). To the extent that Defendants have already taken the Medford parcel into trust, they have simply ignored DOI regulations that certain steps must occur before the land is taken into trust. *See, e.g.*, 25 C.F.R. § 151.12(c)(2)(iii) (2013) (directing DOI to "immediately acquire the land in trust status" on or after the ROD is issued and "***upon fulfillment of the requirements of § 151.13 and any other Departmental requirements***");[19] *id.* § 151.14 (2013) (providing formal

[19] For example, DOI's Fee-to-Trust Handbook expressly requires the AS-IA, upon approving a request to transfer land into trust for gaming, to (1) "[p]ublish the Public Notice in the Federal Register," (2) "consult with the Solicitor's Office" when he knows his decision will be challenged in federal court, and (3) prepare a "Final Certificate of Inspection and Possession" ***prior to*** accepting the conveyance of land. Here, it is unclear whether any of these required steps were taken. *See* Fee-to-Trust Handbook at pp. 23–25 (June 28, 2016), available at

acceptance of land in trust status shall be accomplished by issuance of instrument of conveyance by Secretary "***as is appropriate in the circumstances***"); 25 C.F.R. § 559.2(a) (typically requiring ***120 days' notice*** to NIGC); *see also* 25 C.F.R. § 151.13(c)(2), 151.16 (2024); ECF No. 2-3 at 60.

The effects of Defendants' unlawful final decision are therefore immediate. *Id.* Even if Coquille ceases operating gaming machines until its renovations are complete, once Coquille begins construction in reliance on the agency's final decision, this will only introduce new equitable factors that will make undoing the work even more difficult and costly. Coquille's anticipated actions will irreversibly alter the Medford site despite Defendants' failure to apply the statutorily mandated two-part determination and local governments' strong opposition to Coquille's proposed casino. ECF No. 2-2, Exs. 4–10. These factors, as well as the public interest (discussed below), far outweigh the purely commercial interests of the promotors of Coquille's second casino.

On the other hand, if Plaintiffs' requested injunctive relief is granted, Defendants will suffer no harm or disadvantage. In light of Defendants' decade-long decision making process, any additional delay in Defendants' final decision would be minimal to non-existent. Nor do Defendants establish any *specific* harm from an injunction preserving the status quo and preventing the agency from taking Coquille's proposed casino site into trust during the pendency of this action. *See Akiachak Native Cmty.*, 995 F. Supp. 2d at 17 (enjoining DOI from taking land into trust for an Alaska Tribe, noting "the Secretary does not specifically identify any harm to the United States or the Alaska tribes"); *see also Ebel v. City of Corona*, 698 F.2d 390, 393 (9th Cir. 1983) (because the city could "point to no specific instances of harm," "[t]he hardships [plaintiff] would face if

https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/Acquisition_of_Title_to_Land_Held_in_Fee_or_Restricted_Fee_Status_50_OIMT.pdf.

the preliminary injunction were denied [were] much more serious than the temporary hardship the city would endure if the injunction were granted"). Defendants cannot establish any harm from an injunction or stipulation preventing the agency from taking Coquille's proposed casino site into trust during the pendency of this action. *Id.* Yet, in the absence of such injunctive relief, Plaintiffs will be devastated. *See* Section II(A)(5), *supra*.

In addition, the general public has an interest in an administrative process that conforms to the U.S. Constitution and the statutory requirements mandated by Congress under NEPA and other federal law. This is particularly true where a party has an "extremely high likelihood of success on the merits," which serves as "a strong indicator that a preliminary injunction would serve the public interest" because "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters*, 838 F.3d at 12; *see also Shawnee Tribe*, 984 F.3d at 102 (concluding where the Secretary's action is in violation of a federal statute, "the public interest . . . favors the Tribe"); *Nixon v. Admin. of Gen. Servs.*, 433 U.S. 425, 453 (1977) (finding a "substantial public interest" to "restore public confidence in our political processes"). The public's interest would be best served by enjoining Defendants from enforcing the FEIS or ROD to accept the Medford parcel into trust until the legality of the agency's final decision has been adjudicated on the merits. Indeed, the individuals who were voted into office to represent the citizens of Medford and the surrounding communities (e.g., Governor of Oregon, the Jackson County Board of Commissioners, federal and state legislators, and Cow Creek, Karuk, and Tolowa Councilmembers), do not support Defendants' final decision—the significance of which Defendants appear to completely disregard.

V. CONCLUSION

For these reasons, the Court should therefore grant Plaintiffs' Motion.

DATED this 13th day of January, 2025.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

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

DATED this 13th day of January, 2025.

Respectfully submitted,

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CERTIFICATION OF SERVICE

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

DATED this 13th day of January, 2025.

Respectfully submitted,

/s/ Gabriel S. Galanda