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 MOTION FOR JUDGMENT ON THE PLEADINGS

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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 (collectively, "Plaintiff Tribal Nations")—move under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings as to their first claim 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*.

Plaintiff Tribal Nations challenge the unconstitutional final decision of Defendant U.S. Department of the Interior ("DOI") and its officers and sub-agencies (collectively, "Federal Defendants") approving Intervenor-Defendant Coquille Indian Tribe's ("Coquille") fee-to-trust application to take a 2.42-acre parcel of land in Medford, Oregon into trust for the purpose of opening and operating Coquille's second casino. Plaintiffs challenge Federal 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 on January 10, 2025, purportedly pursuant to the Indian Reorganization Act ("IRA"), Coquille Restoration Act ("Act"), and Indian Gaming Regulatory Act ("IGRA").

Plaintiff Tribal Nations are entitled to judgment on the pleadings as to their first claim for relief because Federal Defendants' issuance of the FEIS and ROD was *ultra vires* and therefore must be vacated. The FEIS was based on the Council for Environmental Quality's ("CEQ") regulations implementing NEPA, which Federal Defendants treated as mandatory and binding. But ten days before the FEIS was issued, the D.C. Circuit held that those CEQ regulations are *ultra vires* and invalid under separation of powers principles. *See Marin Audubon Soc'y v. Fed. Aviation Admin*., 121 F.4th 902 (D.C. Cir. 2024). Nevertheless, both the FEIS and the ROD rely on those unconstitutional CEQ regulations as mandatory and binding.

Because no material fact is in dispute and Plaintiff Tribal Nations are entitled to judgment as a matter of law on their first claim for relief, the Court should grant Plaintiff Tribal Nations' motion for judgment on the pleadings as to that claim.

II. UNDISPUTED MATERIAL FACTS[1]

Coquille's status as a federally recognized Indian tribe, like many other Oregon tribes, was terminated by Congress in 1954. *See* Pub. L. No. 588, 68 Stat. 724 (Aug. 13, 1954). 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"[2] "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 land for Coquille in Coos and Curry Counties, "not to exceed one thousand acres." *Id.* § 5(a). 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] authority under the [IRA] of June 18, 1934 (48 Stat. 984)." *Id.*

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[1] For purposes of this Rule 12(c) motion, the facts are taken from Plaintiffs' allegations in their Amended Complaint (ECF No. 31), Defendants' admissions in their Answers (ECF Nos. 62 & 63), and Defendants' final decision, the FEIS and ROD, referenced throughout Plaintiffs' Amended Complaint (Declaration of Rachel Tobias ("Tobias Decl."), Exs. 1–3). *See Vanover v. Hantman*, 77 F. Supp. 2d 91, 98 (D.D.C. 1999) ("[W]here a document is referred to in the complaint and is central to plaintiff's claim, such a document attached to the motion papers may be considered without converting the motion to one for summary judgment.").

[2] The "service area" referenced in connection with a Tribe's restoration act refers to a defined geographic area where Tribal members are considered to be residing on a reservation for the purpose of accessing certain federal services and benefits. A Tribe's service area is not necessarily a reflection of its historical territory, however, as it is generally based on factors unrelated to IGRA's "restored lands" exception analysis and is often "ill-defined, overlapping and potentially inconsistent" with a Tribe's aboriginal occupation of the land. *Gaming on Trust Lands Acquired After October 17, 1988*, 73 Fed. Reg. 29354, 29365 (May 20, 2008).

On October 9, 1993, Coquille requested several parcels in Coos County, totaling approximately 954 acres, be taken into trust. Pursuant to the CRA, the Secretary exercised his ministerial authority, transferred the requested acreage into trust, and established Coquille's reservation. ECF Nos. 31, 62, & 63 at ¶ 61.[3] Coquille subsequently opened The Mill Casino, a class III gaming facility, on its reservation in North Bend, Coos County, Oregon. ECF Nos. 31, 62, & 63 at ¶ 63. North Bend is located about 170 miles from Medford. ECF No. 31 & 62 at ¶ 65.

Coquille also owns Tribal One, known as the Mith-ih-Kwuh Economic Development Corporation, a federally chartered corporation engaged in the construction business. ECF No. 62 at ¶ 64. Another source of revenue for Coquille is the sale of timber from the 5,410-acre Coquille forest. Tobias Decl., Ex. 2 (FEIS, Vol. II, p. 1-2).

On November 2, 2012, Coquille submitted a letter application to Defendant BIA asking it to take a 2.42-acre parcel it had fee title to in Medford, Oregon into trust pursuant to the Secretary's authority under the IRA and CRA, stating its intention to use the land for gaming. ECF Nos. 31, 62, & 63 at ¶ 66.

