UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of: NARRAGANSETT INDIAN TRIBE, Respondent.	HUDALJ 11-M-027-IH-3 May 11, 2012

RULING GRANTING GOVERNMENT MOTION FOR SUMMARY JUDGMENT

In 1988, the U.S. Department of Housing and Urban Development ("HUD") agreed to fund a project undertaken by the Narragansett Indian Tribe ("Respondent") to construct 50 units of affordable Indian housing. Since then, the project has had a long and tumultuous legal history, accompanied by years of thwarted efforts to complete any housing units. In 1991, in furtherance of the project, Respondent purchased 32 acres of land from the town of Charlestown, Rhode Island. A dispute ensued about whether the construction project had to comply with state and local regulations.

The tribe argued that its ownership of the adjacent 1,800 acres of "settlement lands" made the parcel part of a "dependent Indian community." If so, under 18 U.S.C. § 1151, the parcel was "Indian country". However, in 1996, that argument did not prevail in federal district court.[1] Alternatively, the tribe asked the Secretary of the U.S. Department of the Interior to accept the 32 acres in trust for the tribe, pursuant to 25 U.S.C. § 465.[2] On March 6, 1998, the Secretary accepted the land into trust. On appeal the Interior Board of Indian Appeals (IBIA) upheld the Secretary's decision.[3] As a result, the 32 acres were free from state and local regulation. On appeal by the town of Charlestown and the State of Rhode Island, the Secretary's decision was upheld by the District Court and by the First Circuit Court of Appeals.

However, in 2009, the United States Supreme Court reversed the Secretary and the courts below, deciding the case adversely to Respondent. The Court ruled that the Secretary of the Interior improperly took the land in trust.[4] Lacking exemption from state and local law, the project remained at a standstill until necessary permits were applied for and received.[5] Respondent states

[1] Narragansett Indian Tribe v. Narragansett Elec. Co., 89 F.3d 908, 913–22 (1st Cir. 1996).

[2] The statute provides that title "shall be taken in the name of the United States in trust for the Indian tribe . . . for which the land is acquired, and such lands or rights shall be exempt from state and local taxation.

[3] See Town of Charlestown, Rhode Island v. Eastern Area Director, Bureau of Indian Affairs, 35 IBIA 93 (2000).

[4] Carcieri v. Salazar, 555 U.S. 379 (2009).

[5] The litigation may continue, however, as the Respondent has indicated it may return to District Court to seek relief from a previously imposed injunction.

that all necessary permits have been obtained, except a construction permit, which has—again—been denied by the town of Charlestown.

On November 24, 2010, the HUD Assistant Secretary for Public and Indian Housing notified the Respondent of HUD's intent to impose remedies due to the lack of progress in completion of the project. The Assistant Secretary noted HUD had not taken adverse action before the status of the land was fully resolved. When proposed informal discussions did not resolve the matter, the Assistant Secretary notified Respondent, by letter dated March 17, 2011, that specific sanctions would be imposed. As authorized by law, Respondent requested a hearing, and this Court issued a Notice of Hearing on April 28, 2011. The hearing was set for August 9, 2011, but on August 8, 2011, HUD filed a Motion for Summary Judgment. Following an exchange of pleadings, the Court granted Respondent's request for oral argument on the motion.[6] Argument was held on February 15, 2012, in the U.S. Courtroom at the HUD Office of Hearings and Appeals. For reasons stated below, the Motion for Summary Judgment is will be granted.

THE PARTIES' POSITIONS

HUD moves for summary judgment, alleging that Respondent has failed to use Indian Housing Block Grant (IHBG) funds for affordable housing activities, in violation of section 101(g) of the Native American Housing Assistance and Self-Determination Act (NAHASDA).[7] HUD claims Respondent's failure constitutes substantial noncompliance with NAHASDA, because "[Respondent's] violation has a material effect on Respondent meeting its major housing goals and objectives and involves the expenditure of a material amount of NAHASDA funds budgeted by Respondent for a material activity." Lastly, HUD claims that the remedies sought are authorized under NAHASDA and that HUD is entitled to summary judgment. Respondent argues that HUD has not demonstrated that it is entitled to summary judgment at this time. Specifically, Respondent claims it expended grant funds for "affordable housing activities" and therefore did not violate NAHASDA.

