IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID LITTLEFIELD, et al.,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF THE INTERIOR, *et. al.*,

Defendants.

CIVIL ACTION NO.: 1:16-cv-10184-WGY

Memorandum of Reasons in Support of Defendants' Motion for Summary Judgment

(Leave to file granted on July 12, 2016)

AMICUS CITY OF TAUNTON, MASSACHUSETTS, MEMORANDUM OF REASONS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Introduction

The City of Taunton, Massachusetts ("City") appreciates the Court's consideration of this amicus brief and requests that the Court grant the Defendants' partial motion for summary judgment. The voters of the City overwhelmingly approved the First Light Project ("Project") through a well-publicized referendum. The Project will result in much-needed economic stimulus for the residents of the City in the form of construction and long-term jobs, infrastructure improvements, and substantial revenues for the City. Moreover, the City took great care to ensure the public was duly notified, informed, and had the opportunity to participate in the deliberative process leading up to the Record of Decision ("ROD").

Interests of Amicus City of Taunton

Mayor Thomas C. Hoye, Jr. of Amicus City expressed the City's "strong support" for the Project of the Mashpee Wampanoag Tribe ("Tribe") in a September 10, 2012, letter to the Bureau of Indian Affairs ("BIA"), Department of the Interior. *See* ROD, p. 126, AR __.[1] The Mayor noted that the City was founded in 1637 along the Taunton River, an important waterway used by the Wampanoag Indians to traverse their historic territory. Thus, the Mayor viewed "the Tribe's acquisition and establishment of an initial Indian reservation in Taunton as a fitting return of the Tribe to one of its ancestral homes." AR __. The ROD, which Plaintiffs ask this Court to set aside, is the legal prerequisite for this historic return in that it announced the BIA decision to place the land

[1] All documents cited herein were submitted to or produced by the Department of the Interior as part of its deliberations on the Tribe's land-into-trust application. As a result, all cited documents are necessarily a part of the administrative record herein. However, because of the shortness of time between the filing of the administrative record ("AR") and the due date of opening briefs, the City cannot provide the parallel citations to the administrative record for the cited documents. Amicus City of Taunton will file an errata sheet with those parallel citations as soon as possible following the filing of the administrative record.

into trust and establish the gaming eligibility of those lands.[2] The City has vital governmental and economic interests in the Tribe's return to Taunton and seeks leave to appear as amicus to express those interests.

The City's governmental interests are memorialized in the Intergovernmental Agreement ("IGA") between the City and the Tribe executed on May 31, 2012. The IGA was the result of a lengthy process during which the City was advised by subject matter experts on gaming and mitigation matters. As a condition of the IGA, the City was required to hold a referendum[3] among City voters to approve the Project. IGA, Sec. 20.L.

The IGA specifies numerous mitigation measures, including, but not limited to: (1) a one-time payment of $1.5 million to the City; (2) the payment of 2.05% of the Project's net slot machine revenues to the City on a continuing basis (with a minimum annual guarantee of $8 million); (3) the annual payment, in-lieu-of-property-taxes, in an amount based upon the assessed value of the Project site to the City; (4) the payment of up-front and continuing infrastructure costs necessary to mitigate adverse impacts on the City and its residents and to provide services for the Project, including costs for police, fire, water, sewer, wastewater, administration, schools, and roads; and (5) the establishment of a tribal-city advisory board that will include City residents authorized to make recommendations regarding the operation of the Project. IGA, Secs. 5, 6, 7, 9, and 10.

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[2] The City is affected by the ROD insofar as it announces a decision to place into trust and establish the gaming eligibility of specified parcels located in the City. The City observes, however, that Plaintiffs' suit seeks to set aside the ROD and revoke the trust status of parcels located in Mashpee and used for governmental purposes by the Tribe in addition to those parcels in the City to be used for the Project. As a result, Plaintiffs seek to undo the Tribe's reservation in its entirety – both in Mashpee and Taunton.