In May 2020, DOI clarified that the CRA explicitly made the 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, found at 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 under the IRA's implementing regulations, namely 25 C.F.R. § 151.11(b), determining Coquille's "anticipated benefits d[id] not outweigh the potential jurisdictional concerns raised by the State, county and municipal governments having regulatory

[3] 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. Tobias Decl., Ex. 1 (FEIS, Vol. I, p. 2-28).

jurisdiction over the Medford site"; the agency therefore discontinued its earlier preparation of an environmental impact statement ("EIS"). *See Notice of Cancellation of EIS for Proposed Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project*, 85 Fed. Reg. 55026, 55026–27 (Sep. 3, 2020).

In December 2021, however, the agency reversed itself, withdrawing its previous denial of Coquille's trust application and resuming EIS preparation. *Resumption of Preparation of an IES for Proposed Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project*, 86 Fed. Reg. 73313, 73313 (Dec. 27, 2021).

On November 22, 2024, Defendant BIA published an FEIS, pursuant to NEPA and the CEQ regulations found at 40 C.F.R. Part 1500, identifying as its proposed action the acquisition of "the 2.4-acre site in trust pursuant to the Secretary's authority under the [IRA] and the [CRA]" for Coquille to "remodel . . . an existing bowling alley into an approximately 30,300-square-foot gaming facility . . . in the City of Medford, Oregon." ECF Nos. 31, 62, & 63 at ¶ 108; Tobias Decl., Ex. 2 (FEIS, Vol. II, at p. i). The FEIS—which all Defendants maintain "speaks for itself" and is "the best evidence" of its own contents, ECF Nos. 62 & 63 at ¶ 108 & 127—expressly acknowledges that the three Plaintiff Tribal Nations will experience immediate substitution effects of at least 21.3% for Plaintiff Cow Creek, 23.4% for Plaintiff Karuk, and 5.3% for Plaintiff Tolowa. Tobias Decl., Ex. 2 (FEIS, Vol. II, pp. 4-22–4-23).

On January 10, 2025, after Plaintiffs initiated this action on December 23, 2024 (ECF No. 1) and unsuccessfully moved to temporarily enjoin Defendant Assistant Secretary of the Interior for Indian Affairs ("AS-IA") from issuing the ROD (ECF No. 27), Defendant AS-IA issued a ROD accepting the Medford Site into trust pursuant to the IRA and the CRA, and finding it eligible for gaming under IGRA's "restored lands exception." ECF Nos. 31, 62, & 63 at ¶ 127. All Defendants maintain the ROD "speaks for itself" and is "the best evidence" of its own contents. ECF Nos. 62

& 63 at ¶ 127.

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 governmental services to its membership. Tobias Decl., Ex. 3 (ROD, p. 7).

Despite having failed to give the National Indian Gaming Commission the 120-day notice required under 25 C.F.R. § 559.2(a), Coquille opened a casino on the Medford parcel the next day, January 11, 2025, which remains fully operational to date. ECF No. 31 at ¶ 63; *see* ECF No. 62 at ¶ 63; Tobias Decl., Ex. 2 (FEIS, Vol. II, pp. 3-18–3-19.

As a result of Federal Defendants' issuance of the ROD, Plaintiff Tribal Nations will suffer devastating economic and environmental impacts as a direct result of Federal Defendants' unconstitutional and otherwise unlawful issuance of the FEIS and ROD. It is uncontested Plaintiff Tribal Nations will be imperiled by "substitution effects" of Coquille's second casino in Medford, or the "loss of customers at [Plaintiff Tribal Nations'] existing commercial businesses" to Coquille's new casino. Tobias Decl., Ex. 2 (FEIS, Vol. II, pp. 4-21–4-23).

Cow Creek[4] operates its sole casino, the Seven Feathers Casino ("Cow Creek's Casino"), on trust land within its reservation in Canyonville, Oregon, about 73 miles (or one hour's drive) from the Medford site. *See* ECF No. 31 at ¶ 130; Tobias Decl., Ex. 2 (FEIS, Vol. II, p. 4-22). The FEIS predicts Cow Creek's Casino will lose at least 21.3% of its gross gaming revenue to Coquille's new casino. *Id.* (FEIS, Vol. II, p. 4-22); ECF No. 31 at ¶ 130. Karuk operates its sole casino, the Rain Rock Casino and Hotel ("Karuk's Casino"), on its trust land located about 53 miles (less than one hour's drive) from the Medford site. ECF No. 31 at ¶ 131. Karuk's Casino

[4] 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).

