IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFFS' REPLY IN SUPPORT OF THEIR RENEWED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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I. INTRODUCTION

Plaintiffs Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek"), the Karuk Tribe ("Karuk"), and Tolowa Dee-ni' Nation ("Tolowa") respectfully urge the Court to grant their Renewed Motion for a Temporary Restraining Order and Preliminary Injunction ("Motion") to protect Plaintiffs from "here-and-now" constitutional injury as well as their sovereign, economic, socioeconomic, cultural, historical, environmental, and ecological interests. Plaintiffs seek preliminary injunctions against both the U.S. Department of the Interior ("DOI") and its officers (collectively, "Federal Defendants") and Intervenor-Defendant Coquille Indian Tribe ("Coquille") (collectively, "Defendants"), until the Court can adjudicate the merits of Plaintiffs' challenge to (1) the Final Environmental Impact Statement ("FEIS") issued on November 22, 2024, pursuant to the National Environmental Policy Act ("NEPA") in review of Coquille's fee-to-trust application to take a 2.42-acre parcel of land in Medford, Oregon into trust for a second casino and (2) the Record of Decision ("ROD") issued on January 10, 2025, approving Coquille's application to take the Medford parcel into trust for gaming purposes pursuant to the Indian Reorganization Act ("IRA"), the Coquille Restoration Act ("CRA"), and the Indian Regulatory Gaming Act ("IGRA").

Federal Defendants took final agency action despite the invalidity and unenforceability of both the FEIS and ROD under *Marin Audubon Soc. v. Fed. Aviation Admin*., 121 F.4th 902 (D.C. Cir. 2024), *reh'g denied en banc*, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025) (per curiam). Federal Defendants' final decision also fails to comply with IGRA, the IRA, and NEPA, particularly as Federal Defendants repeatedly failed to consult with Plaintiffs before the FEIS and ROD were issued. Because the final decision is contrary to the U.S. Constitution and federal statutes, and is otherwise arbitrary and capricious, Plaintiffs are entitled to relief under the Administrative Procedure Act ("APA") and Declaratory Judgment Act.

Immediately before Plaintiff's Motion was filed, Federal Defendants took the unprecedented, unlawful step of acquiring the Medford parcel in trust the same day they issued the ROD on January 10; and Coquille immediately commenced gaming activities on the parcel on January 11 without requisite notice to the National Indian Gaming Commission ("NIGC") in violation of federal law. These facts are not in dispute. To prevent even further irreparable harm caused by Defendants' ongoing unlawful actions, Plaintiffs seek (1) a mandatory injunction immediately divesting Federal Defendants of trust title to the Medford parcel and (2) a prohibitory injunction enjoining Intervenor-Defendant Coquille from unlawfully gaming on the parcel. These injunctions are necessary to preserve the status quo as of January 9.

Defendants do not dispute Plaintiffs' evidence showing the immediate and irreparable harm to Plaintiffs' sovereign, socioeconomic, cultural, historical, environmental, *and* ecological interests, which will compound absent injunctive relief. Defendants only seek to refute Plaintiffs' economic harm, which is fatal to their opposition. Nor do Defendants compellingly rebut Plaintiffs' showing that they are likely to prevail on their challenge to the FEIS and ROD as *ultra vires* and contrary to federal statutes. For these reasons, the requested injunctive relief should be granted.

II. ARGUMENT

A. Plaintiffs' Requested Mandatory and Prohibitive Injunctive Relief Is Proper.

1. Plaintiffs are entitled to a mandatory injunction against DOI.

Federal Defendants acknowledge that Plaintiffs seek a mandatory injunction to temporarily divest the land from its trust status until Plaintiffs' claims are resolved. ECF No. 51 at 37.[1] Federal

[1] Plaintiffs could not have requested mandatory injunctive relief in their Motion because Federal Defendants misrepresented when the trust acquisition occurred. *See* ECF Nos. 49 at 2–3, 32-2 at 193–95; 90 Fed. Reg. 3907, 3907 (Jan. 15, 2025) (falsely providing DOI "*will* immediately acquire title to the Medford Site" on or after January 15). Federal Defendants in fact acquired title to the Medford site the same day they issued the ROD, on January 10, and they recorded the deed the

Defendants, however, misrepresent the applicable standard for mandatory injunctions, asserting Plaintiffs must meet a "higher standard than in the ordinary case" by showing "extreme or very serious damage will result from the denial of the injunction." *Id*. (quoting *Singh v. Carter*, 185 F. Supp. 3d 11, 17 (D.D.C. 2016)). To be sure, this Circuit rejects any distinction between requests for mandatory and prohibitory injunctive relief. *League of Women Voters of United States v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016) ("[T]his court has rejected any distinction between a mandatory and prohibitory injunction, observing that a "'mandatory' injunction has not yet been devised that could not be stated in 'prohibitory' terms") (quoting *United States v. W. Elec. Co.*, 46 F.3d 1198, 1206 (D.C. Cir. 1995)); *Singh v. Berger*, 56 F.4th 88, 95–96 (D.C. Cir. 2022) (declining to apply a heightened standard to mandatory injunctions or otherwise "reformulate the traditional test set out by the Supreme Court in *Winter*"). Plaintiffs satisfy the traditional *Winter* factors.

Further, as Federal Defendants previously acknowledged, the Supreme Court, in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012), "squarely addressed the . . . irreparable harm that Plaintiff[s] complain[] of and indicated that federal district courts do have the power to strip the federal government of title to land taken into trust for an Indian tribe under the APA." ECF No. 13 at 28 (citing *Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty. v. Salazar*, No. 12-cv-3021, 2013 WL 417813, at *4 (E.D. Cal. Jan. 30, 2013)); *see* 78 Fed. Reg. 67928-01, 697934 (Nov. 13, 2013) ("If a court determines that the Department erred in making a land-into-trust decision, the Department will comply with a final court order and any judicial remedy that is imposed."). Federal district courts have previously exercised their power to vacate trust decisions that are *ultra vires*, as the Court should do here. *See,*

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same day the Motion was filed, on January 13. ECF Nos. 51-1, 51-2; 25 C.F.R. § 151.16 (providing all requirements of the "formalization of acceptance and trust status" is complete after recording).

e.g., Crawford-Hall v. United States, 394 F. Supp. 3d 1122, 1153–54 (C.D. Cal. 2019) (concluding that DOI's Notice of Decision taking land into trust for Santa Ynez Band of Mission Indians was *ultra vires*, vacating opinion, and remanding to agency to correct its final decision).