STANDARD OF REVIEW

Pursuant to 24 C.F.R. § 180.430 and 26.32(l), this Court is authorized to "decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact[.]" The Court may exercise its discretion in application of Rule 56 of the Federal Rules of Civil Procedure. 24 C.F.R. § 26.40(f)(2).

Summary judgment will be granted where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S.

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[6] Currently before the Court are the Government's Motion for Summary Judgment ("Motion"), dated August 8, 2011; the Narragansett Indian Tribe's Objection to the Government's Motion for Summary Judgment ("Objection"), dated September 2, 2011; the Government's Response to Narragansett Indian Tribe's Objection to the Government's Motion for Summary Judgment ("Response"), dated September 16, 2011; the Government Supplemental Brief, dated October 3, 2011; the Narragansett Indian Tribe's Reply in Opposition to Government's Motion for Summary Judgment ("Reply"), dated October 3, 2011; and the Government's Response to Narragansett Indian Tribe's Reply ("Surreply"), dated October 11, 2011.

[7] The grant preceded the passage of NAHASDA. In September, 1988, the grant was received by the Narragansett Indian Wetuomuk Housing Authority—formed by Respondent—from the Traditional Indian Housing Development program. Such pre-existing grants became subject to NAHASDA, after its passage in 1996.

242 (1986); Matsushita Elec. Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574 (1985); Celotex Corp. V. Catrett, 477 U.S. 317 (1986). Summary judgment is a "drastic device" because, when exercised, it cuts off a party's right to present its case. Nationwide Life Ins. Co. v. Bankers Leasing Ass'n. Inc., 182 F.3d 157, 160 (2d Cir. 1999). "Accordingly, the moving party bears a heavy burden of demonstrating the absence of any material issues of fact." Id.

In reviewing a motion for summary judgment, the reviewing court must find "all ambiguities and draw all reasonable inferences in favor of the party defending against the motion." Id.; see also, Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990) ("where the facts specifically averred by [the nonmoving] party contradict facts specifically averred by the movant, the motion must be denied").

UNDISPUTED FACTS

1. On March 25, 1987, the Narragansett Indian Wetuomuck Housing Authority ("NIWHA") was established by Respondent to serve as an Indian housing authority for the benefit of Respondent.

2. On September 29, 1988, HUD committed to providing NIWHA with $3.25 million in IHBG funds so that it could develop a project called the Wetuomuck Community Village, consisting of 50 affordable housing units.

3. On October 3, 1991, HUD and NIWHA executed an Annual Contributions Contract ("ACC") memorializing the conditions for the receipt of these grant funds.

4. Section 3 of the ACC, titled "Completion of Projects," requires NIWHA to proceed with the "timely development" of the Wetuomuck Community Village.

5. Sometime in 1991, Respondent expended ACC funds to acquire 32 acres of real property in the town of Charlestown, Rhode Island, upon which the Wetuomuck Community Village project was to be built.

6. By amendment, dated December 16, 1994, the total grant amount for the ACC was increased to $4,144,999.

7. In 1996, The Native American Housing Assistance and Self-Determination Act (NAHASDA) was passed.

8. Subsequently, Respondent further expended its NAHASDA funds for development and construction of various infrastructures including site work such as the installation of foundations, septic and water service.

9. Respondent also expended its NAHASDA funds for the acquisition of 12 modular homes.

10. On March 6, 1998, the U.S. Dept. of Interior's Bureau of Indian Affairs (BIA) accepted in trust, pursuant to 25 U.S.C. § 465, the 32-acre housing site, finding that the property "was acquired for the express purpose of building much needed low-income Indian housing via a contract between the NIWHA and HUD.

11. In June of 1998, Respondent abolished NIWHA and began self-administering its IHBG program.

12. The town of Charlestown and the state of Rhode Island appealed the decision of the Secretary of the Interior taking Respondent's housing land in trust. The resulting litigation lasted from 1998 until concluded by the United States Supreme Court in February 2009. See Carcieri v. Salazar, 555 U.S. 379 (2009).