draws a significant portion of its patronage, and thus its revenue, from the greater Medford area. *Id.*; *see* Tobias Decl., Ex. 2 (FEIS, Vol. II, p. 4-22). The FEIS predicts that the Karuk Casino will lose up to at least 23.4% of its gross gaming revenue to Coquille's new casino. ECF No. 31 at ¶ 131. Finally, Tolowa operates its sole casino, Lucky 7 Casino ("Tolowa's Casino") on trust land within its reservation located about 118 miles from Coquille's second casino in Medford. ECF No. 31 at ¶ 132. The FEIS predicts that Tolowa's Casino will lose 5.3% of its gross gaming revenue to Coquille's new casino. Tobias Decl., Ex. 2 (FEIS, Vol. II, p. 4-23).[5]

This dramatic drop in Plaintiff Tribal Nations' gross gaming revenue will inevitably result in significant decreases in total revenue that these Tribal governments use to fund governmental programs and other public services, such as programs protecting and restoring the environment on or near the trust lands upon which many of their citizens depend for their subsistence and maintenance of their culture and traditions. ECF No. 31 at ¶¶ 135–36. Such losses in overall Tribal government revenue will have profound environmental consequences for Plaintiff Tribal Nations and their citizens, including increased vulnerability to wildfires given these Tribes' location in Southern Oregon and Northern California. ECF No. 31 at ¶¶ 130–37, 139; *see also* ECF No. 63 at ¶¶ 135–37, 139 (generally lacking knowledge or information sufficient to form a belief about the truth of the allegations); ECF No. 62 at ¶¶ 135–37, 139 (same).[6]

Although the FEIS acknowledges these inevitable losses in gross gaming revenue—based

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[5] "Gross gaming revenue" is not the same as profit. The former consists of the gaming establishment's "win" before deducting operating expenses and debt service, so the reduction in Plaintiff Tribal Nations' net revenues would be substantially greater than these figures.

[6] Still, Coquille admits that the FEIS and ROD acknowledge certain environmental impacts, such as greenhouse-gas emissions. ECF No. 62 at ¶ 138; Tobias Decl., Ex. 2 (FEIS, Vol. II, p. 4-81) (noting the development of Coquille's second casino at Medford would result in "an increase in [greenhouse gas] emissions related to mobile sources (trips generated), area sources[,] . . . and indirect sources related to electrical power generation").

on a consultant's guesses, not actual data from the Plaintiff Tribal Nations' casinos—the FEIS does not quantify the impact of this estimated reduction in gross gaming revenue on Plaintiff Tribal Nations' ability to provide essential services and programs to their citizens, such as protecting and restoring the environment on and near the trust lands upon which many of their citizens depend. *See* Tobias Decl., Ex. 1 (FEIS, Vol. I, p. 3-16). Nevertheless, the FEIS does concede "[a]n adverse economic, fiscal, or social impact would occur if [Coquille's Medford casino] were to negatively alter the ability of [other Tribal] governments to perform at existing levels or alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services." *Id.*, Ex. 2 (FEIS, Vol. II, p. 4-18). But the FEIS also asserts "[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." *Id.*, Ex. 1 (FEIS, Vol. I p. 3-16).

III. LEGAL STANDARD

Rule 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Rule 12(c) permits the moving party, "at any point in the proceeding, to demur to his opponent's pleading and secure a dismissal or final judgment on the basis of the pleadings." *Dist. No. 1, Pacific Coast Dist., Marine Eng'rs Ben. Assoc., AFL-CIO v. Liberty Maritime Corp. ("Liberty Maritime")*, 933 F.3d 751, 760 (D.C. Cir. 2019) (citing 5C Wright & Miller § 1367, at 205).

Because a Rule 12(c) motion is resolved at the early stages of the case, the motion may be granted "if the moving party demonstrates that no material fact is in dispute and that it is entitled to judgment as a matter of law." *Seed Co. Ltd. V. Westerman, Hattori, Daniels & Adrian, LLP*, 961 F.3d 1190, 1194 (D.C. Cir. 2020) (citation omitted).

"The moving party must demonstrate its entitlement to judgment in its favor, even though the 'court evaluating the 12(c) motion will accept as true the allegations in the opponent's pleadings, and as false all controverted assertions of the movant.'" *Liberty Maritime*, 933 F.3d at 760–61 (quoting *Haynesworth v. Miller*, 820 F.2d 1245, 1249 n.11 (D.C. Cir. 1987)). A court likewise gives "'all reasonable inferences to the opponent's pleadings' before entering a judgment on the pleadings." *Id.* at 761 (citation omitted).

In addition, "where a document is referred to in the complaint and is central to plaintiff's claim, such a document attached to the motion papers may be considered without converting the [Rule 12] motion to one for summary judgment." *Vanover*, 77 F. Supp. 2d at 98;[7] *see also United States ex rel. Vermont Nat. Tel. Co. v. Northstar Wireless LLC*, 703 F. Supp. 3d 48, 58 (D.D.C. 2023) ("A motion brought pursuant to Rule 12(c) requires the Court to render 'a judgment on the merits . . . by looking at the substance of the pleadings and any judicially noted facts.'") (quoting *All. Of Artists & Recording Cos., Inc. v. Gen. Motors Co.*, 162 F. Supp. 3d 8, 16 (D.D.C. 2016)).