2. Plaintiffs are entitled to a prohibitory injunction against Coquille.

Plaintiffs likewise seek to enjoin Intervenor-Defendant Coquille, now a party to this action, from unlawfully gaming on the parcel. When the Motion was filed on January 13, 2025, Coquille was not party and therefore could not be subject to any injunction. *See* ECF Nos. 32. Nine days later, on January 22, Coquille became a permissive Intervenor-Defendant. *See* ECF Nos. 15, 33; 1/22/2025 Minute Order. Contrary to Coquille's misrepresentations, the Court did not grant Coquille's "motions to intervene as of right in this action." ECF No. 50 at 1. Instead, the Court's oral ruling made clear that Coquille's intervention motion was granted because Plaintiffs did not oppose Coquille's *permissive* intervention.[2]

Coquille does not deny it has been unlawfully operating at least 30 gaming machines on the Medford parcel since January 11, 2025. ECF No. 52-1, ¶ 7. Nor could it: Coquille failed to provide the required 120 days' notice (or at least 60 days' notice) to the NIGC before opening its new gaming facility. 25 C.F.R. § 559.2(a) ("A tribe shall submit to [the NIGC] a notice that a facility license is under consideration for issuance at least 120 days before opening any new place . . . on Indian lands where class II or III gaming will occur."). Coquille waited to provide the NIGC with notice until January 16, five days *after* it started gaming in violation of § 559.2(a). *See* Declaration of Gabriel S. Galanda ("Galanda Decl."), Ex. 1; *see, e.g.*, NIGC Settlement Agreement No. SA-19-01 (assessing a $26,298 fine where the Tribe acknowledged the NIGC regulations required a

[2] Plaintiffs' order of the January 22 hearing transcript is pending. Had the Court granted Coquille's motion to intervene as of right over Plaintiffs' objection, it would have needed to expressly find Coquille met Rule 24(a)(2)'s requirements. The Court did not do so. *See* 1/22/2025 Minute Order.

Tribal Facility Licence Notice at least 97 days earlier and the NIGC could have assessed a $5,101,812 fine against the Tribe); NIGC Settlement Agreement SA-23-02 (assessing a $100,000 fine for violation of § 559.2(a), among other violations).

Coquille responds that its illegal gaming is justified because it requested that the NIGC grant an expedited 60-day review period on October 30, 2024, months before the Medford parcel was eligible for Indian gaming and, therefore, months before the NIGC had jurisdiction. 25 U.S.C. § 2702(3) (declaring "the establishment of independent Federal regulatory authority for gaming on Indian lands"); ECF Nos. 52 at 50, 52-3 at 3. However, on January 17, 2025, the NIGC ***denied*** Coquille's request for the 60-day expedited review period and refused to waive the 120-day waiting period. ECF No. 52-3 at 43, 52. Coquille fails to disclose that its operative NIGC notice was submitted on January 16, meaning the waiting period expires on May 16. *Cf.* ECF No. 52 at 50 (representing review period expires on March 1); Galanda Decl., Ex. 1. To protect their various interests, Plaintiffs must now seek a prohibitory injunction against Intervenor-Defendant Coquille, prohibiting them from gaming on the Medford parcel in violation of § 559.2(a). *See* ECF No. 32 at 3–4. At the very least, this Court should enjoin Coquille's unlawful gaming until May 16, 2025.

Coquille suggests that Plaintiffs forfeited their ability to seek injunctive relief against Coquille by failing to ask for such relief in their Motion or their Amended Complaint. ECF No. 52 at 18 n.4. As discussed above, Plaintiffs could not have asked for such relief in either filing because Coquille was not yet a permissive intervenor-defendant. *See* 1/22/2025 Minute Order. Regardless, Plaintiffs clearly indicated their intent to seek relief against Coquille in their Motion and other papers, once Coquille became a party. ECF No. 32 at 41; ECF No. 49. Coquille had every opportunity to respond (and did in fact respond) to Plaintiffs' request. *See* ECF No. 52 at 18 n.4.

Coquille also asserts, in a conclusory fashion, that it cannot be subject to an injunction as a

party to this action "because it would plainly violate Coquille's tribal sovereign immunity." ECF No. 52 18 n.4; *see, e.g., Okla. Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509–11 (1991). However, Coquille waived its sovereign immunity when it sought to intervene in this case without limiting the purpose of its intervention[3] and expressly represented "it will not move to dismiss this action pursuant to [Rules] 12(b)(7) and 19."[4] ECF No. 15 at 7; *see also Keepseagle v. Purdue*, 856 F.3d 1039, 1053 (D.C. Cir. 2017) ("Waiver is the 'intentional relinquishment or abandonment of a known right.'") (citation omitted). Coquille attempted to reinstate its immunity in its renewed motion to intervene, but "sovereign immunity, once waived, cannot be reasserted." *Johnson v. U.S. Capitol Police Bd.*, No. 03-614, 2005 WL 8165800, at *2 (D.D.C. Aug. 8, 2005) (citing *Lehman v. Nakshian*, 453 U.S. 156, 172 n.1 (1981)).

Even if Coquille had not waived its sovereign immunity argument in its initial intervention motion (ECF No. 15), "[t]here can be no doubt that" the act of unqualified voluntary intervention of a Tribe as a party defendant constitutes "an express waiver of their right not to be joined in the" underlying suit. *Wichita & Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 773 (D.C. Cir. 1986); *see United States v. Oregon*, 657 F.2d 1009, 1015 (9th Cir. 1981) ("By intervening, the Tribe assumed the risk that its position would not be accepted, and that the Tribe itself would be bound by an order it deemed adverse."). "'[T]he possibility that the plaintiff will be able to obtain

[3] "A review of our precedent, and that of other courts, demonstrates that nonparties may file a motion for limited intervention, while expressly reserving their rights." *Broidy Cap. Mgmt. LLC v. Muzin*, 61 F.4th 984, 995–96 (D.C. Cir. 2023).

[4] Tribes regularly assert they are an "indispensable party" under Rule 19 for the purpose of moving to dismiss under Rule 12(b)(7) due to lack of jurisdiction based on the Tribe's sovereign immunity. *See, e.g. Maverick Gaming LLC v. United States*, 123 F.4th 960, 964 (9th Cir. 2024). There is no other basis under which Coquille would assert Rules 19 and 12(b)(7); thus, waiving their option to do so constitutes a waiver of sovereign immunity. *See C & L Enter., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 412–13 (2001) (While a waiver of sovereign immunity must be "clear," it need not be explicit or use the words "sovereign immunity.").

relief against the intervenor-defendant' is part of the 'price' paid for intervention." *Schneider v. Dumbarton Dev., Inc.*, 767 F.2d 1007, 1017 (D.C. Cir. 1985) (citation omitted).

The Court must address the merits of Plaintiffs' requested relief against both parties, as such relief could not have been requested any earlier. Regardless, both parties (presumably realizing that relief could not have been requested earlier) addressed it in their responses.

