Memorandum Regarding Access across the Common Lands to the Lobsterville Beach under the 1983 Settlement Agreement

One of the fundamental agreements underlying the settlement of the land claim was that the Town retained title to the beaches. Negotiators agreed that the traditional, established pathways across the Common Lands to access the Lobsterville Beach would be preserved and would be maintained by the Town. The pathways at the end of Clay Pit Road were long established and among the primary access pathways to Lobsterville Beach. As Joan Wallen told everyone Thursday night, she has used those pathways at the end of Clay Pit Road for over 50 years. We have seen a photograph from around the time of the settlement that shows one of those paths as being wide enough to be used by motor vehicles.

The documents that govern the question of access rights at Clay Pit Road are the 1983 settlement agreement which consists of a Memorandum of Understanding and Land Use Plan, and the 1992 deed. Below are excerpts relevant to this question from those documents. In addition, a 1989 deed is briefly discussed and excerpts are set forth from a letter from the Chief of the Title Unit in the Land Acquisition Section of the Department of Justice who reviewed that deed and rejected it.

1983 Memorandum of Understanding: paragraph 10:

"Access to the shoreline across the common lands shall be preserved and the roads and paths established in accordance with the Land Use Plan … for such access shall be maintained by the Town of Gay Head."

1983 Land Use Plan:

I (A): "Access to the shoreline across the Common Lands shall be preserved, and the established roads and paths for such access shall be maintained by the Town of Gay Head or … the State….

1989 Deed:

The Town (Selectmen: J. Madison, D. Vanderhoop and W. Delaney) drafted and executed a deed in 1989 which listed access to three rights of way, and attached a map without listing the Clay Pit pathways. The 1989 deed and attached map were not accepted by the Federal government or the Taxpayers Association because it attempted to reduce access provided by the settlement across the Common Lands to the beach.

1991 Letter from Department of Justice:

In connection with the preparation of the 1992 Deed, Lewis Baylor, Chief, Title Unit, Land Acquisition Section, U.S. Department of Justice wrote the following in a letter dated June 13, 1991 to Henry J. Sockbeson, the Tribe's attorney:

“The first paragraph on page 4 of the deed reserves a right to use certain footpaths. Changes have been made to this paragraph to add references to additional paths. What is stated is fine if the parties are in agreement, but it appears that the intent is to subject the conveyance to the shoreline access provisions in paragraphs 4 and 10(a) of the Memorandum, and to the provision of the Land Use Plan. This intent is in fact carried out by the deed as it stands because of the second paragraph on page 4, but the subject paragraph (the first paragraph on page 4) could be a source of confusion. **Since the access provisions in the referenced documents are far broader than what appears in subject paragraph in the deed, and since those documents will be attachments to the deed, why not change the deed language to simply state that the conveyance is subject to the reservation of certain access rights as to the shoreline as more particularly set forth in paragraphs 4 and 10(a) of the Memorandum (Exhibit F) and in the Land Use Plan (Exhibit H)**."
[Emphasis supplied]

1992 Deed:

In fact, the 1992 Deed from the Town (Selectmen: D. Vanderhoop, R. Smith, W. Delaney) reserves access rights generally and specifically:

"Grantor expressly reserves the access rights to the shoreline as set forth in the Memorandum (see Paragraphs 4 and 10) and in Land Use plan; and further expressly reserves rights of way across Parcel One along the existing ways (**one proceeding from Menemsha Sound**, the other from the terminus of the Lobsterville Road at Menemsha Pond) **to the clay pits, one of which rights of way is known as the “Road to the Claypits,”** said rights of way to the clay pits to be used for all purposes for which roads and ways are now or may hereafter be used in the Town of Gay Head."
[Emphasis supplied]

Parcel One is identified in the 1992 Deed as comprising what is commonly known as The Cranberry Lands.

The 1992 Deed makes it clear that no map was ever agreed to:

"2. Neither Appendices A and B, nor any map or plan was ever attached to the Memorandum despite a recitation to the contrary in the Memorandum.

3. No Appendix “C” was ever attached to the Land Use Plan …"

August 3, 2010