If the moving party carries its burden, a judgment on the pleadings is appropriate. *See, e.g.*, *Seed Co.*, 961 F.3d at 1195–96 (affirming defendant's Rule 12(c) motion for judgment on the pleadings where the record showed no material fact was in dispute and the moving party was entitled to judgment as a matter of law); *Peters v. Nat. R.R. Passenger Corp.*, 966 F.2d 1483, 1485, (D.C. Cir. 1992) (same); *Deming v. Turner*, 63 F. Supp. 220, 223 (D.D.C. 1945) (granting plaintiff's motion for judgment on the pleadings where defendant's answer admitted material facts and its asserted affirmative defenses raised purely legal issues).

[7] Although *Vanover* involves a Rule 12(b)(6) motion, "[i]n evaluating a motion for judgment on the pleadings, the Court applies the same standard that governs motions to dismiss made under Rule 12(b)(6)." *Nationstar Mortgage, LLC v. RFB Props., LLC*, 752 F. Supp. 3d 136, 141 (D.D.C. 2024).

IV. ARGUMENT

A. Plaintiff Tribal Nations Have Standing to Challenge the Final Agency Decision.

Plaintiff Tribal Nations are entitled to judgment on the pleadings on their first claim for relief notwithstanding Intervenor-Defendant Coquille's first affirmative defense that "Plaintiffs lack standing to assert any of their claims." ECF No. 62 at p. 37[8] Plaintiff Tribal Nations have standing under Article III to challenge the validity of the FEIS and ROD because (1) they have suffered a "concrete, particularized, and actual or imminent" injury due to Defendants' issuance of the unconstitutional FEIS and ROD; (2) Plaintiffs' injuries are "fairly traceable" to Federal Defendants' conduct; and (3) a favorable court decision would likely redress Plaintiff Tribal Nations' injuries. *Davis v. Fed. Election Com'n*, 554 U.S. 724 (2008) (listing Article III standing elements); *see, e.g., 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").

"It is settled law that 'an agency's failure to prepare (or adequately prepare) an Environmental Impact Statement before taking action with adverse environmental consequences' constitutes the 'archetypal procedural injury' redressable under Article III." *Sierra Club v. FERC*, 827 F.3d 36, 43 (D.C. Cir. 2016). The Supreme Court has likewise 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); *see also Elec. Power Supply Assoc. v. FERC*, 391 F.3d

8 Federal Defendants have not raised standing as an affirmative defense. ECF No. 63 at p. 39.

1255, 1261–62 (D.C. Cir. 2004) (plaintiffs have standing based on their "right to participate in contested FERC hearings when their financial interests are at stake").

As this Court has previously explained, in these types of procedural injury cases, "'the primary focus of the standing inquiry is not the imminence or redressability of the injury to the plaintiff, but whether a plaintiff who has suffered personal and particularized injury has sued a defendant who has caused that injury." *Gulf v. Burgum*, No. 23-cv-604-APM, --- F. Supp. 3d --- , 2025 WL 928684, at *5 (D.D.C. Mar. 27, 2025) (quoting *Fla. Audubon Soc'y v. Bensten*, 94 F.3d 658, 664 (D.C. Cir. 1996) (en banc)); *see also WildEarth Guardians v. Jewell*, 738 F.3d 298, 305 (D.C. Cir. 2013) (courts "relax the redressability and imminence requirements for a plaintiff claiming a procedural injury," but not "the requirement of injury in fact.").

1. Injury-in-Fact

Plaintiff Tribal Nations easily demonstrate they have suffered injury in fact on account of Federal Defendants' issuance of an unconstitutional FEIS and ROD. The "touchstone" of the injury-in-fact element is whether Federal Defendants' failure to follow NEPA affects Plaintiff Tribal Nations' "concrete interests in a manner distinct from society as a whole"—as opposed to "mere violation[s]" of a procedural requirement or "generalized harm" to the environment. *Gulf*, 2025 WL 928684, at *5 (citing *Fla. Audubon Soc'y*, 94 F.3d at 664 & *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009)).