13. Respondent, in a good faith effort to complete the 12 housing units while the litigation was pending, made a decision to apply for and obtain all necessary state and local permits.

14. On January 29, 1999, HUD's Office of Inspector General issued an audit report revealing that, despite expending $3,168,576 in NAHASDA funds, as of April 30, 1998, NIWHA and Respondent had only constructed 12 units, none of which were habitable.

15. By letter dated December 1, 2000, HUD authorized the completion of 12 housing units, representing a reduction from the 50 units required in the original grant.

16. On February 20, 2001, Respondent received from the Town of Charlestown Zoning Board of Review approval under the Rhode Island Low and Moderate Income Housing Act to construct 12 homes on the project site.

17. On August 5, 2002, Respondent received a waiver from the Assistant Secretary of the requirements that it obtain a Local Cooperation Agreement pursuant to Section 101(c) of NAHASDA with the town of Charlestown.

18. On November 13, 2002, the Charlestown town council approved the exchange of a drainage easement permitting the completion of construction of 12 housing units, but the easement was never recorded, apparently out of concern that Respondent might seek to construct a casino on the property.

19. On July 23, 2003, the town council revoked its consent to exchange of drainage easements for the project.

20. Respondent has obtained from the state of Rhode Island permits for septic and construction within a coastal zone regulated under the federal Coastal Zone Management Act.

21. Respondent has retained the services of various architects and engineers, which have prepared comprehensive plans and cost analysis to complete the existing 12 units of the project.

22. Respondent on at least two occasions, once in 2004 and again in 2011, applied for and was denied building permits from the town of Charlestown.

23. As a condition to allow the project to move forward, the town of Charlestown required that Respondent waive its sovereign immunity and consent to the land being subject to state and local laws, even if the housing site is, in the future, placed in trust by the BIA.

24. As of the date of oral argument on this motion, Respondent had not completed any habitable, affordable housing units in the Wetuomuck Community Village.

25. On August 4, 2011, Respondent appealed with the Charlestown Zoning Board of Review's denial of Respondent's Application for a Building Permit, but no permit has been issued.

APPLICABLE LAW

NAHASDA provides that grant funds previously allocated under the United States Housing Act of 1937 are to be considered assistance under NAHASDA and are subject to the statute and its implementing regulations. 25 U.S.C. § 4140. Under NAHASDA, The HUD Secretary is authorized to make grants on behalf of Indian tribes to carry out affordable housing activities. 25 U.S.C. § 4111(a)(1)(A). In order to receive such funding, a tribe must submit an annual Indian Housing Plan (IHP) for approval by HUD. 25 U.S.C. § 4111(b)(1).

Section 4111(g) of NAHASDA requires that grants made by the Secretary on behalf of Indian tribes may only be used for affordable housing activities. The Secretary has the authority to conduct an audit or review to determine whether a recipient of NAHASDA funds has carried out eligible housing activities in a timely manner. 25 U.S.C. § 4165(b)(1)(A)(i)(I).

If an audit or review results in a finding that a recipient of NAHASDA funds has not carried out its eligible housing activities, the recipient may be found in substantial noncompliance, which occurs when:

> (a) The noncompliance has a material effect on the recipient meeting its major goals and objectives as described in its Indian Housing Plan;
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> (b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;
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> (c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or
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> (d) The noncompliance places the housing program at substantial risk of fraud, waste, or abuse.

24 C.F.R. § 1000.534.

Remedies for substantial noncompliance include, in pertinent part, the termination of payments under NAHASDA to Respondent and the reduction of future payments to Respondent, under NAHASDA, up to an amount equal to the payments that were not expended in accordance with NAHASDA. 24 C.F.R. § 1000.538(a)(1) and (2).

DISCUSSION

There is no genuine issue of material fact. HUD alleges that there is no issue of material fact and it is, therefore, entitled to summary judgment. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact..." Ledbetter v. City of Topeka, Kan., 318 F.3d 1183, (10th Cir. 2003).