B. Plaintiffs Will Be Further Irreparably Harmed Absent Injunctive Relief.

Plaintiffs can establish they are likely to suffer severe and imminent harm in the absence of emergency relief divesting Federal Defendants of title to the Medford parcel and enjoining Coquille from unlawfully gaming at the site. Both Defendants concede that Plaintiffs are likely to suffer economic harm, but they wrongfully suggest that that is the only type of harm Plaintiffs will suffer. Defendants further attempt to discredit both the severity and imminence of that harm to three federally recognized Tribal nations.

1. The harm to Plaintiffs goes well beyond harm to their economic interests.

As extensively discussed in the Motion (ECF No. 32 at 11–14, 39–44), Plaintiffs' sovereign, cultural, historical, environmental, ecological as well as economic and socio-economic interests will be devastated if their requested injunctive relief is not granted.

Defendants completely disregard evidence that Coquille's new territorial presence in Medford "displaces and causes irreparable harm to . . . the aboriginal Indigenous peoples and Tribal nations" of southern Oregon and northern California, including Plaintiffs. *See* ECF No. 2-3, ¶ 18; ECF No. 32-7 at ¶ 84 (the trust acquisition of the Medford parcel itself will "create immediate irreparable harm to the public" and Plaintiffs by creating a false impression that Coquille is aboriginally or historically connected to Jackson County). Nor do Defendants refute that Plaintiffs will suffer harm to their cultural interests or ability to preserve traditional resources

through the loss of millions in government revenue, discussed below. ECF No. 2-3, ¶¶ 11, 21, 23; ECF No. 2-5, ¶¶ 19, 26; ECF No. 2-6, ¶ 3; ECF No. 32-6, ¶¶ 6–7; ECF No. 32-8, ¶ 7.

Significantly, Defendants do not meaningfully rebut Plaintiffs' evidence that Cow Creek's gross gaming revenues will likely permanently decline by **21.3% to 28.5%** and its non-gaming revenue will likely decline by **52.1%**; Karuk's gross gaming revenues will likely decline by **23.4% to 37%** and its non-gaming revenue will likely decline by **51.7%**; and Tolowa's gross gaming revenues will likely 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; ECF No. 2-5, ¶ 25; ECF No. 2-6, ¶¶ 6–7 & Ex. RA-2. These significant declines in unrecoverable revenue for Plaintiffs' gaming establishments—likely resulting in layoffs of hundreds of Tribal and non-Tribal employees[5]—threaten Plaintiffs' economic enterprises' very existence. *See* ECF No. 2-4, Ex. 3 at 2, ECF No. 2-6, Ex. RA-2 ("losses of this magnitude" could "threaten the viability" of Cow Creek and Karuk's enterprises); *see also Wash. Metro. Area Transit Comm'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. v. FINRA*, No. 23-5129, 2023 WL 4703307, *2 (D.C. Cir. July 5, 2023) (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). This level of likely economic harm is "severe" and without "adequate compensatory . . . relief that will be available at a later date." *Wash. Metro. Area Transit*, 559 F.2d at 843 & 843 nn. 2–3; *see* ECF No. 2-4, Ex. 3 at 2. The FEIS *concedes* that Plaintiffs will suffer substantial economic harm (e.g., a decline of nearly a quarter of gross gaming revenues for Cow Creek's and Karuk's

[5] Inevitably, these layoffs will result in harmful effects to Tribal employees: mental distress, reliance on unemployment compensation, housing insecurity, and poverty risk. ECF No. 2-3, ¶¶ 10, 20–21 & Ex. 3; ECF No. 32-6, ¶¶ 6, 9–13; ECF No. 32-8, ¶¶ 5–7.

enterprises once Coquille's active casino is fully operative, ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 4-22–4-23)), as well as "adverse economic, fiscal, or social impact," as the Medford casino will "negatively alter the ability of governments to perform at existing levels" and "the ability of people to obtain public health and safety services." ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 4-18–4-19).

More critically, Defendants—without any evidence—disregard Plaintiffs' evidence that declining gaming revenues will reduce the funding available to Tribal governmental programs that serve the essential health and well-being of their Tribal members and the surrounding environment. ECF No. 51 at 20–21; ECF No. 52 at 45. This is terribly misguided. In 2023, gaming and related funds made up **40.2%** of Cow Creek's Tribal government revenues. ECF No. 32-8, ¶ 3; *see* ECF No. 2-4, Ex. 3 at 55 (economist conclusion that reduced gaming and non-gaming revenue "will directly translate into less governmental revenue to . . . Cow Creek," preventing it from funding Tribal governmental programs, services, and operations); *see also* ECF No. 2-3, ¶¶ 11–12, 21; ECF No. 2-6, ¶ 9; ECF No. 2-5, ¶¶ 17–20; ECF No. 32-6, ¶ 7; ECF No. 32-8, ¶ 3. This evidence casts any doubt on Defendants' speculative assumption that Plaintiffs' governments and citizens will suffer insignificant harm. This is particularly true, given this Court's prior conclusion that diminished funding to Tribal governments' "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)[6]; *see also Akiachak Native Community v. Jewell*, 995 F. Supp. 2d 7, 17 (D.D.C. 2014) (enjoining DOI from taking land into trust "is necessary to prevent the irreparable

[6] Defendants take great pains to distinguish *Chehalis* on the ground that federal COVID-19 funding is "readily distinguishable" from the Tribal governmental funding at risk here. ECF No. 51 at 20–21; ECF No. 52 at 45 n.21. They simply ignore the degree to which Plaintiffs rely on gaming revenue to fund their Tribal governments, *see, e.g.*, ECF No. 32-8, ¶¶ 3–5; ECF No. 32-6, ¶ 7; and they fail to recognize Congress's express intent, in passing IGRA, to encourage "the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and *strong tribal governments*." 25 U.S.C. § 2702(1) (emphasis added).

harm to state sovereignty and state management of land that will befall Alaska").

Once Tribal members lose their jobs at Plaintiffs' casinos and Tribal governmental revenue is permanently diminished, potentially *this year* (*see* Section II(B)(2) below), Plaintiffs' governments and their citizens will suffer devastating socioeconomic impacts, increasing poverty rates and economic disparity in Plaintiffs' reservation communities. ECF No. 32-6, ¶¶ 6, 9–13, ECF No. 32-8, ¶ 5; ECF No. 2-4, Ex. 3 at 10–11 (economist conclusion that given Coquille's second casino's "close proximity to a significant portion of [Cow Creek] Casino Resort's existing players, the substitution effect is going to be *permanent"*) (emphasis added). These Tribal revenue declines will also have devasting impacts on the surrounding environments and communities, as it will deprive Plaintiffs of critical funding needed to provide clean water, protect "runs of endangered salmon," and "to combat climate change and mitigate . . . wild land fires," which have destroyed Karuk's natural resources in recent years. ECF No. 32-4, ¶¶ 4, 7, 9; *see* ECF No. 2-3, ¶¶ 11, 21, 32; ECF No. 2-5, ¶¶ 19, 26; ECF No. 2-6, ¶ 3; ECF No. 32-6, ¶¶ 6-7; ECF No. 32-8, ¶ 7.