Plaintiff Tribal Nations can demonstrate that they will suffer concrete and particularized injuries due to Federal Defendants' unconstitutional FEIS and ROD based on the FEIS's uncontested findings of economic harm to their gaming facilities. There is no dispute that Plaintiff Tribal Nations will suffer substantial cuts in gross gaming revenues (e.g., a decline of at least 23.4% in gross gaming revenue for the Karuk Tribe) on account of the issuance of an unconstitutional FEIS and ROD, including the FEIS's incomplete economic and environmental analyses, approving Coquille's operation of a second casino in an area with which Plaintiff Tribal Nations share a geographic nexus. Tobias Decl., Ex. 2 (FEIS, Vol. II, pp. 4-22–4-23); *see, e.g.*, *Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 596 (D.C. Cir. 2015) (a final agency action that "used incomplete economic analysis that failed rationally to account for [the agency action's] impact on the environment would harm [plaintiff's members'] concrete economic and aesthetic interests").

In addition, Plaintiff Tribal Nations can show that these dramatic reductions in gross gaming revenue will inevitably result in significant decreases in total revenue used by their Tribal governments to fund environmental programs protecting and restoring the environment on or near the trust lands upon which many of their citizens depend for their subsistence and maintenance of their culture and traditions. ECF No. 31 at ¶¶ 135–36. Such losses in overall Tribal government revenue will have profound environmental consequences, including increased vulnerability to wildfires. *Id.* at ¶¶ 130–37, 139; *see also* ECF No. 63 at ¶¶ 135–37, 139; ECF No. 62 at ¶¶ 135–37, 139; *see, e.g.*, *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972) (holding that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the areas will be lessened" by the challenged activity); *WildEarth Guardians v. Jewell*, 738 F.3d at 305–06 (same, where plaintiffs identified "aesthetic interests in the land surrounding" the region impacted by the challenged agency action and "specific plans to visit the area regularly for recreational purposes"); *Gulf*, 2025 WL 928684, at *6 (same, where plaintiffs identified "specific wildlife areas" they "use and enjoy, both now and in the future," in the region impacted by the challenged agency action); *see also* *Growth Energy v. EPA*, 5 F.4th 1, 27 (D.C. Cir. 2021) (same, where a plaintiff shows a "demonstrably increased . . . specific risk of environmental harms that imperil [their] members' particularized interests in a species or habitat with which the members share a geographic nexus").

Plaintiff Tribal Nations can show that the unconstitutional FEIS and ROD demonstrably increased the risk of harms, both economic and environmental, that imperil Plaintiff Tribal Nations' and their Tribal citizens' particularized interests in the Medford parcel, the site of the challenged agency decision, as well as in the surrounding region.

2. Causation

Plaintiff Tribal Nations can trace their injuries directly to Federal Defendants' issuance of an FEIS and ROD that violate separation-of-powers principles.

"In NEPA procedural-injury cases, an adequate causal chain contains two links: one connecting the [deficient] EIS to some substantive government decision that may have been wrongly decided because of the lack of an adequate EIS, and one connecting that substantive decision to the plaintiff's particularized injury." *Sierra Club*, 827 F.3d at 44 (internal quotation marks and citation omitted). "The first link does not require the plaintiff to show that but for the alleged procedural deficiency the agency would have reached a different substantive result." *WildEarth Guardians*, 738 F.3d at 306. "All that is necessary is to show that the procedural step was connected to the substantive result." *Id.* As for the second link, "it is sufficient for standing purposes that the injury follows from an inadequate [EIS] whether or not the inadequacy concerns the same environmental issue that causes injury." *Sierra Club v. FERC*, 867 F.3d 1357, 1366 (D.C. Cir. 2017); *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").

Both links are present here. First, Federal Defendants' failure to adequately evaluate the environmental and economic impacts of Coquille's application by basing its hastily issued final agency decision on unconstitutional CEQ regulations is "plainly connected to its decision to approve" Coquille's second casino in Medford. *Gulf*, 2025 WL 928684, at *7; *see also Am. Fuel & Petrochemical Mfr. v. EPA ("AFPM")*, 937 F.3d 559, 594 (D.C. Cir. 2019) (concluding "[a]s to causation, the [agency's] alleged failure to comply with its [statutory] obligations is plainly connected to the setting of standards" in the challenged final rule). Second, there is a causal connection between Federal Defendants' approval of Coquille's second casino and Plaintiff Tribal Nations' economic and asserted injuries; that is, but for Coquille's development and operation of the second casino in Medford, Plaintiff Tribal Nations would not suffer significant declines in gross gaming revenues or declines in overall Tribal government revenue intended for environmental preservation and other public services to their Tribal members. *See* Tobias Decl., Ex. 2 (FEIS, Vol. II, pp. 4-22–4-23); *see also* ECF No. 31 at ¶¶ 130–37, 139; ECF No. 63 at ¶¶ 135–37, 139. As the D.C. Circuit has previously recognized, "[e]ven if [a plaintiff] would suffer a similar type of harm in the absence of the" challenged action, the causation element is satisfied even if the challenged action "will cause [the plaintiff] to suffer an *additional quantum* of that harm." *Sierra Club v. FERC*, 827 F.3d 59, 67 (D.C. Cir. 2016); *see also Gulf*, 2025 WL 928684, at *7 ("[T]he causation element of standing does not require that the challenged action be the sole or even immediate cause of the injury.") (quoting *Sierra Club v. DOI*, 899 F.3d 260, 284 (4th Cir. 2018)).