[3] The ballot question in the referendum read: "Shall the City of Taunton, pursuant to section 91 of Chapter 194 of the Acts of 2011, approve the operation of a tribal gaming establishment proposed by the MWT [(the Tribe)] to be located east of Route 24 in the immediate vicinity of the intersection of Route 24 and Route 140?" Scoping Report, 1.2.4, AR __.

The IGA further obligates the Tribe to adopt building, health and safety codes that are at least as restrictive as those of the City and to allow access to the Project by the City's health inspectors, police department, and fire department to determine compliance with the tribal codes. IGA, Sec. 12. The City held the referendum on June 9, 2012 and 63% of the voters approved the proposed Project. As a result the IGA is now in effect. Final Environmental Impact Statement ("FEIS"), p. 2-5, AR __. The Tribe subsequently made the $1.5 million one-time mitigation payment to the City as required by the IGA on August 22, 2012. ROD, p. 125, AR __.[4]

The City also has economic interests in the Project that extend far beyond the mitigation and government service payments required by the IGA. The Project is located in and adjacent to an area zoned as commercial by the City in 2003 for the purpose of generating economic development opportunities. ROD, p. 128, AR __. The ROD found that the Project will indeed generate significant economic opportunities for the Tribe and the City, thereby satisfying this pre-Project objective. ROD, p. 134, AR __. Specifically, the Project will create: 300 full-time equivalent jobs during the construction period, with direct compensation totaling approximately $123.8 million; 3,500 permanent full- and part-time jobs during operation of the Project, with direct compensation totaling approximately $93.2 million annually; indirect and induced employment and economic growth in the City and surrounding areas, including 271 full-time equivalent jobs during the construction period and 1,720 permanent jobs during operations, for a total of approximately $836.5

[4] The City's governmental interests in the Project are also asserted through indirect means. For example, the City works with the Tribe and the Massachusetts Department of Transportation on the Mitigation Monitoring and Enforcement Plan for the Project. ROD, Attachment III, AR . In addition, there is a Compact between the Tribe and the Commonwealth of Massachusetts required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*, (1988), that is in effect. *See* 79 Fed. Reg. 6,213 (Feb. 3, 2014). The Compact provides that the Commonwealth of Massachusetts may exercise criminal jurisdiction over any person at the gaming facility and that the Tribe shall exercise criminal jurisdiction over its members at the gaming facility concurrent with the Commonwealth, effectively authorizing a role for the City in law enforcement at the Project. Compact ¶17.

million of economic activity during construction and $511.8 million of economic activity annually during operations. ROD, p. 135, AR __. This economic activity would increase the number of jobs available in the City alone by 12.3%. ROD, p. 27; AR __.[5]

There is much at stake in this litigation not just for the Tribe, but also for the City and its approximately 56,789 residents.[6] The City appears as amicus on Defendants' motion for summary judgment to reflect the overwhelming view of its voters in support of the Project.

Argument

The Court's standard of review of the ROD is limited under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, which was invoked by Plaintiffs. It is well-established that the Court is not to substitute its own judgment for that of the BIA as expressed in the ROD. *Citizens Awareness Network, Inc. v. U.S. Nuclear Regulatory Comm'n*, 59 F.3d 284, 290 (1st Cir. 1995). Rather, the ROD is entitled to a presumption of regularity and can only be set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Id.*; 5 U.S.C. § 706(2)(A). In addition, where, as here, a statute is susceptible to one or more constructions, the court defers to the agency's construction that administers the statute so long as that construction is a reasonable one. *Craker v. DEA*, 714 F.3d 17, 26-28 (1st Cir. 2013); *Massachusetts Audubon Society, Inc. v. Daley*, 31 F. Supp. 2d 189, 194 (D. Mass. 1998). Here, the ROD reflects carefully considered, deliberative and reasoned administrative decision-making by the BIA. Also, the BIA's construction of the governing statutes, principally the Indian Reorganization Act ("IRA"), is reasonable and

[5] Although the Tribe would extend a hiring preference to its members, the Tribe has also agreed in the IGA to "work in good faith to employ City residents and patronize local vendors" in the construction and operation of the Project. IGA, Sec. 16.