Finally, Defendants dismiss Plaintiffs' "here-and-now injury" of being subjected to an unlawful NEPA review process that was based on unconstitutional CEQ regulations. *See Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 191 (2023). Federal Defendants claim Plaintiffs "can make no serious argument that it was unconstitutional for [DOI] to undertake an environmental impact statement under NEPA," ECF No. 51 at 22, but Federal Defendants misrepresent Plaintiffs' position. DOI was clearly authorized to issue the FEIS under NEPA. But they were *not* authorized by NEPA to act *ultra vires* by determining in the FEIS that Coquille's Medford gaming project would have no relative human, social, or other environmental impact based on unconstitutional CEQ regulations—regulations that Federal Defendants then erroneously concluded were binding. *See Marin Audubon*, 121 F.4th at 918; *see also* Section II(C)(1) below.

Recognizing that "here-and-now" injuries are irreparable when they "would put [the plaintiff] out of business," this Circuit has previously granted an emergency motion for injunction on these grounds, enjoining the agency from continuing an enforcement proceeding against the appellant. *Alpine Sec. Corp.*, 2023 WL 4703307, at *1; *id.* at *2 (Walker, J., concurrence) (citing *Axon Enter.*, 598 U.S. at 191).[7] Federal Defendants' unlawful actions not only put Plaintiffs' enterprises at risk of going out of business, but they also subject Plaintiffs to "here-and-now" injuries on account of being subjected to DOI's unlawful NEPA review process.

2. The harm to Plaintiffs is imminent—in fact, current.

Now that the Medford parcel has been taken into trust, Plaintiffs have already suffered immediate irreparable harm because the trust acquisition itself creates the false impression that Coquille is aboriginally or historically connected to Jackson County and the Rogue River Valley. ECF No. 32-7 at ¶ 84; *id.* ¶¶ 45, 80; ECF No. 2-3, ¶ 18.

In an unprecedented move that is contrary to federal law, Coquille has already commenced unlawful gaming at the Medford site. 25 C.F.R. § 559.2(a). Federal courts have previously recognized that Plaintiffs' concerns could "support a finding of irreparable harm if construction *and gaming were to occur without any notice*." *Cachil Dehe Band of Wintun Indians of Colusa Indian Community*, 2013 WL 417813, at *4 (emphasis added) (ordering the Tribe to provide 30 days' notice to the Court before commencing any gaming at the proposed site, which would be sufficient to "revisit the harm caused by activity at the site without issuing a TRO"). Here, Coquille

[7] Federal Defendants rely on cases holding "procedural injury, standing alone, cannot constitute irreparable harm," ECF No. 51 at 23, that clearly do not apply where Plaintiffs have established concrete injuries to not just their economic interests, but also to their governmental, historical, environmental, and socioeconomic interests. *Cf. E. Band of Cherokee Indians v. U.S. Dept. of Interior,* No. CV-20-757, 2020 WL 2079443 (D.C. C. Apr. 30, 2020); *Friends of Animals v. U.S. Bureau of Land Mgmt.*, 232 F. Supp. 3d 53 (D.D.C. 2017).

provided no notice to the Court, let alone to the NIGC, that once the Medford site went into trust on January 10, 2025, Coquille would immediately start gaming during the pendency of this lawsuit and in direct contravention of 25 C.F.R. § 559.2(a). *See* Galanda Decl., Ex. 1; *see also Cahil Dehe Band*, 2013 WL 417813, at *4 (cautioning the Tribe that "any activity . . . prior to the scheduled . . . hearing will not necessarily sway any future equitable analysis in their favor, and they therefore proceed . . . at their own peril").

Despite Defendants' speculative assurances to the Court, there is nothing stopping Coquille from expanding its casino by the end of 2025—potentially *before* the Court will reach the merits of Plaintiffs' claims. ECF No. 52 at 41–42; *see* ECF No. 2-4, Ex. 3 at p. 2; ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 2-18) (acknowledging its initial assumption that the full buildout of the second casino would be completed within one year). Challenging that position, Federal Defendants exclusively rely on FEIS's hypothetical "estimates" that Plaintiffs' gaming revenue losses would be 2.2–9.4% in 2025 (assuming 150 gaming machines), 3.4–16.2% in 2027 (assuming 300 gaming machines), and 5.3–32.4% in 2029 (assuming 650 gaming machines). *See* ECF No. 51 at 17–18; FEIS No. 2-2 (FEIS Vol. II, p. 2-18). Yet, Federal Defendants do not explain why, in 2021, they anticipated "all project components [would] . . . be constructed and operational" within one year, but they now "expect[] that the installation of gaming devices would occur in three phases," through 2029. ECF No. 2-2, Ex. 2 (FEIS, Vol. II, p. 2-18). To Plaintiffs' knowledge, Coquille has *never* committed to installing gaming machines in multi-year phases or waiting until 2029 to realize the full buildout of its second casino. Coquille has already flouted federal regulatory requirements by operating 30 gaming machines today in violation of 25 C.F.R. § 559.2(a); *see* ECF No. 52-1, ¶ 7. Coquille admits it plans to increase that number to 150 machines by the end of February 2025, well before it would be legal to do so, having provided its 120-day notice to the

NIGC on January 16, 2025. *See* 25 C.F.R. § 559.2(a); ECF No. 52-1, ¶ 5 ("Coquille will continue to add Class II gaming devices, with a goal of reaching 150 Class II gaming devices by the end of February 2025. . . [and] expect that increase from 150 to 650 Class II gaming devices to occur no sooner than the first quarter of 2026."). There is simply no basis for Federal Defendants' newfound and highly speculative assumption that Coquille will wait until 2029 to install 650 machines, which, in any event, Coquille refutes. *See* ECF No. 52-1, ¶¶ 5, 7.

Once Coquille's second casino is fully built out—again, which will likely occur before Plaintiffs' claims are adjudicated on the merits (*see* ECF No. 52-1, ¶ 5)—economists expect (and Federal Defendants acknowledge) that Cow Creek's gross gaming revenues will likely decline by 21.3% to 28.5%; Karuk's revenues will likely decline by 23.4% to 37%; and Tolowa's revenues will likely 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; ECF No. 2-5, ¶ 25; ECF No. 2-6, ¶¶ 6–7 & Ex. RA-2. In addition, Cow Creek and Karuk's respective non-gaming revenue will likely decline by more than 50%. ECF No. 2-4, Ex. 3; ECF 2-6, Ex. RA-1. "[L]osses of this magnitude" will "threaten the viability" of Plaintiffs' casinos (and therefore their Tribal governments), and such losses will be almost certainly permanent. *See, e.g.*, ECF No. 2-4, Ex. 3 at 2. Plaintiffs will suffer imminent harm if their requested injunctive relief is not granted.