3. Redressability

Plaintiff Tribal Nations can also show redressability, as Federal Defendants could have reached a different conclusion had they followed the law in issuing the FEIS and ROD. Moreover, "[c]laims 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." *See Hawkins v. Haaland*, 991 F.3d 216, 225 (D.C. Cir. 2021) (emphasis in original). "In making this determination, the [C]ourt must assume that Plaintiffs will ultimately receive the relief sought." *Gulf*, 2025 WL 928684, at *8 (citing *Fla. Audubon Soc'y*, 94 F.3d at 665).

Vacatur of the FEIS and ROD, which is the "standard remedy" for a NEPA violation, would clearly redress the injuries asserted by Plaintiff Tribal Nations. *Gulf*, 2025 WL 928684, at *8 (citing *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 225 F. Supp. 3d 101, 147 (D.D.C. 2017)); *see WildEarth Guardians*, 738 F.3d at 306 (concluding that if the agency "is required to adequately consider each environmental concern, it could change its mind about authorizing" the final agency action); *AFPM*, 937 F.3d at 595 ("There is at least the possibility that the [agency] could set different standards").

Plaintiffs have constitutional standing to bring this suit. This Court should issue Judgment on the Pleadings on Intervenor-Defendant Coquille's First Affirmative Defense.

B. Plaintiff Tribal Nations Are Entitled to Judgment on the Pleadings Because Defendants' Issuance of the FEIS and ROD Is *Ultra Vires* under Separation of Powers Principles (First Claim).

Plaintiff Tribal Nations are entitled to judgment on the pleadings under Rule 12(c) because Federal Defendants' issuance of the FEIS and ROD are both, on their face, based on and rely on regulations implementing NEPA that are *ultra vires* and invalid under separation of powers principles, as the D.C. Circuit recently held in *Marin Audubon*.

1. Judgment on the pleadings is appropriate where the relevant portions of the administrative record are undisputed, and the unconstitutional final agency action cannot stand.

A Rule 12(c) motion is appropriate in APA cases involving an undisputed administrative record—as here—because the APA directs that the Court "*shall* decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U.S.C. § 706; *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."). The APA further requires the Court to "hold unlawful and set aside agency action, findings, and conclusions found to be," among other things, "not in accordance with law," "contrary to [a] constitutional right" or "power," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." 5 U.S.C. §§ 706(2)(A)–(D).

If a federal agency bases its final decision on an unconstitutional statutory or regulatory provision—again, as here—a judgment on the pleadings is *required* because the final decision cannot stand. *See Marin Audubon Soc'y*, 121 F.4th at 918 (vacating FAA's final decision because the entire NEPA decision-making framework, based on the *ultra vires* CEQ regulations, was legally invalid); *INS v. Chadra*, 462 U.S. 919, 959 (1983) (affirming Court of Appeal's conclusion that a statutory provision violated the constitutional doctrine of separation of powers and therefore vacating the deportation order); *see, e.g.*, *United States ex rel. Zafirov v. Fl. Med. Assocs., LLC*, No. 8:19-cv-01236-KKM-SPF, 2024 WL 4349242, at *5 (M.D. Fla. Sep. 30, 2024) (granting Rule 12(c) motion, noting the non-moving party "suffers no prejudice by consideration of a motion that is 'purely legal and does not require either side to present additional facts or arguments to a jury'") (citation omitted).

2. Federal Defendants' issuance of the FEIS and ROD violates separation-of-powers principles and therefore cannot stand.

Because Federal Defendants, in issuing the FEIS and ROD, applied NEPA regulations that the CEQ had no constitutional authority to promulgate as "mandatory" and "binding," both the FEIS and ROD must be vacated as *ultra vires*.

Federal agencies, like DOI, are creatures of statute and "literally ha[ve] no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *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 by Congress of the requisite legislative authority to issue the regulations . *See Chrysler Corp. v. Brown*, 441 U.S. 281, 304 (1979). A separation of powers issue therefore arises when an executive or independent agency lacks statutory authority from Congress to issue particular 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 here, 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'y*, 121 F.4th at 912. Nor does any "statute confer[] rulemaking authority on CEQ." *Id.*[9] Instead, CEQ promulgated its regulations pursuant to Executive Order 11991. However, executive orders are not "judicially enforceable," nor can they result in regulations validly governing the administration of statutes. *See Sierra Club v. U.S. Dep't of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (citing, *inter alia*, *Marin Audubon Soc'y*, 121 F.4th at 913); *see also California v. EPA*, 72 F.4th 308, 318 (D.C. Cir. 2023) ("[A]n executive order is not 'law' within the meaning of the Constitution."). Thus, Executive Order 11991 did not provide CEQ any lawful exercise of authority to issue regulations binding on other agencies. *Marin Audubon Soc'y*, 121 F.4th at 912.[10]