[6] U.S. Census Bureau, Quick-Facts: Taunton City, Massachusetts, http://www.census.gov/quickfacts/table/PST045215/2569170 (last visited July 7, 2016) (estimate of 56,789 residents in the City as of July 1, 2015).

reflects the BIA's unique and substantial subject matter experience in these matters. This is especially so in light of the alternative construction proposed by Plaintiffs.

I. Plaintiffs' claims are based on an improper and flawed analysis of federal statutes and authority governing Indian affairs.

Indian affairs is a uniquely federal field of law. The leading treatise traces the antecedents of federal supremacy and complete occupation of the field back to a 1763 Proclamation of King George and then through the Articles of Confederation, the Constitution, and early bedrock Supreme Court cases on the exclusivity of federal authority and federal protection of tribal sovereignty. *Cohen's Handbook of Federal Indian Law*, ¶2.01[2] (2012 ed.) This exclusive, protective federal role is the framework within which the issues raised by Plaintiffs' claims must be resolved. *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172 (1973).[7]

Plaintiffs misapprehend this pre-emptive federal law. For example, Plaintiffs suggest the BIA erred in its 2007 decision to extend federal recognition to the Tribe. *See* Amended Complaint, ¶¶ 101-106, Plaintiffs' Motion for Preliminary Injunction or Writ, pp. 17-18.[8] Plaintiffs are wrong. The BIA did not err. The BIA's statutory authority over tribal existence is quite broad, founded in the general statutes delegating authority to promulgate regulations governing Indian affairs. 25 U.S.C. §§ 2, 9 (2016). It is well-settled that the decisions made by the BIA under these statutes are entitled to deference by the courts. *Muwekma Ohlone Tribe v. Salazar*, 813 F. Supp. 2d 170, 189 (D.D.C. 2011); *Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 887 F. Supp. 1158, 1163 (N.D.

[7] The deeply ingrained right of tribal self-government and federal policy in support of tribal development is such that a different rule on the pre-emptive scope of federal statutes applies to determine whether state authority over a tribe or tribal territory is pre-empted. Unlike in other fields of federal law, state authority can be pre-empted even in the absence of an explicit congressional statement to that effect. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

[8] Plaintiffs present this issue by indirection for the obvious reason that a direct challenge to the decision is time-barred under the six-year statute of limitations applicable in APA actions. *Trafalgar Capital Association, Inc., v. Cuomo*, 159 F.3d 21, 34 (1st Cir. 1998).

Ind. 1995). Moreover, even when federal recognition of a given tribe is not continuous, it remains effective once federal recognition was initially extended. *United States v. John*, 437 U.S. 634, 653 (1978). Further, neither a state's prior assertions of authority over a tribe nor a tribe's geographic location within one of the original thirteen colonies diminishes or lessens federal authority over a tribe. *United States v. Holliday,* 70 U.S. 407, 419 (1865) ("Neither the constitution of the State nor any act of its legislature, however formal or solemn, whatever rights in [sic] may confer on those Indians or withhold from them, can withdraw them from the influence of an act of Congress which that body has the constitutional right to pass concerning them."); *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974) ("It is true that the United States never held fee title to the Indian lands in the original States as it did to almost all the rest of the continental United States...[b]ut this reality did not alter the doctrine that federal laws, treaties, and statutes protected Indian occupancy and that its termination was exclusively the province of federal law."); *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975).[9]

Plaintiffs also misapply the rules of construction to interpret and enforce the applicable federal Indian statutes. There are specific canons of construction that apply to federal Indian statutes, such as the IRA, which Plaintiffs simply ignore. In the words of the Supreme Court: "We have consistently admonished that federal statutes and regulations relating to tribes and tribal activities must be 'construed generously in order to comport with ... traditional notions of [Indian] sovereignty and with the federal policy of encouraging tribal independence.'" *Ramah Navajo School Board v.*

[9] It is also noteworthy that the Department of the Interior has consistently applied the IRA to tribes located in the eastern United States, particularly to those tribes in occupation of tribal lands even in the absence of continuous federal supervision over those lands. 2 Op. Sol. 1163 (Aug. 25, 1942) (discussing federal authority over the Eastern Band of Cherokee in North Carolina, notwithstanding the history of state jurisdiction over the band); 2 Op. Sol. 1255 (Mar. 20, 1944) (discussing federal authority over the Catawba Tribe of South Carolina, notwithstanding state trusteeship over that tribe's reservation); *see also South Carolina v. Catawba Tribe, Inc.*, 476 U.S. 498, 501 (1986).