C. Plaintiffs Are Likely to Succeed on the Merits.

1. Both the FEIS and ROD must be vacated and remanded to DOI.

Federal Defendants' actions were *ultra vires* when they determined in the FEIS that Coquille's Medford gaming project would have no detrimental environmental impact as compared with other alternatives, as the D.C. Circuit recently held in *Marin Audubon*, 121 F.4th at 918, *reh'g*

denied en banc, 2025 WL 374897.[8] Accordingly, this Court must vacate the ROD and the *ultra vires* FEIS on which it relies and remand to DOI "to take a completely different tack to complete their NEPA review." *Id.* Neither Federal Defendants nor Coquille compellingly rebut Plaintiffs' position that the FEIS is *ultra vires* or that the ROD and the FEIS must be vacated and corrected on remand under *Marin Audubon.*

This Circuit unambiguously held that "the CEQ regulations, which purport to govern how all federal agencies must comply with [NEPA], are *ultra vires*" under separation of powers principles. *Marin Audubon*, 121 F.4th at 908–15. Federal Defendants do not deny this. *See* ECF No. 51 at 14, 26. Nor could they. After *Marin Audubon* was issued, on January 29, 2025, the President issued Executive Order 14154, revoking the Executive Order 11991 that directed CEQ to issue binding NEPA regulations for all federal agencies in 1977. *See* 90 Fed. Reg. 8353, 8355 (Jan. 29, 2025), § 5(a). Likewise, on January 31, 2025, this Circuit denied the parties' respective petitions for rehearing *en banc* in *Marin Audubon*, 2025 WL 374897.

Despite the fact Federal Defendants were on notice of *Marin Audubon*'s holding before they issued the FEIS and the ROD in this case,[9] Federal Defendants nevertheless went on to decide they were *required* to apply the unconstitutional CEQ regulations in issuing the FEIS, without

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[8] Defendants initially argue Plaintiffs' declaratory relief claim (based on their separation-of-powers argument) cannot survive unless Plaintiffs can show their likely harm falls within NEPA's "zone of interests." ECF No. 51 at 24; ECF No. 52 at 20–22. Apart from the fact that Plaintiffs can unambiguously demonstrate environmental harm, *see* Sections II(B)(1) & II(C)(2), Plaintiffs do not bring this particular claim as a "NEPA challenge," but as a "separation-of-powers" challenge. ECF No. 31 at ¶¶ 146–152; *see Marin Audubon*, 121 F.4th at 909 ("CEQ's authority to issue regulations on the basis of an Executive Order raises what is essentially a 'separation of powers' issue"). And despite Federal Defendants' confusing argument to the contrary, Plaintiffs need not join CEQ as a defendant to bring this claim for declaratory relief. *But see* ECF No. 51 at 28.

[9] In addition, DOI must revise its FEIS in the face of any comments indicating "significant new circumstances or information" relevant to environmental concerns—such as the binding decision in *Marin Audubon*. ECF No. 2-2, Ex. 11 (BIA NEPA Guidebook, § 8.5.4).

acknowledging *Marin Audubon* and instead citing the regulations at least 52 times: 34 times in Volume I and at least 18 times in Volume II. ECF No. 2-2, Ex. 2 (FEIS, 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). In addition, the ROD, which incorporates the *ultra vires* FEIS, and was issued after this lawsuit was filed, putting Federal Defendants on specific notice of this issue, cited the CEQ regulations at least 13 more times. *See, e.g.,* ECF 32-2 at 49–51, 55, 59–60, 74–76 (ROD).

Although Federal Defendants now back away from the FEIS's reliance on the CEQ regulations, it cannot be denied that the FEIS was "completed in accordance with . . . the [CEQ] Regulations for Implementing NEPA [40 C.F.R. §§ 1500–08]." ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 1-3); *see also id.* (FEIS, Vol. II, p. 1-4) (CEQ regulations "require a 'scoping' process to determine and narrow the range of issues to be addressed"); *id.* (FEIS, Vol. II, p. 2-26) (CEQ regulations "require[] a discussion of alternatives that were eliminated from further study").

After Plaintiffs raised Federal Defendants' *ultra vires* issuance of the FEIS, Federal Defendants attempted to cure the FEIS's "required" compliance with unconstitutional CEQ regulations by indicating the agency "nonetheless elected to follow those regulations," in addition to DOI's NEPA regulations and the BIA NEPA Guidebook. 43 C.F.R. Part 46 ("Part 46"); ECF No. 32-2 at 51 n.1, 77. Yet the ROD also concludes that the unconstitutional CEQ regulations were "require[d]." *Id.* at 55 (ROD's Mitigation Monitoring and Compliance Plan "has been prepared consistent with the *requirements* of 40 CFR § 1501.6(d) and 1505.3(c)"); *id.* at 59 (for compliance with 40 C.F.R. § 1508.27(b)(10), the following mitigation measures *shall* be implemented"); *id.* at 51 (CEQ regulations "*call for* identification in the ROD of any mitigation measures specifically mentioned in the FEIS that are not adopted") (emphases added).

Regardless, there is no indication in the FEIS that Federal Defendants were then "aware"

of the *Marin Audubon* decision, that they "elected" to follow the CEQ regulations nonetheless, or that they were instead "required" to rely on their own Part 46 regulations or NEPA Guidebook. 42 U.S.C. § 4332(2)(B) (federal agencies "*shall* . . . identify and develop methods and procedures" to ensure unquantifiable environmental impacts are considered, along with "economic and technical considerations") (emphasis added). Instead, the FEIS makes one fleeting reference to 43 C.F.R. § 46.30 in Volume I; and the ROD references to 43 C.F.R. § 415(c) twice. *See* ECF No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-35); *see generally id.*, Ex. 2 (FEIS, Vol. II); ECF No. 32-2 at 74–75 (ROD).