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

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

[10] 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 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,* 603 U.S. 369. *See Marin Audubon Soc'y*, 121 F.4th at 913.

separation of powers principles. *Marin Audubon Soc'y*, 121 F.4th at 908–915. 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); 90 Fed. Reg. 10610, 10610–16 (Feb. 25, 2025) (interim final rule removing the CEQ regulations implementing NEPA from the Code of Federal Regulations).

As a result, the D.C. Circuit has repeatedly recognized that "NEPA's implementing regulations are *ultra vires* and therefore non-binding because the [CEQ] lacks rulemaking authority." *Am. Whitewater v. FERC*, 125 F.4th 1139, 1148 n.2 (D.C. Cir. 2025); *Citizens Action Coal. of Indiana, Inc. v. FERC*, 125 F.4th 229, 240 n.3 (D.C. Cir. 2025). And at least one court has since vacated the 2024 Rule promulgating the most recent CEQ regulations as invalid on the ground that CEQ "ha[d] no rulemaking authority." *Iowa v. CEQ*, No. 1:24-cv-00089, -- F. Supp. 3d --, 2025 WL 598928, at *23 (D.N.D. Feb. 3, 2025); *see id.* ("It is very likely that if the CEQ has no authority to promulgate the 2024 Rule, it had no authority for the 2020 Rule or the 1978 Rule.").

Despite the fact that Federal Defendants were on notice of *Marin Audubon*'s holding before they issued the FEIS, they nevertheless proceeded to apply the unconstitutional CEQ regulations as binding and mandatory in issuing the FEIS. Tobias Decl., Exs. 1–2 (FEIS, Vols. I & II). Throughout the FEIS, Defendants failed to even acknowledge *Marin Audubon* and relied on and cited the invalid CEQ regulations at least ***52 times***: 34 times in Volume I and at least 18 times in Volume II. *See, e.g.*, *id.*, Ex. 1 (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).

Then, when Plaintiffs presented DOI with *Marin Audubon* and requested pre-decisional consultation before issuing the ROD, Federal Defendants ignored them, and issued the ROD without any amendment of the FEIS's great many references to the unconstitutional CEQ regulations. Tobias Decl., Ex. 3 (ROD at p. 24 n.1; ROD – Response to Comments at § 2.4).

Moreover, the ROD also announces DOI's decision to apply an unconstitutional NEPA regulatory process, despite the D.C. Circuit's recent finding that the CEQ regulations are *ultra* vires. *See* Tobias Decl., Ex. 3 (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.

Tobias Decl., Ex. 3 (ROD at p. 24 n.1).

Yet, the ROD did not alter or amend the FEIS's invalid reliance upon the CEQ regulation at least 52 times. *See id.*, Ex. 3 (ROD at pp. 24 n.1). Instead, the ROD continues to rely on the invalid CEQ regulations as "require[d]," at least 13 times, and announces the agency will continue to knowingly rely on *ultra vires* CEQ regulations, 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); *see, e.g.*, *id.* (ROD at p. 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.* (ROD at p. 59) (for compliance with 40 C.F.R. § 1508.27(b)(10), "the following mitigation measures *shall* be implemented"); *id.* (ROD 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).[11]

Put another way, Federal Defendants' entire NEPA process—both procedurally and substantively—was "completed in accordance with . . . the [CEQ] Regulations for Implementing NEPA." *Id.*, Ex. 2 (FEIS, Vol. II, p. 1-3); *id.*, Ex. 1 (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 ("[T]he 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 . . . ."); 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.")); *id.*, Ex. 2 (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)). From providing notice to the public and affected Tribal nations, to

[11] 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 MMCP identifies mitigation enforcement through compliance with federal laws . . . and as a matter of tribal law." Tobias Decl., Ex. 3 (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).

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. The FEIS and ROD are therefore constitutionally invalid.

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

Nor did Federal Defendants apply DOI's own regulations implementing NEPA, 43 C.F.R. Part 46, which they *do* have statutory authority to establish. *See* Tobias Decl., Ex. 1 (FEIS, Vol. I, p. 3-35). 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* Tobias Decl., Ex. 1 (FEIS, Vol. I, p. 3-35); *see generally id.*, Ex. 2 (FEIS, Vol. II); *id.*, Ex. 3 at 74–75 (ROD). Notably, Federal Defendants neither represented in the FEIS that they were "required" to rely on their own NEPA-implementing regulations, nor did they cite those regulations anywhere in the FEIS. 43 C.F.R. Part 46; *see generally* Tobias Decl., Ex. 1 (FEIS, Vol. I), Ex. 2 (FEIS, Vol. II).