Bureau of Revenue, 458 U.S. 832, 846 (1982) (quoting *Bracker*, 448 U.S. at 144)). This rule of liberal construction in favor of the tribes applies specifically when, as here, a court is faced with two possible constructions of a federal Indian statute. The United States Supreme Court has instructed: "When we are faced with these two possible constructions [of a statute], our choice between them must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: '[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.'" *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992) (quoting *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985)); *see also Citizens Exposing Truth About Casinos v. Kempthorne*, 492 F.3d 460, 471 (D.C. Cir. 2007).

This rule of generous construction applies with particular force to the IRA. The Supreme Court has explained that the IRA was intended to "'rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.'" *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) (*quoting* H.R. Rep. No. 1804, 73d Cong., 2d Sess., 6 (1934)); *Bracker*, 448 U.S. at 143, n.10. In fact, the IRA was the "crowning achievement" of the New Deal and "designed to improve the economic status of Indians by ending the alienation of tribal land and facilitating tribes' acquisition of additional acreage and repurchase of former tribal domains." *Cohen's Handbook of Federal Indian Law*, §1.05 at 86 (2012 ed.). The BIA appropriately relied on this congressional policy in the ROD at issue here. ROD, p. 81, 91-91; AR __.[10]

[10] The liberal rule of construction applicable to Indian statutes is the exact opposite of the rule of lenity applied in federal deportation statutes. There, ambiguities are resolved against the government because of the drastic remedy of deportation. *Castaneda v. Souza*, 952 F. Supp. 2d 307, 320 (D. Mass. 2013). Here, the remedial nature of federal Indian statutes requires that ambiguities be resolved in favor of asserted federal authority.

These discrete rules confirm the correctness of the BIA's construction of Section 479 of the IRA at issue here. 25 U.S.C. § 479. By construing the three categories of eligible Indians in the section as encompassing independent and distinct groups, the BIA has given the statute the required liberal and generous construction and has fulfilled congressional policy. ROD, p. 81; AR __. The BIA's construction of the IRA is also consistent with the structure of Section 479 itself. *See* Castaneda v. Souza, 952 F. Supp. 2d 307, 311 (D. Mass. 2013) (statutory structure must be examined along with wording). Section 479 clearly enumerates three categories of eligible Indians. There is no question that the first and third categories are distinct and separate. The second category must be similarly construed as separate and comprehending a group of eligible Indians distinct from the first and third.[11]

History shows the wisdom and justice of applying the rule of generous statutory construction here. As noted at the outset, the Project lands are within the Tribe's territory. The Tribe lost its territory originally through a combination of overreach by the Commonwealth of Massachusetts and the neglect of the United States. The Tribe was reduced over time from the twenty-five mile square area it once held to only 17,000 acres in the Town of Mashpee. Proposed Finding, p. 32; AR __. Even as the Commonwealth attempted to extinguish the Tribe's title to Mashpee in 1869 and 1870, the Tribe remained in occupation and control of the Town of Mashpee for one hundred years afterwards. *Id.*, p. 44; AR __. As a result, the Tribe was effectively in occupation of a reservation in 1934. *See* Minnesota v. Hitchcock, 185 U.S. 373, 389-90 (1902). Now, the United States has acted

[11] Plaintiffs cannot avoid the natural reading of Section 479 based upon its structure by suggesting that the second category remains distinct, in part, because of the need to reach after-born Indians described in the first category. It has been settled for generations that tribes have the inherent power to define their own membership, including after-born members. *Cohen's Handbook of Federal Indian Law,* §4.01[2][b] 215-16 (2012 ed.). Therefore, the first category in describing eligible Indian tribes necessarily includes after-born members of those tribes. To follow Plaintiffs' construction would render the second category of eligible Indians to be meaningless and a statute cannot be read to render language meaningless.

in the ROD to provide for the economic and governmental renewal of the Tribe, precisely as contemplated by the IRA. The modicum of long over-due justice for the Tribe embodied in the ROD must stand.

