

INTERGOVERNMENTAL AGREEMENT ON COOPERATIVE
LAND USE AND PLANNING
BETWEEN
THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
AND
THE TOWN OF AQUINNAH

This Intergovernmental Agreement on Cooperative Land Use and Planning between The Wampanoag Tribe of Gay Head (Aquinnah) (the “Tribe”) and the Town of Aquinnah (the “Town”) (the “Agreement”) represents good faith commitments which are being made by each of the parties in a spirit of cooperation, and is based on the belief that these commitments will be of mutual benefit to the parties.

WHEREAS, the Tribe and the Town recognize that a common interest exists between the two governments with respect to land use regulation on the Wampanoag Aquinnah trust lands and public lands and private non-tribal lands that abut Wampanoag Aquinnah trust lands; and

WHEREAS, the interest of the Tribe extends to all lands within the boundaries of its trust lands and to land use activities in areas beyond the exterior boundaries of these trust lands that may affect or have impacts on trust lands; and

WHEREAS, the interests of the Town extends to lands that surround Wampanoag Aquinnah trust lands and to activities within the boundaries of the trust lands that impact Town lands; and

WHEREAS, the Tribe and the Town agree that it is in both their interests to cooperatively address land use issues and continue to build a government-to-government relationship to establish a collaborative planning process; and

WHEREAS, the Tribe and the Town agree that in order to address conflicts that may arise in the long-term, the Tribe

and the Town should adopt an administrative procedure that involves joint review and consultation regarding proposals for land use activities on Wampanoag Trust lands so that mutually agreeable decisions which acknowledge the broad interests of the community, both Indian and non-Indian, may be reached; and

WHEREAS, the Tribe and the Town affirm that cooperative problem solving and consensus decision-making will be the preferred means of reaching decisions relating to land use planning and regulatory activities on the Wampanoag Aquinnah trust lands;

NOW THEREFORE, for purposes of coordinating land use issues and establishing better communications and relations between the Town and the Tribe, the parties agree as follows:

I. AQUINNAH PLANNING ADVISORY BOARD

1. An Aquinnah Planning Advisory Board (hereinafter referred to as the “Advisory Board”) is a board to be established to facilitate land use issues which may arise between the Tribe and the Town. The parties agree that the Advisory Board will seek to use cooperative problem-solving and consensus-based negotiations to resolve land use disputes between the two governments.

2. The Advisory Board will be comprised of seven members: three appointments are to be made by the Tribe; three appointments are to be made by the Town; and one appointment is to be made jointly.

3. The role of the Advisory Board is to: a.) make recommendations to each government’s land use planning commissions, Boards and officials regarding land use activities; b.) facilitate the resolution of disputes stemming from any land use or permitting issues; c.) monitor the progress of the cooperative planning processes; and d.) make recommendations

to the Town Boards and the Tribe's Land Use Commission to improve the future effectiveness of these processes.

4. The Advisory Board shall comply with, and be governed by, the provisions of the Massachusetts Open Meeting Law, G. L. c. 39, § 23B (the "Open Meeting Law").

II. ADOPTION OF SUBSTANTIALLY EQUIVALENT REQUIREMENTS

1. The Tribe agrees to adopt and enforce the laws and regulations that are, at a minimum, substantially equivalent to the provisions of the Town zoning by-laws that were in place on the date of the 1983 Settlement Agreement, and including any amendments accepted by the Tribe pursuant to paragraph 16 of the 1983 Settlement Agreement.

III. JOINT PERMIT REVIEW PROCESS

1. The parties agree to facilitate the following joint permit review process in order to enhance their intergovernmental communication and to protect and preserve the interests of both parties.

2. The parties will use their best efforts to coordinate inspections to assess the progress of all land use activities for compliance with applicable approvals, regulations and agreements. The Tribe agrees to provide the Town with reasonable access to its property such that the Town can monitor land use activities that fall under this Agreement, and the Town agrees to provide at least 24 hours notice to the Tribe prior to conducting any such inspections, except for any emergency and then notice reasonable to the situation and agrees to check in with the Tribe upon actually arriving at Tribal property.

3. Any permit application to a Tribal board or to the Tribal Land Use Commission for a land use activity on Tribal lands shall be forwarded to the applicable Town board, commission or official in or within ten business days of its submission. Any permit application by the Town on any Town land abutting Tribal property shall be forwarded by the Town board, commission or official to the Tribal Land Use Commission in or within ~~five~~ ten business days of its submission. The parties agree to provide the other

government with information that is at least as detailed as the information required to be submitted by the other government's bylaws or regulations and that the time to begin the permit review process shall begin upon receipt of such information.

4. The Tribe agrees to amend its land use regulations, if necessary, so that any acting Tribal board shall: cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision in writing.

5. If the Town Board, Commission or official determines that a land use activity must be reviewed by a State agency(s) and/or regional government entity (both hereinafter "State Agency"), the parties agree that the time period for any such Town board, commission, or official to act is tolled until the review of such State Agency is complete.

IV. CONSULTATION

1. The parties will use their best efforts to coordinate

their respective hearings and permitting processes for land use activities (see Section III, Par. 3) in such a manner so that they will proceed at the same time and at the same place.

2. All joint hearings under this Section shall be governed by the Open Meeting Law. The intent of this provision is to provide a procedural mechanism through which the respective permitting boards may voice concerns, identify problems, and explore solutions in a good faith manner during the early stages of the permitting process.

