

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BGA, LLC and THE WESTERN MOHEGAN  
TRIBE AND NATION OF THE STATE OF  
NEW YORK,

Plaintiffs,

v.

Index No. 06-CV-0095 (GLS)(RFT)

ULSTER COUNTY, NEW YORK,  
a municipal corporation of the State of  
New York,

Defendant.

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT  
OF MOTION FOR SUMMARY JUDGMENT

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs BGA, LLC ("BGA") and The Western Mohegan Tribe and Nation of the State of New York (the "Tribe" or "Western Mohegan Tribe"), the plaintiffs herein ("Plaintiffs"), by and through their counsel, Todtman, Nachamie, Spizz & Johns, P.C., respectfully submit this Memorandum of Law in support of their motion for summary judgment against Defendant Ulster County (the "County") seeking declaratory relief. Accompanying this memorandum of law is Plaintiffs' Statement of Material Facts pursuant to Local Rule 7.1(a)(3) (the "Fact Statement"), the Affidavit of Chief Ronald A. Roberts (the "Roberts Aff.") and the exhibits thereto, the expert report of Michael L. Lawson, Ph.D. (the "Lawson Report") and the exhibits thereto, and the expert report of Paul Goldstein, Ph.D. (the "Goldstein Report").

### PRELIMINARY STATEMENT

The uncontested record shows that the Western Mohegan Tribe is a sovereign Indian Nation with a distinct political structure. The Tribe satisfies the federal common law standard governing the determination of tribal existence, as set forth below.

The uncontested record further shows that the 250 acre Property,<sup>1</sup> which the Tribe owns in fee (through its independent trustee) and occupies as its Indian Reservation, is located in the territory of the Tribe's ancestral and aboriginal lands. As such, the Property constitutes Indian Country.

Ulster County conveyed the fee title to the Property to the Tribe in settlement of the Tribe's substantial land claims. The County does not dispute that, as recently as 2001, the County recognized the Tribe as a sovereign Indian tribe and recognized that the Property has the status of Indian Country. The "Western-County Agreement," which the parties submitted to the United States Bankruptcy Court for the Eastern District of New York, and which was approved by that Court in 2001, expressly prohibits the County from taking any action to contest the Indian Country status of the Property and from seeking to collect real property taxes on the Property. The Western-County Agreement required Plaintiffs to pay the County a purchase price of \$900,000 to obtain the County's fee title to the Property, and to make certain specified payments in lieu of taxes on an annual basis.

Subsequent to the Bankruptcy Court's approval of the Western-County Agreement, Plaintiffs paid the \$900,000 purchase price to the County and tendered the first annual payment in lieu of taxes in the stipulated amount of \$25,000. The County kept the \$900,000 paid by Plaintiffs for the purchase price, but refused to accept the \$25,000

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<sup>1</sup> Capitalized terms which are not defined herein shall have the meanings given in the Roberts' Aff. 221511.1

payment in lieu of taxes, demanding that the Tribe pay the actual amount of real property taxes assessed on the Property. The County continued to demand real property taxes on the Property over Plaintiffs' protestations, and brought a foreclosure action under which it ultimately obtained a judgment of foreclosure against the Property. By doing so, the County violated the express terms of the Western-County Agreement, to the severe detriment of Plaintiffs, which incurred substantial legal fees in opposing the foreclosure action.

The parties subsequently entered into a Settlement Agreement which provided, inter alia, for vacatur of the judgment of foreclosure. The County did not, however, agree that it would refrain from seeking property taxes or from pursuing another foreclosure action in the future.

The County subsequently continued to demand that the Tribe pay taxes on the Property and has indicated that it may bring a future action to foreclose on the Property. By reason of the foregoing, the County has violated and continues to violate federal Indian law, including federal common law which recognizes the sovereign immunity of Indian tribes, and the Nonintercourse Act, 25 U.S.C. §177, which provides that land owned by an Indian tribe is inalienable except with the approval of Congress.

The Tribe has neither filed for nor received official recognition by the Bureau of Indian Affairs of the Department of the Interior (the "BIA"). The Tribe has, however, been consistently treated by the Federal government as a sovereign Indian Nation. In fact, the Tribe received de facto recognition from the Federal government as recently as October 14, 1999 when it received the right of entry (an interest in land) from the Department of the Army, confirming the Army's "government to government" relationship with the Tribe.