II. The ROD is based on substantial evidence and the result of the BIA's considered, deliberative, and rational exercise of its authority.

The Plaintiffs' contention that the BIA's decision-making in this case was arbitrary or capricious is belied by the overwhelming record. As the United States demonstrates in its motion for partial summary judgment, the BIA acted with appropriate authority under the IRA to place the Project lands and others into trust for the Tribe. Apart from that issue, the focus of the Court's review under the arbitrary or capricious standard is on process; that is, whether the ROD takes into account all relevant considerations and is supported by substantial evidence. *Craker*, 714 F.3d at 26; *Sig Sauer, Inc. v. Brandon*, No. 15-2230, 2016 WL 3409869, at *2 (1st Cir. June 21, 2016). Here, the ROD is the result of the BIA's detailed review of all relevant considerations, including those raised by the public generally and by Plaintiffs then and now. The ROD is overwhelmingly supported by substantial evidence obtained through a fair and deliberative process.

Perhaps the two most deliberative and protracted processes leading to the ROD were environmental reviews based on federal and state law: the Final Environmental Impact Statement ("FEIS") and the Final Environmental Impact Review ("FEIR"), respectively. AR __. These processes began on May 31, 2012, with the announcement by the BIA of its intent to prepare an Environmental Impact Statement ("EIS") on the Tribe's request that land be taken into trust in Taunton for gaming purposes and in Mashpee for governmental, housing and other tribal purposes. 77 Fed. Reg. 32132 (May 31, 2012).

Public meetings were duly noticed and held on the scope of environmental review on June 20 and June 21, 2012, at Taunton and Mashpee High Schools, respectively. The Tribe published notices

of the hearing in local papers and solicited public comment. Scoping Report, p. 1.2, AR __. Beginning at the same time and throughout the ensuing process, the City also hosted a page on its municipal website informing its residents of relevant Project matters including plans regarding and opportunities to comment on the Project. The City also sponsored events on May 8, 2012 to solicit public input and determine relevant issues to be considered as part of the environmental review, and conducted a special City Council public meeting on May 24, 2012, for the same purpose. *Id.* The resulting Scoping Report identified a number of alternatives to consider, including full development of the Project as proposed by the Tribe, smaller development projects, or no development at all.

On July 2, 2012, the Tribe filed an Environmental Notification Form that triggered a parallel environmental review under the Massachusetts Environmental Policy Act. Following due notice, another public hearing was held on July 24, 2012 to solicit public comments on the Project. Scoping Report, p. 1.2.6, AR __. These various public hearings resulted in written comments by 78 members of the public. ROD, p. 9, AR __. In addition, oral comments were made by members of the public at the hearings, including statements by eight individuals who are now the Plaintiffs in this matter.[12]

Significant issues identified by the public at these hearings included traffic, wetlands, water supply and wastewater, potential Project impacts on water quality and flooding, and changes in community character. As a result, all of these and other matters were analyzed in the draft EIS, published on November 15, 2013. Hard copies of the draft EIS were made available to the public at the City's office and public libraries.

[12] Plaintiffs David Littlefield (tr. 231), Kathleen Lewry (tr. 74), Michelle Littlefield (tr. 7, 17), Veronica Casey (tr. 68), Cora-Dorothy Peirce (tr. 137), David Lewry (tr. 231), and Carol Murphy (tr. 82) testified at the June 20 hearing. Counsel for Plaintiffs, Adam Bond, also testified at the June 20 hearing (tr. 108). Plaintiffs Michelle Littlefield and Francis Legace also testified at the June 22 hearing.

