

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID LITTLEFIELD, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,

Defendants.

CIVIL ACTION NO.

1:16-cv-10184-WGY

**AFFIDAVIT OF BRUCE W. MAYTUBBY IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION OF WRIT**

I, Bruce W. Maytubby, hereby declare and state as follows:

1. I am the Regional Director of the Eastern Regional Office ("Regional Office") of the Bureau of Indian Affairs ("BIA") at the United States Department of the Interior ("Department"). As Regional Director, I oversee the BIA programs and services to tribes situated within this region, including the Mashpee Wampanoag Tribe ("Tribe").
2. On September 18, 2015, the Assistant Secretary – Indian Affairs ("Assistant Secretary") issued a record of decision ("ROD") to acquire 170 acres in the Town of Mashpee and 151 acres in the City of Taunton in trust for the Tribe and to proclaim these lands to be the Tribe's initial reservation. On the same day, the Assistant Secretary sent a letter notifying me of his decision and directing the Regional Office to complete the trust transfer "[u]pon the fulfillment of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements."
3. Pursuant to the Assistant Secretary's directives, my staff completed the title work and updated the environmental documents for all 28 parcels comprising the Taunton and Mashpee

acquisitions. The environmental work consisted of updating the Environmental Compliance Review Memorandum in order to demonstrate compliance with NEPA and 602 DM 2 concerning environmental liabilities. The title work included obtaining updated title evidence from the Tribe and completing a Final Certificate of Inspection and Possession (CIP). Regional Office staff compared the Final CIP with the Preliminary Title Opinion and Initial CIP to identify and resolve any inconsistencies.

4. On November 10, 2015, and upon the Regional Office's completion of the environmental and title work, I accepted the conveyance of the Mashpee and Taunton parcels to the United States in trust and the associated trust deeds were signed. The Regional Office submitted the deeds and title documentation to the BIA Land Titles and Records Office for recordation.

5. If the United States were ordered to take the Taunton and Mashpee parcels out of trust status prior to a final court decision, the BIA would have to effectively unwind all the environmental and title work that it had completed over the course of almost three months in reliance on the September 18, 2015 ROD. This would be an extraordinary step, and there are no clear procedural steps to guide this process.

6. Reversing the trust transfer before a final decision on the merits would nullify the countless hours of labor that BIA staff have already spent on finalizing the trust transfer. It would create confusion as to the appropriate agency process for implementation, particularly given that these parcels must be re-accepted into trust if a favorable decision on the merits is later issued.

7. Moreover, divestiture of the trust title in this context will create a perplexing situation in which the ROD is still in effect and yet the subject parcels are no longer held in trust, such that the precise status of the land and BIA's responsibilities with regard to that land would be unclear. This would present BIA with a number of practical challenges. For example, BIA would need to determine whether to continue to treat the land as "Indian country" for purposes of granting the Tribe access to federal programs, services, and benefits. Any pending requests from

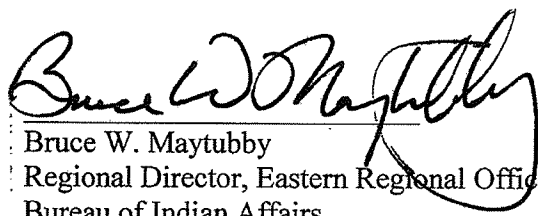
the Tribe that relate to the trust property would necessarily be delayed or denied by the BIA, in obstruction of the BIA's and the federal government's fundamental policies of tribal self-determination and tribal economic growth.

8. For example, a preliminary injunction would substantially impact BIA funding and services related to forestry and wildfire management. There are approximately 100 acres of forest land within the Tribe's trust lands. Completion of a forest inventory and development of a forest management plan covering trust land forests would be delayed, or not accomplished at all. Development of a fire management plan covering all "burnable acres" held in trust would be delayed or not accomplished at all. Development of fire cooperative agreements or contracts with local or state agencies that provide for wildland fire suppression/protection of tribal trust lands and paid for by BIA would be delayed or not accomplished at all. BIA funding can only be spent on forest inventories, forest management planning, and fire management planning for lands held in trust or restricted fee status. Moreover, BIA cannot provide funding and other assistance in regards to protection of a tribe's forest resources from wildfire, forest insect and disease problems, or forest and fire trespass when the land is not held in trust status or restricted fee status.

9. Additionally, Barstow's Pond Dam located on the Taunton properties is slated for demolition at a cost of \$1.5 million. The dam is in extremely poor condition. Funding and oversight of the proposed removal is being provided by the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Agency, with InterFluve being the project contractor. Section 404 and State of Massachusetts permits are currently in place. If the federal agencies backed out of this project due to questions over title and/or jurisdiction, regulatory authority for this dam would revert to the State of Massachusetts and the Tribe would have to bring this facility into compliance at an approximate cost of \$1-2 million depending on the level of compliance. If the properties revert to fee, it would be unlikely that BIA could provide Natural Resources trust services and contract support. Additionally, it would be very unlikely that BIA could provide contract support for any water-related project for the City of Taunton, Massachusetts.

10. BIA would also need to determine whether the land would again be subject to state/local jurisdiction, such as for law enforcement. It is possible that the State and local governments would decline to exercise regulatory and other jurisdictional authority, particularly given the potentially temporary nature of the relief. If the State and local governments declined to reassume jurisdictional authority, the BIA, along with its sister federal agencies, would need to determine whether they have the authority to step into the jurisdictional gap in order to ensure that important issues, like law enforcement, are addressed. Furthermore, it is possible that agency action taken during this jurisdictional gap could later be contested on the grounds of lack of jurisdiction. In any event, the BIA would need to work with other federal agencies, the State, and local jurisdictions to resolve all the jurisdictional confusion that is likely to result from such an action.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed this 17th day of June, 2016.


Bruce W. Maytubby
Regional Director, Eastern Regional Office
Bureau of Indian Affairs
United States Department of the Interior
545 Marriott Drive
Suite 700
Nashville, TN 37214