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. 61292, 61298 (Oct. 15, 2008)).[12]

Defendants' issuance of the FEIS and ROD, and their determination that Coquille's proposed casino development will have no relative environmental or economic impact, is therefore based on the CEQ regulations alone, which are *ultra vires*. *Marin Audubon Soc'y*, 121 F.4th at 918.

4. Vacatur is the only available remedy because Federal Defendants cannot show at least a "serious possibility" that they will be able to reach the same outcome on remand.

Because Federal Defendants' issuance of the FEIS and ROD—embodying their determination Coquille's second casino would have no relative environmental or economic impact under NEPA—was *ultra vires,* vacatur pursuant to 5 U.S.C. § 706(2) is necessary. Nor can Federal Defendants show "at least a serious possibility that they will be able to reach the same outcome on remand." *Marin Audubon Soc'y*, 121 F.4th at 918. In deciding *Marin Audubon*, the D.C. Circuit was explicit in its rationale for its chosen remedy: 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).

Federal district courts have likewise exercised their power to vacate trust decisions that are *ultra vires*, as the Court should do here. *See, 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

[12] 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 between then 2023, when the Plan at issue in that case 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.*

for Santa Ynez Band of Mission Indians was *ultra vires*, vacating opinion, and remanding to agency to correct its final decision).

To avoid vacatur, Federal Defendants would have to demonstrate "at least a serious possibility that they will be able to reach the same outcome on remand." *Marin Audubon Soc'y*, 121 F.4th at 918. Federal Defendants cannot make this showing because DOI's NEPA regulations must sufficiently consider both the environmental and the *economic* impacts of its proposed actions—and such economic consideration was plainly lacking in the FEIS. *See* 42 U.S.C. § 4332(B) (requiring federal agencies to "identify and develop methods and procedures" to ensure unquantifiable environmental impacts are considered, as well as "economic and technical considerations").

For example, the FEIS admits that "[a]n adverse economic, fiscal, or social impact would occur" if Coquille's Medford casino "disproportionately affected an identified minority or low-income community or Native American tribe," including "negatively alter[ing] the ability of [Tribal] governments to perform at existing levels or alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services." Tobias Decl., Ex. 2 (FEIS, Vol. II, pp. 4-18–4-19). But the FEIS stopped short of determining these economic, socio-economic, or "environmental justice" impacts, such as reduced "governmental and social services" provided by Plaintiff Tribal Nations to their citizens, allegedly because Federal Defendants failed to request from Plaintiff Tribal Nations the "confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members." *Id*., Ex. 1 (FEIS, Vol. I p. 3-16). Had DOI followed NEPA's mandate to identify and develop regulations accounting for these "economic . . . considerations," 42 U.S.C. § 4332(B), as opposed to blindly following unconstitutional CEQ regulations that do not sufficiently consider these economic and "environmental justice" factors, the FEIS would have been *required* to analyze the "environmental justice impact on governmental and social services" provided by Plaintiff Tribal Nations to their citizens.

Further, while some federal agencies have complied with NEPA's statutory mandate to identify and develop methods to analyze environmental, economic, and other considerations (e.g., FERC), *see* 18 C.F.R. § 380.1,[13] DOI did not. *See Marin Audubon*, 121 F.4th at 914–15 (concluding 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). 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)—as well as the FEIS's own admission that it failed to consider "the environmental justice impact on governmental and social services" provided by Plaintiff Tribal Nations—Federal Defendants cannot show "at least a serious possibility" they would reach the same outcome on remand. *Marin Audubon*, 121 F.4th at 918.

In short, Federal Defendants overstepped the bounds of their legal authority by issuing an FEIS and ROD that are based on unconstitutional CEQ regulations they treated as binding—and in doing so, either ignored or disregarded *Marin Audubon*. The Court must now declare the FEIS and ROD as *ultra vires* and set aside Federal Defendants' final decision under the APA. *See* 28 U.S.C. § 2201; 5 U.S.C. § 706(2). Further, because Federal Defendants cannot show "at least a serious possibility" that they would be able to reach the same outcome on remand, they "will now

[13] 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).

need to take a completely different tack to complete their . . . review." *Marin Audubon Soc'y*, 121 F.4th at 918.

V. CONCLUSION

For these reasons, the Court should therefore grant Plaintiffs' motion for judgment on the pleadings as to Plaintiffs' first claim for relief and vacate the FEIS and ROD.

DATED this 16th day of May, 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 16th day of May, 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 16th day of May, 2025.

Respectfully submitted,

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