The publication triggered a 45-day comment period and during this time the BIA sent letters to all individuals, including some of Plaintiffs who had commented at the scoping hearing, advising of their opportunity to comment on the draft EIS. ROD, p. 9, AR __. Public hearings were then held on the draft EIS on December 2 and December 3, 2012 at Mashpee and Taunton High Schools, respectively. ROD, p. 10, AR __. The BIA extended the comment period through January 17, 2014 and, by the close of the comment period, the BIA had received 44 comment letters in addition to the 20 comments made at the public hearings. ROD, p. 10, AR __.[13]

On September 5, 2014, the BIA published the final EIS. 79 Fed. Reg. 53,077 (Sept. 5, 2014). The final EIS identified each comment on every subject and included a response to each, except for those matters beyond the scope of environmental review such as general objections to the conduct of gaming. FEIS, AR __. A thirty-day waiting period ended on October 6, 2014, during which time additional comments were received. These comments were addressed in Attachment IV to the ROD. *See* ROD, p. 10; AR __. At the end of this lengthy and comprehensive environmental review, the BIA adopted the Tribe's proposed Project as the preferred development alternative.

At the same time that this extensive and public environmental review took place, the BIA also considered whether the Project, if selected as the preferred alternative in the final EIS, would qualify as Indian land within the meaning of the Indian Gaming Regulatory Act and regulations found at 25 C.F.R. Part 292. ROD, p. 53; AR __. The relevant considerations for an initial reservation, the category of eligibility for tribes that had been recognized through the administrative acknowledgment process, are proximity of the land to the tribe's headquarters and whether the tribe has significant historical ties to the land. 25 C.F.R. § 292.6(d). In making this determination, the

[13] Some of the Plaintiffs commented on the draft EIS, including Francis Lagace (tr. 53), Michelle Littlefield (tr. 65), and David Littlefield (tr. 70) and also submitted written comments on the draft EIS: Jill and Francis Lagace; Robert Lincoln; David Littlefield; and Dorothy Peirce. DEIS, AR .

BIA relied upon the substantial record developed on the Tribe's petition for federal acknowledgment. ROD, p. 59; AR __. In addition, the BIA received and considered an opposing historical report. ROD, p. 67. The BIA assessed and acted well within its discretion when it rejected the opposing historical report and concluded that the Project qualified for gaming at the Tribe's initial reservation, if placed into trust. ROD, p. 67-77, AR __.

To complete its analysis of the Project, the BIA also considered another set of factors; that is, those factors that all applications for trust land must meet as set out at 25 C.F.R. Part 151. These regulations require that the BIA assess its authority under the IRA to place land into trust for the particular tribe, the Tribe's need for the land, the purposes for which the land will be used, the impact on local governments, and the BIA's ability to administer the lands. The first factor, addressed at length by the BIA, is the subject of the parties' cross-motions for partial summary judgment. ROD, pp. 80-120. The BIA properly found that the remaining factors uniformly counseled in favor of the proposed trust acquisition, in large measure because of the Tribe's positive working relationship with the City and other local governments. ROD, pp. 121-130; AR __.

As a result of these extensive deliberations and analyses, undertaken over the course of nearly four years, the BIA announced the ROD on September 18, 2015, and accepted the land into trust on November 10, 2015. Amended Answer, ¶ 82. In its final required act, the BIA noticed its intention to declare the trust lands to constitute the Tribe's initial reservation on December 31, 2015. 81 Fed. Reg. 948 (Jan. 8, 2016).

All relevant factors in this decision-making process were identified, with help in part from a number of the Plaintiffs. These factors were analyzed and weighed with the help of several substantial comment periods from the public. All governing regulations were properly applied. In the end, the BIA agreed with the City and the Tribe that the Project is appropriate and authorized. Indeed, it is fitting that the federal policy underpinning the IRA has been applied and will ultimately

result in substantial and long-term economic resurgence of the Tribe and the City, as the Tribe's partner. There is no genuine question of material fact here; the BIA did not act in an arbitrary or capricious manner in issuing the ROD. The City urges that the Court grant Defendants' motion for summary judgment.

Conclusion

Plaintiffs' claims face an insurmountable burden against the uncontested facts, the law, the rules of construction, common sense, and careful decision-making by the BIA in this matter. The City urges the Court to grant Defendants' Motion for Partial Summary Judgment.

DATED: July 14, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) on July 14, 2016.

/s/ Jason D. Buffington