To raise a question of fact, Respondent must set forth "specific facts showing that there is a genuine issue for trial." Posey v. Skyline Corp., 702 F.2d 102 (7th Cir. 1983), cert. denied, 464 U.S. 960 (1983). To defeat summary judgment, disputed facts must be of a nature that affects the outcome of the trial. Pollard v. Azcon Corp., 904 F. Supp. 762 (N.D. Ill. 1995).

Respondent does not raise any genuine issue of material fact that is in dispute. In its objection, Respondent notes that, "at the very least, issues of material fact are in dispute in this matter, requiring that this case proceed to a full hearing." However, Respondent does not specify any disputed facts. Instead, Respondent argues that HUD is not entitled to judgment as a matter of law. Accordingly, the Court finds that there is no genuine issue of material fact in this case.

HUD is entitled to judgment as a matter of law. HUD claims Respondent's failure to produce habitable affordable housing units constitutes substantial noncompliance with NAHASDA. Determination that a noncompliance with NAHASDA is substantial requires a two-step analysis. 24 C.F.R. § 1000.534. The first step requires a determination that a noncompliance with NAHASDA or its implementing regulations has occurred. Id. The second step is to determine if the noncompliance is substantial. Noncompliance is substantial if it: (a) has a material effect on the recipient meeting its major goals and objectives under its Indian Housing Plan; (b) represents a material pattern or practice of activities constituting willful noncompliance with a provision of NAHASDA or its regulations; (c) involves the obligation or expenditure of a material amount of NAHASDA funds budgeted by the recipient for a material activity; or (d) places the housing program at substantial risk of fraud, waste, or abuse. 24 C.F.R. § 1000.534.

1. Noncompliance. (Respondent is in violation of § 4111(g) of NAHASDA). In this case, HUD alleges Respondent failed to comply with § 4111(g) of NAHASDA, which requires that the IHBG funds are used only for affordable housing activities consistent with the approved Indian Housing Plan. 25 U.S.C. § 4111(g). "Affordable housing activities" are defined as "activities...to develop, operate, maintain, or support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing." 25 U.S.C. § 4132. "Development," as an affordable housing activity, is defined as

> the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, and other related activities.

Id. at § 4132(2).

NAHASDA, and its implementing regulations govern HUD's and Respondent's responsibilities in this case. The element of "timeliness" is certainly implied by § 4165, which gives the Secretary the authority to audit or review a recipient of NAHASDA funds to ensure that said recipient is carrying out "eligible housing activities in a timely manner." 25 U.S.C. § 4165(b)(1)(A)(i)(I). Further, although the ACC was preempted by NAHASDA and its regulations, the language of the ACC is persuasive in ascertaining the intent of the parties. Pursuant to the terms of the ACC, Respondent is required to complete the Wetuomuck Community Village in a timely manner.

Respondent claims the IHBG funds were used for development. Indeed, it is undisputed that the funds were used to acquire the parcel of land, purchase components, and design and construct infrastructure on the land. However, it is also undisputed that in the 22 years since HUD first committed to providing the grant funds for the Wetuomuck Community Village project, not a single, habitable unit has been produced. This is the crux of HUD's argument.

Respondent argues that "[i]t is illogical to assert that Respondent is noncompliant based solely on the fact that the development is not yet complete," and that NAHASDA "requires affordable housing activities, not solely affordable housing." Respondent also argues that "there is absolutely no requirement in Section 202 that a development needs to be presently completed and occupied in order to qualify as affordable housing activities" and that Respondent has "diligently pursued this project...but through no fault of their own, they've been unable to move the local community into granting the necessary permits in which to complete this housing." Respondent also claims that the town of Charlestown will only allow the project to move forward on the condition that Respondent's lands remain subject to state and local criminal and civil jurisdiction in perpetuity.

This Court acknowledges that "affordable housing activities" are not limited to the development and completion of affordable housing units. Section § 4132 of NAHASDA includes numerous activities, beyond those classified under "development," that qualify as "affordable housing activities." However in this case, Respondent received the IHBG with the understanding that the funds allocated would be used to develop affordable housing units. Therefore, Respondent's argument that NAHASDA does not specifically require affordable housing to be produced in order to comply with the statute, is contrary to the intention of the ACC and the purpose of the IHBG.