Even if Defendants had relied on their own Part 46 regulations or guidance throughout the FEIS and ROD, the *Marin Audubon* court concluded that DOI's NEPA regulations did not constitute a "permissible exercise of [DOI's] own rulemaking authority" because the agency "obeyed CEQ's command" by "confin[ing]" itself to issuing implementing procedures that merely "compl[ied] with" or "supplement[ed]" the CEQ regulations; and DOI did not otherwise adopt the content of the CEQ regulations, or incorporate them by reference. *Marin Audubon*, 121 F.4th at 914–15 (citing 40 C.F.R. § 1507.3(a)–(b) (1978)); *see* 43 C.F.R. §§ 46.10(a)(2), 46.20(a), 46.415 (providing DOI regulations were issued to "compl[y] with" and "supplement" CEQ regulations). The *Marin Audubon* court also noted that although DOI once stated it was "incorporat[ing]" certain CEQ guidance documents, it never said the same of the CEQ regulations. *Marin Audubon*, 121 F.4th at 915 (citing 73 Fed. Reg. 61,292, 61,292, 61,298 (Oct. 15, 2008)).[10]

Now aware that *Marin Audubon* renders its FEIS and ROD unenforceable, Defendants

[10] The *Marin Audubon* court further noted that even if DOI had incorporated CEQ's regulations as its own, it did so only for the original 1978 version of the CEQ rules, given that DOI's current NEPA rules (43 C.F.R. Part 46) went into effect in 2007 and CEQ amended its rules at least twice before 2023, when the Plan at issue there was published. *Marin Audubon*, 121 F.4th at 915. According to the court, DOI could not have adopted or incorporated the operative version of the CEQ rules, which were cited throughout the Plan, because they "did not exist" in 2007. *Id.*

alternatively argue that the FEIS was a lawful exercise of DOI's authority because NEPA required it to assess the environmental impact of Coquille's proposed Medford casino as a "major Federal action." ECF No. 51 at 27. Of course, as discussed above, Plaintiffs do not dispute DOI's statutory obligations under NEPA. But Defendants fail to acknowledge that "NEPA itself does not mandate particular results" and "imposes only procedural requirements," *Marin Audubon*, 121 F.4th 906. NEPA, standing alone, therefore could not have been the source governing Defendants' required NEPA analysis in the FEIS. Instead, Defendants were statutorily required to identify and develop their own procedures "to undertake analyses of the environmental impact of their proposals and actions," along with "technical and economic considerations." *Id.*; *see* 42 U.S.C. §§ 4332(2)(B), 4332(2)(C). While some federal agencies complied with NEPA's statutory mandate (e.g., FERC), DOI did not. *See Marin Audubon*, 121 F.4th at 914–15; *see e.g.*, 18 C.F.R. § 380.1.[11] Given DOI's complete failure to comply with NEPA's mandate to "identify and develop methods and procedures" to assess both the environmental *and* economic impacts in issuing the FEIS, 42 U.S.C. §§ 4332(B)(2), 4332(2)(C), Federal Defendants cannot show "at least a serious possibility" they would reach the same outcome on remand. *Marin Audubon*, 121 F.4th at 918.

Relatedly, Federal Defendants argue Plaintiffs cannot show that the procedural steps outlined in the FEIS to comply with the CEQ regulations are inconsistent with NEPA or that Plaintiffs were injured by Federal Defendants' improper reliance on the CEQ regulations. ECF No. 51 at 28. Federal Defendants simply misread *Marin Audubon*, which unambiguously vacated the final agency action *because* "the Agencies' actions were *ultra vires* when they determined that their [final decision] would have no environmental impact as compared" to the baseline. 121 F.4th

[11] For example, FERC's NEPA regulations provide FERC will comply with CEQ regulations *to the extent they are not inconsistent* with the agency's NEPA requirements. 18 C.F.R. § 380.1; *see Power Auth. of N.Y.*, 189 FERC P 61217, 2024 WL 5183200, at *2 n.14 (FERC Dec. 19, 2024).

at 918. No further showing is required under *Marin Audubon*. Plaintiffs cannot speculate about what regulations DOI may have promulgated to comply with NEPA's mandate to ensure the agency properly considered Coquille's Medford project's environmental impacts, along with its "economic and technical considerations." 42 U.S.C. §§ 4332(2)(B), 4332(2)(C); *see Marin Audubon*, 121 F.4th at 914–15. What Plaintiffs can demonstrate, however, is that DOI's regulations must sufficiently consider the economic impacts of its proposed actions, *see id.* § 4332(2)(B)—and such consideration was plainly lacking in the FEIS. *See* ECF No. 2-4, Exs. 1–3; *Marin Audubon*, 121 F.4th at 918 (vacating the final decision *because* the agencies did not show "at least a serious possibility" that they will be able to reach the same outcome on remand).

Finally, Federal Defendants also suggest *Marin Audubon*'s express holding—that "[t]he CEQ regulations, which purport to govern how all federal agencies must comply with [NEPA], are *ultra vires*"—is dicta because the court proceeded to address at least one of the petitioner's arguments, "without invoking CEQ regulations." 121 F.4th at 908; ECF No. 51 at 29. Similarly, Coquille argues that since deciding *Marin Audubon*, "the D.C. Circuit has clarified that where, as here, an agency affirmatively complied with CEQ regulations in its NEPA review (rather than allegedly violating the CEQ regulations in performing its NEPA review, as in *Marin Audubon*), *Marin Audubon* does not call the resulting agency action into question." *See* ECF No. 52 at 25 (citing *Citizens Action Coal. Of Indiana, Inc. v. FERC*, 125 F.4th 229, 240 n.3 (D.C. Cir. 2025) & *Am. Whitewater v. FERC*, No. 23-1291, 2025 WL 85341, at *3 (D.C. Cir. Jan. 14, 2025)).

Coquille's argument is nonsensical.[12] In both *Citizens Action Coalition* and *American*

[12] In light of *Marin Audubon's* express holding and chosen remedy, 121 F.4th at 918, it would defy logic to require Plaintiffs to also argue that a specific CEQ regulation was violated (as petitioners did in *Marin Audubon*) when it is now clear that the entire CEQ regulatory scheme "is not in force[]" or "legally binding." *Id.* at 909.

Whitewater, the plaintiffs challenged FERC's (not DOI's) NEPA review process. FERC permissibly follows the CEQ regulations as *guidelines*, to the extent they are not inconsistent with FERC's statutory requirements under NEPA. *See, e.g.*, 18 C.F.R. § 380.1; *see also Power Auth. of N.Y.*, 189 FERC P 61217, 2024 WL 5183200, *2 n.14 (FERC Dec. 19, 2024). Here, however, Plaintiffs' challenge DOI's decision to *comply* with the CEQ regulations as *binding*, as proclaimed in the FEIS, notwithstanding *Marin Audubon*, 121 F.4th at 918. Plaintiffs also challenge DOI's failure to issue its own NEPA regulations as statutorily mandated. *See id.* at 914–15. Regardless, as the *American Whitewater* Court clarified, this Court "must judge the propriety of [agency] action solely by the grounds invoked by the agency." *Am. Whitewater*, 2024 WL 85341 at *3 n.2 (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)). Here, the parties have fully briefed whether Federal Defendants acted *ultra vires* in issuing an FEIS based on the unconstitutional CEQ regulations; and Federal Defendants expressly invoked Plaintiffs' separation-of-powers challenge based on *Marin Audubon* in the ROD. *See* ECF No. 32-2 at 51 n.1, 77.