3. The Tribe recognizes that the Town board, commission or official may be required to render a decision within a time-frame specified in the general laws, the zoning by-laws, or the general by-laws of the Town. In the event that a Town board, commission or official votes to act favorably on a land use application which falls under the terms of this agreement, and the Tribal Land Use Commission votes to act unfavorably, the Town agrees to seek an extension of the time within a final decision has to be made to allow the dispute resolution process outlined in

Section V to proceed. In the event that a Town board, commission or official votes to act unfavorably on a land use application on Tribal land, and the Tribal Land Use Commission votes to act favorably, the Tribe agrees to an extension of the final decision to allow the dispute resolution process outlined in Section V to proceed.

V. DISPUTE RESOLUTION

1. In the event of a dispute between the parties concerning the approval of a land use application under Section IV, then each respective board shall attempt to informally resolve such dispute. Within ten (10) days of the failure to reach an agreement each respective board shall forward copies of their proposed decision and the files pertaining to the application to the Advisory Board.

2. The Advisory Board will seek to bring about a mutually acceptable resolution on all matters referred to it. The Advisory Board may use conciliation, mediation, fact-finding, or any other method deemed appropriate, to reach a resolution that is acceptable to both parties.

3. In the event the Advisory Board is unsuccessful in bringing about an agreement, it will notify the Tribal Council and the Board of Selectmen of that conclusion. The two governing boards shall have the option to confer on the issues by calling a special joint meeting for that purpose.

4. In the event that consensus is not reached, the Tribal Council and the Board of Selectmen shall refer the dispute to a mediator selected by the Advisory Board. The cost of the mediator shall be split evenly between the Tribe and the Town.

5. Any decision or recommendation of the mediator shall not be binding. Should the respective permitting boards reach an agreement in principle through mediation, or by any other method outlined in Section V of this agreement, then the respective permitting boards shall conduct public hearings pursuant to applicable law, and shall issue their final decisions.

6. If the parties are unable to reach a resolution through mediation or by any other method outlined in Section V of this Agreement, then the respective permitting boards shall, following

public hearings pursuant to applicable law, issue their final decisions.

7. The parties agree that the dispute resolution process set forth in Section V is intended as a good faith method to reach consensus, and if that effort is unsuccessful, nothing which is said or done in connection with such efforts may be utilized in subsequent court proceedings.

8. The Tribe, or any person aggrieved within the meaning of G. L. c. 40A, or other applicable laws or regulations, shall have the right to seek judicial review in the Land Court or the Superior Court of Dukes County within twenty (20) days of the date on which the final decision is filed with the Town Clerk, or such other time period provided by Massachusetts Law, and the Town shall have the right to seek judicial enforcement of any order or final decision relating to land use activities on Tribal lands.

9. The Tribe agrees to waive the defense of sovereign immunity to any action seeking judicial review or enforcement of matters covered by this agreement and both parties recognize, and agree,

that said limited waiver is not intended for, and may not be used for, any other purpose in any other action or proceeding. In addition, the Town continues to consider the waiver of sovereign immunity found to exist by the Supreme Judicial Court of Massachusetts, 443 Mass. 1 (2004), as sufficient for purposes of this agreement. The Tribe reserves the right to disagree with the Town's interpretation of the Massachusetts Supreme Judicial Court decision in 443 Mass 1 (2004).

10. A land use activity shall not commence until such time as final approval is obtained and the time for filing appeals in court has expired, or if a court appeal is filed, until the matter is finally adjudicated on the merits and the permit issues.

VI. ANNUAL REVIEW

1. The Advisory Board will report to both governments after one year, biannually thereafter, regarding its activities. A joint review of the cooperative planning process will be conducted after two years. Based on the results of the review, as well as

recommendations from the Advisory Board, the amendments to this Agreement may be proposed and submitted for approval to the Tribal Council and the Town Meeting.

VII. AMENDMENTS

1. The provisions of this Agreement may be amended only by parallel resolutions of the Tribal Council and the Town Meeting, and no such amendment is effective unless and until it is approved by both governing bodies.

VIII. JURISDICTION

1. Nothing in this Agreement shall limit or waive the rights, regulatory authority or jurisdiction of either party or any individual Tribal member or citizen of the Town. This Agreement is not intended to provide or limit any remedy not already provided by law, but is intended to assist the parties in implementing the “Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts, Indian Land Claims”, executed on November 22, 1983 (the “Settlement Agreement”), its accompanying Land Use Plan dated October 3, 1983, and the

State and Federal implementing legislation. Notwithstanding the above, the Tribe does agree to limit its defense of sovereign immunity solely as described in Section V, paragraph 9 above.

IX. AUTHORITY

1. Representatives signing this Agreement acknowledge that approval of this Agreement by the Tribal Council and the Town Meeting is required, and, that by signing this document, they hereby certify that such votes have occurred.

X. TERMINATION

This Agreement cannot be terminated for 2 years from its effective date without the approval of both Tribal Council and Town Meeting, and shall continue thereafter unless one party provides written notice 30 days before the next annual anniversary of the effective date of this Agreement.

IN WITNESS WHEREOF, this Agreement serves to document the voluntary cooperation and good faith efforts between the Wampanoag Tribe of Gay Head (Aquinnah) Tribal

Community and the Town of Aquinnah regarding the administration of a coordinated land use planning process by and between the parties.

In full recognition of this understanding, the parties hereto have executed this Agreement on the day and year of the last date of signature below:

PASSED by the Aquinnah Selectmen

This ____ day of _____, 2006

PASSED by the Wampanoag Tribe of Gay Head (Aquinnah)

This ____ day of _____, 2006

Tribal Chairperson