If Respondent's interpretation of the statute prevails, for example, a recipient of NAHASDA funds who began the process of developing affordable housing, but abandoned the project before any habitable units were actually produced, would not be liable for grant funds that were already spent on the project's development. At some point, development of affordable housing must produce the affordable housing units, or the effort, no matter how sincere or diligent, may be said to have failed. In this case, after more than 22 years, Respondent has failed to produce even one habitable unit.

The Court is cognizant of repeated efforts by Respondent to advance this project, and the Court takes no position on Respondents refusal to bargain away its potential rights of sovereignty over the project. However, as with any decision, there often flows collateral consequences. In this case, the principal impediment to completion of this project is the controversy between Respondent

and the town. That controversy is not within the purview of this action or the jurisdiction of this Court. This Court's role in this matter is limited to determining whether Respondent is in compliance with the terms and conditions of its agreement with HUD. To the extent that Respondent's compliance with the ACC has been made impossible by its stand-off with the local government, Respondent is not culpable for its failure to complete the project.[8] However, this condition of impossibility is no different in effect than if a sink-hole opened up and swallowed the entire project.

Respondent agreed to complete the Wetuomuck Community Village in a timely manner. Respondent is now precluded from completing the project, so Respondent can no longer claim that any activities taken by Respondent—however well-intended—could amount to "affordable housing activities."

To be clear, it is not the delay, or any particular period of time, that the Court relies on in granting Summary Judgment in this case. Certainly, not every decision causing a delay would result in an affordable housing activity being carried out in a manner that is characterized as untimely under NAHASDA. Neither NAHASDA nor its implementing regulations define the term "timely." The meaning of "timely" within the context of NAHASDA has yet to be litigated and HUD has not published any regulatory clarification of the term. The ACC also fails to clarify the meaning of "timely" by either offering a definition or including a deadline for the completion of the project, or defined phases of the project. Thus, this is an issue of first impression.[9]

In its Supplemental Brief, HUD cited the Merriam-Webster Dictionary's definition of the term as "coming early or at the right time." HUD asserts that the Court should "consider the amount of time required under normal circumstances to build a single family home and make it ready for occupancy" before HUD concedes that after "extensive research" it is "not aware of any definitive data" on the subject. However, HUD claims that "common experience and knowledge illustrate that even with foreseeable delays, construction and occupancy of a single family home can typically be completed in no more than one to two years."

The Court declines to make a finding as to the specific amount of time required for the timely completion and occupation of 12 housing units. The need for such a standard could have been anticipated and provided for in the terms of a thorough ACC or in an approved IHP.[10] Nevertheless, the Court does not need a definitive deadline to find Respondent's failure, thus far, to produce affordable housing units to be a violation of § 4111(g) of NAHASDA. Twenty-two years should be ample time to construct, and make habitable, housing units, particularly when the originally planned number of units was reduced from 50 to 12. After receiving and expending over three and one-half million dollars without producing a single habitable unit, it is fair to say that Respondent's expenditure of NAHASDA funds was not for "affordable housing activities" and therefore is a violation of the statute and the IHP. And, for the reasons previously stated, the current

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[8] This certainly, is a factor that should be taken into account by HUD in determining the amount of recoupment HUD seeks from Respondent.

[9] See Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971) (citing Allen v. State Board of Elections, 393 U.S. 544 (1968) in stating that an issue of first impression is one whose resolution was not clearly foreshadowed).

[10] Neither party has cited any deadlines established in any of the Indian Housing Plans submitted by Respondent and approved by HUD. In drawing all reasonable inferences in favor of Respondent, the Court concludes that no such deadlines existed in the approved IHPs.

stand-off between Respondent and the town suggests that no further expenditure of funds will constitute "affordable housing activities," as the project cannot result in the completion of habitable affordable housing units.

2. Noncompliance is substantial. (Respondent's violation of § 4111(g) of NAHASDA constitutes substantial noncompliance with the statute). HUD alleges Respondent's noncompliance with HUD constitutes substantial noncompliance pursuant to 24 C.F.R. § 1000.534(a) and (c). The regulation includes violations that have a material effect on the recipient meeting its major goals and objectives as described in its IHP, and involve the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity. Id.