Regardless, Defendants' position cannot be squared with the D.C. Circuit's explicit rationale for its chosen remedy: a vacatur of the final agency action *because* the agency's "actions were *ultra vires* when they determined that [the agency action] would have no environmental impact." *Marin Audubon*, 121 F.4th at 918; *see also id.* at 920 (Srinivasan, J., dissenting) (indicating the panel majority "unnecessarily decid[ed] the CEQ regulations' validity" and "*unnecessarily vacat[ed] agency action*") (emphasis added).

If an agency's decision to take land into trust is issued *ultra vires*, the Court must vacate the decision and remand to the agency for further consideration. *See Marin Audubon*, 121 F.4th at 918. In *Crawford-Hall*, for example, once a district court concluded that DOI's Notice of Decision taking land into trust for Santa Ynez Band of Mission Indians was *ultra vires*, the court vacated

the final decision and remanded to DOI to cure its final decision. *Crawford-Hall*, 394 F. Supp. 3d at 1153–54; *see also id*., No. 17-cv-1616, 2019 WL 6178806 (C.D. Cal. July 1, 2019) (even after DOI's Assistant Secretary – Indian Affairs "cured" the agency's *ultra vires* decision by approving the trust acquisition, DOI withdrew its final trust acquisition decision and vacated the "Notice of Decision conveying [land] to the United States in trust for the Band").

Plaintiffs are likely to prevail on their claim that the FEIS is *ultra vires* as it is based on unconstitutional CEQ regulations that Federal Defendants believed they were "required" to follow; and the ROD made no meaningful attempt to reconsider the matter under DOI's Part 46 regulations or guidance. Accordingly, the Court must vacate the FEIS and ROD and remand to DOI "to take a completely different tack to complete their NEPA review." *Marin Audubon*, 121 F.4th at 918.

2. The FEIS and ROD are invalid for failure to consult with Plaintiffs.

Plaintiffs also have standing to bring and are likely to prevail on their failure to consult claim brought under NEPA and other federal law. Nevertheless, Defendants argue that Plaintiffs' allegations of economic harm fall outside the zone of interests that NEPA was designed to protect. ECF No. 51 at 24; ECF No. 52 at 20–22. Defendants ignore the fact that Plaintiffs allege more than "purely economic, competitive harm," and they misconstrue the controlling legal authority. As the FEIS acknowledges, "[a]n adverse economic, fiscal, or social impact would occur if the effect of the project were to negatively alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services." ECF No. 2-2, Ex. 2 (FEIS, Vol. II, pp. 4-18-4-19).

Plaintiffs base their claims for declaratory and injunctive relief on (1) the U.S. Constitution, including constitutional "here-and-now" injuries that are "fairly traceable" to Defendants' violation of the separation of powers principles, *see Axon Enter.*, 598 U.S. at 19; and (2) the APA,

which provides "[a] person suffering legal wrong because of agency action . . . is entitled to judicial review thereof." *United States v. S.C.R.A.P.*, 412 U.S. 669, 685 n.12 (1973). While it is true that in evaluating whether Plaintiffs have standing under the zone-of-interests test to bring an APA claim, the Court looks to the substantive provisions of the alleged statutory violation (here, NEPA), it must consider "the particular provision of law upon which the plaintiff relies"—*not* NEPA's overall purpose. *Bennett v. Spear*, 520 U.S. 154, 176 (1997) (concluding allegation plaintiffs were victims of an erroneous application of 16 U.S.C. § 1536's requirement that agency "use the best scientific and commercial data available" "is plainly within the zone of interests that the provision protects").

Here, Plaintiffs argue they are victim to Federal Defendants' violation of both constitutional separation-of-powers principles by relying on *ultra vires* CEQ regulations post-*Marin Audubon*, 121 F.4th at 918; and by failing to comply with NEPA's mandate to "identify and develop methods and procedures" to assess the Coquille Medford's project "unquantified environmental" considerations, "along with economic and technical considerations." 42 U.S.C. § 4332(2)(B). Likewise, Plaintiffs argue that Federal Defendants failed to assess the environmental and economic impacts of Coquille's Medford project "in cooperation with" and in consultation with affected Tribal governments—and again that Plaintiffs were the victim of that error. 42 U.S.C. § 4331(a), 43 C.F.R. § 46.155. These allegations are "clearly within the zone of interests" that these particular NEPA provisions were designed to protect. *Bennett*, 520 U.S. at 176.

Further, the Supreme Court has expressly rejected Federal Defendants' argument that Plaintiffs somehow lack prudential standing under NEPA because they will suffer severe economic harm as a result of the FEIS: "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." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156 (2010); *cf. S.C.R.A.P.*, 412 U.S. at 686

(challenging an agency's failure to issue a detailed EIS under NEPA and the APA is "not confined to those who could show 'economic harm,'" as "[a]esthetic an environmental well-being, like economic well-being, are important ingredients of the quality of life in our society").

Defendants also conveniently disregard the evidence that Plaintiffs allege concrete injuries to their environmental interests—including Plaintiffs' significantly diminished capacity to fund governmental programs related to natural resources, salmon and river restoration, marine fisheries, wildlife and habitat, environmental, food sovereignty, historical preservation, and forest fire protection. ECF 2-3, ¶¶ 11, 21, 23; ECF No. 2-5, ¶¶ 19, 26; *see* ECF No. 2-6, ¶ 3; ECF 32-4, ¶¶ 4, 7, 9; ECF No. 32-6, ¶¶ 6–7; ECF No. 32-8, ¶ 7.

Defendants' reliance on cases alleging purely private economic harm, unconnected to NEPA's particular provisions at issue, is therefore inapplicable. ECF No. 51 at 19-20; *cf. Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 274 (D.C. Cir. 2015) (concluding evidence of loss of "aesthetic, emotional, and physical loss of . . . trees" was insufficient to fall within NEPA's zone of interests where party failed to "offer them in that spirit" or otherwise "invoke them" to show environmental harm); *Viasat, Inc. v. Fed. Comm. Com'n*, 47 F.4th 769, 780 (D.C. Cir. 2022) (concluding individuals subjected to nuisances in the same "geographical[]" location may sue to prevent NEPA violations, but a claim of a nuisance or environmental injury from "congestion in outer space" is insufficient); *ANR Pipeline Co. v. F.E.R.C.*, 205 F.3d 403, 408 (D.C. Cir. 2000) (party "has not alleged that it has any interest in the environment at all"). These cases do not preclude a finding that Plaintiffs have adequately alleged environmental and other harm to establish NEPA standing. *See* ECF 32-4, ¶¶ 4, 7, 9; ECF No. 32-6, ¶¶ 6–7; ECF No. 32-8, ¶ 7.

On the merits, Federal Defendants clearly failed to assess the environmental and economic impacts of their final decision in cooperation and in consultation with affected Tribal governments,

as required under NEPA. 42 U.S.C. § 4331(a) (emphasis added); *id.* § 4332(2)(B); 43 C.F.R. § 46.155. Not even direction from the White House caused Federal Defendants to undertake any effort to consult with Plaintiffs *in the months before issuing the FEIS*. *See, e.g.*, ECF No. 2-2, ¶ 14 & Exs. 9–10; ECF 2-3, ¶¶ 25–51 & Exs. 1–11; ECF No. 2-6, ¶ 4; ECF No. 32-1, Exs. 1–2, 5–14, 17–22. Nor did Federal Defendants consult with Plaintiffs *before issuing the ROD* (or listen to state, local, federal, or other Tribal officials). *See, e.g.*, ECF No. 32-1, Exs. 11–13.

Despite Federal Defendants' reliance on their formulaic meetings with Plaintiffs and their empty "consultation" promises, ECF No. 51 at 30, they repeatedly disregarded their concerns about the lack of "robust, interactive, pre-decisional, informative, and transparent consultation" in advance of both the FEIS and ROD. 512 DM 4 § 4.4. Nor did Federal Defendants respond to other Tribal nations, the Governor of Oregon, and both U.S. Senators from Oregon, who all objected to the issuance of the FEIS and ROD. ECF Nos. 32-1, Exs. 7–13, 22. Plaintiffs have raised "serious questions" regarding the merits of this claim, which is sufficient. *See Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) (concluding Tribe's failure-to-consult claim brought under NEPA raised "serious questions").

3. The ROD violates IGRA and the IRA.

For the reasons discussed in the Motion, Plaintiffs are likewise likely to prevail on their claims brought under IGRA and the IRA. *See* ECF No. 32 at 31–35. Indeed, Federal Defendants' violation of the IRA regulations are *ongoing*: when they signed the deed on January 10, 2025, the very same day the ROD was issued, they violated 25 C.F.R. §§ 151.13(c)(iii) and 151.16(a).[13] *See id.* § 151.13(c)(iii) (providing agency will "[i]mmediately acquire the land in trust status . . . *after*

[13] Federal Defendants concede the most recent regulations found under 25 C.F.R. Part 151 apply to DOI's trust acquisition. *See* ECF No. 51 at 11; ECF No. 2-3, ¶¶ 34–35.

the date such decision is issued) (emphasis added); *id.* § 151.16(a) (providing the formalization of trust process occurs "after the requirements of §§ 151.13, 151.14, and 151.15 have been met").

D. The Balance of Hardships Tips in Plaintiffs' Favor.

Plaintiffs will suffer irreparable damage if Defendants are not enjoined. Federal Defendants concede they will suffer no harm if they transfer the parcel back to Coquille during the pendency of this action. *See* ECF No. 51 at 36–37. Nor can Coquille plausibly assert it will suffer harm from delaying the operation of 30 gaming machines in violation of 25 C.F.R. § 559.2(a).[14]

Federal Defendants have spent more than a decade reviewing the Coquille's fee-to-trust application, and any marginal delay in Defendants' ROD would result in relatively minimal harm. The harm incurred by Coquille, a prosperous Tribal nation, being forced to wait a slightly longer period to operate its second casino—so that the Court can review the FEIS and ROD to ensure compliance with the U.S. Constitution, NEPA, and other federal laws—does not tip the balance of hardships in Defendants' favor. *See Akiachak Native Cmty.*, 995 F. Supp. 2d at 17 ("Tribes will suffer no harm . . . because if the Tribes prevail in the litigation, the only harm they will suffer will be a delay in their ability to have land taken into trust for them.").

Yet, Federal Defendants' final decision to permit the Coquille to establish the second casino in the heart of Medford will devastate Plaintiffs' economies and ability to sufficiently fund government programs, including healthcare, environmental programs, and other essential public services. ECF No. 2-3, ¶¶ 6, 11–12, 19, 21; ECF No. 2-4, Exs. 1–3; ECF No. 2-5, ¶¶ 17–20, 23; ECF No. 2-6, ¶ 7, 9; ECF. No. 2-2, Ex. 1 (FEIS, Vol. I, p. 3-15). [15]

[14] Coquille could financially benefit from ceasing its gaming activities, given that the NIGC may authorize a civil fine of $65,655 per violation under 25 C.F.R. § 559.2(a). *See id.* § 575.4.

[15] Again, the Coquille's proposed second casino is located just 52 miles from the Karuk Casino, 72 miles from the Cow Creek Casino, and 118 miles from the Tolowa Casino. ECF No. 2-6, ¶ 5; ECF No. 2-3, ¶¶ 6–7; ECF No. 2-5, ¶ 14.

Federal Defendants also ignore the fact that the FEIS and ROD are 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 Plaintiffs' governments and many others. ECF No. 2-2, Ex. 4; *id.*, Ex. 5; *id.*, Ex. 9; *id.*, Ex. 10; *id.*, Ex. 6. Plaintiffs' and other governments' interests in preserving the status quo far outweigh any harm that stems from delaying Defendants' final decision to take the Medford parcel into trust for Coquille's second casino.

E. Plaintiffs Alternatively Seek an Injunction Pending Appeal.

If this Court denies this Motion, Plaintiffs alternatively move for the same mandatory and prohibitory injunctions, pending appeal. Fed. R. Civ. P. 62(d); Fed. R. App. P. 8(a)(1)(C); *see Alpine Sec. Corp.*, 2023 WL 4703307, at *1; *id.* at *2 (Walker, J., concurrence). Were this Court to somehow find that Plaintiffs have shown only a "serious legal question" short of a likelihood of success, the threat of irreparable harm remains "so grave," and the balance of equities and public interest still favors them "so decisively" that an injunction pending appeal is proper. *Republican Nat'l Comm. v. Pelosi*, No. 22-659, 2022 WL 1604670, at *3 (D.D.C. May 20, 2022) (quoting *MediNatura, Inc. v. Food & Drug Admin.*, No. 20-2066, 2021 WL 1025835, at *6 (D.D.C. Mar. 16, 2021)); *see also Wash. Metro. Area Transit*, 559 F.2d at 844–45.

A proposed alternative Order accompanies this reply.

III. CONCLUSION

For these reasons, and those raised in the Motion, the Court should grant Plaintiffs' Motion and grant the requested injunctive relief. Alternatively, if the Court denies this Motion, Plaintiffs respectfully request that the Court grant the injunction pending appeal.

DATED this 6th day of February, 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 25 pages, excluding the caption, tables of contents and authorities, signature block, declarations, exhibits, and any certificates of counsel.

DATED this 6th day of February, 2025.

Respectfully submitted,

/s/ Gabriel S. Galanda

CERTIFICATION OF SERVICE

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

DATED this 6th day of February, 2025.

Respectfully submitted,

/s/ Gabriel S. Galanda