First, HUD claims Respondent's violation of NAHASDA had a material effect on Respondent's IHBG program because "a significant number of eligible individuals and families have not been served during Respondent's multiple unsuccessful attempts to complete the Wetuomuck Community Village." The regulations specifically require that the violation must have a material effect on the recipient meeting its major goals and objectives *as described in its IHP*. 24 C.F.R. § 1000.534(a). IHPs are required to be submitted to HUD annually by a tribe or its designated housing authority. 25 U.S.C. § 4112(a). The IHP must include a description of planned activities, a statement of needs, an operating budget, and a certification of compliance. 25 U.S.C. § 4112(b)(2). The record of this proceeding does not indicate that HUD has filed a copy of any IHP. Absent such evidence, and considering the nature of the Motion before the Court, it cannot be inferred that Respondent's failure to produce affordable housing units had a material effect on the goals and objectives contained in any of its IHPs as such plans could include affordable housing activities other than the development of the Wetuomuck Community Village.

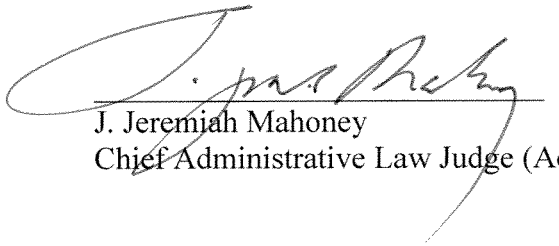
Second, In the Motion, HUD claims Respondent's violation of NAHASDA involves "the expenditure of a material amount of NAHASDA funds budgeted by Respondent for a material activity." It is undisputed that Respondent has received $3,597,132.17 of the $4,144,999 IHBG. It is also undisputed that Respondent has spent at least $3,168,576 of the amount given by HUD. This amount constitutes more than three-quarters of the total IHBG. The IHBG was promised to Respondent with the primary purpose that Respondent would use the funds to develop the Wetuomack Community Village. Accordingly, the Court finds that Respondent's noncompliance was substantial as it involved the expenditure of a material amount of the NAHASDA funds granted to Respondent for the completion of the Wetuomack Community Village.

CONCLUSION

Respondent is in substantial noncompliance of NAHASDA for its failure to effectively spend NAHASDA funds for "affordable housing activities." Respondent violated § 4111(g) by failing to spend NAHASDA grant funds on affordable housing activities because, despite its best efforts and the passage of 22 years, Respondent has failed to produce a single, habitable housing unit. In so concluding, the Court does not intend to impugn Respondent's motivation or good intentions. The Court notes that the very town that sold the land to Respondents for the purpose of constructing affordable Indian housing has thwarted that noble goal by denying construction permits. Unfortunately, this Court has no power over actions of the town, and is compelled to conclude that Respondent, in the face of significant obstacles, has not been able to live up to its commitment to build affordable housing units pursuant to the HUD grant. Respondent has already expended more than three-quarters of the total IHBG. In the face of the current stand-off between

Respondent and the town of Charlestown, no further expenditures of funds can be claimed to be in furtherance of "affordable housing activities," as no habitable affordable housing is likely to result. Respondent has failed to produce any affordable housing, and has no prospect of being permitted to do so. Thus, this Court is constrained to find that Respondent is in substantial noncompliance with NAHASDA.

Accordingly, it is **ORDERED** that the Government's Motion for Summary Judgment is **GRANTED**. By virtue of this order, HUD is authorized to impose the remedies as stated in the Assistant Secretary's letter of March 17, 2011.[11]



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

Notice of Appeal Rights. The appeal procedure is set forth in detail in 24 C.F.R. § 26.52 (2009). This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 90 days of its service (30 days for cases brought under the Program Fraud Civil Remedies Act), this decision becomes final.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Hearings and Appeals.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 25 U.S.C. § 4161(d). The petition must be filed within 60 days after the date the HUD decision becomes final.

[11] The remedies include, as further detailed in the letter, (1) termination of current Indian Block Grants to Respondent, and (2) recoupment of expended funds by adjustment of future IHBGs. See 24 C.F.R. § 1000.538(a).