

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

vs.

THE WAMPANOAG TRIBE OF GAY
HEAD (AQUINNAH), THE
WAMPANOAG TRIBAL COUNCIL OF
GAY HEAD, INC. and THE AQUINNAH
WAMPANOAG GAMING
CORPORATION,

Defendants.

CASE NO: _____

CIVIL ACTION NO. 2013-0479
[Formerly Supreme Judicial Court for Suffo
County, Massachusetts]

NOTICE OF REMOVAL

Defendants, THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH), THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC¹. and THE AQUINNAH
WAMPANOAG GAMING CORPORATION (collectively “Defendants” or “ Aquinnah Tribe”),
hereby remove Case No. 2013-0479 from the Supreme Judicial Court for Suffolk County,
Massachusetts pursuant to 28 U.S.C. § 1331, 1441 and 1446 and as grounds for its removal, state
as follows:

¹ Defendant, THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. is alleged by
Plaintiff to exist, but the Defendant THE WAMPANOAG TRIBE OF GAY HEAD
(AQUINNAH) believes it does not. The parties have agreed that by accepting service for THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. and removing the action to this
Court, Defendants do not waive any argument that, THE WAMPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC. does not exist.

Statement Of The Case

1. On August 23, 2013, the United States Department of the Interior, Office of the Solicitor, issued an opinion letter to the National Indian Gaming Commission concluding that the Wampanoag of Gay Head (Aquinnah) Indian Claims Settlement Act of 1987 (“Settlement Act”), 25 U.S.C. §§ 1771 et. seq. does not prohibit the Wampanoag Tribe of Gay Head (Aquinnah) from gaming on its existing trust lands under the Indian Gaming Regulatory Act (“IGRA”) 25 U.S.C. §§ 2701 et. seq.
2. On August 29, 2013, the National Indian Gaming Commission deemed approved the Aquinnah Tribe’s submission of a site-specific amendment to its Gaming Ordinance for the conduct and regulation of gaming on the Aquinnah Tribe’s existing trust lands, Gaming Ordinance No. 2011-01.
3. On October 25, 2013, the National Indian Gaming Commission, Office of General Counsel, issued a legal opinion that the Aquinnah Tribe is entitled to conduct and regulate gaming activities on its existing trust lands under IGRA.
4. On December 2, 2013, the Commonwealth of Massachusetts (“Commonwealth”) filed a Complaint and Motion in the Supreme Judicial Court for Suffolk County, Massachusetts, Case No. 2013-0479 (the “State Court Action”). A copy of the Complaint, with Exhibits, is attached as Exhibit A, hereto.
5. All Defendants agreed to stipulate to acceptance of service as of December 26, 2013. A copy of the letter confirming such agreement is attached as Exhibit B, hereto.
6. The Complaint purports to assert two causes of action: (1) Breach of Contract and (2) Declaratory Judgment pursuant to G.L. c. 231A.

7. The Commonwealth seeks relief in the form of an order (1) Declaring that the Aquinnah Tribe has no right to license, open, or operate a gaming establishment on the Settlement Lands without complying with all laws of the Commonwealth pursuant to the terms of the Settlement Agreement; (2) Declaring that Gaming Ordinance No. 2011-01, and any action taken by the Aquinnah Tribe pursuant to Gaming Ordinance No. 2011-01, is illegal and void because the Ordinance and any actions taken pursuant to the Ordinance are in irreconcilable conflict with the Settlement Agreement and with Massachusetts law; and (3) Awarding the Commonwealth such other and further relief as the Court deems just and proper.

Federal Subject Matter Jurisdiction

8. In order for the Commonwealth to prevail on its claims against the Aquinnah Tribe, it must establish that the allegations of which it complains violate federal law. Accordingly, the Commonwealth's claims plainly arise pursuant to federal law, thus presenting federal questions that permit removal to this Court.

9. Reserving Aquinnah's defenses that this case should be dismissed for lack of a valid waiver of Aquinnah's sovereign immunity from suit and/or should be dismissed for failure to join necessary and indispensable parties, for purposes of removal, this Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction to the Commonwealth's state law claims pursuant to 28 U.S.C. § 1367.

10. Specifically, the Complaint on its face calls into question the United States Department of the Interior's and the National Indian Gaming Commission's interpretation of the Settlement Act, 25 U.S.C. §§ 1771 et. seq. as modified or impacted by IGRA, by alleging at ¶ 36 that the Act reaffirms all the provisions of a certain Settlement Agreement between the Commonwealth

and a private corporation prior to the federal recognition of the Aquinnah Tribe. This allegation misrepresents the terms of the Settlement Act.

11. Specifically, the Complaint on its face calls into question the effect of the National Indian Gaming Commission's approval of Gaming Ordinance No. 2011-11, as amended. See Complaint at ¶¶ 54 -56.

12. Specifically, the Prayer for Relief of the Complaint on its face requests an Order "declaring that the Aquinnah Tribe has no right to license, open, or operate a gaming establishment on the Settlement Lands without complying with all laws of the Commonwealth pursuant to the terms of the Settlement Agreement." Such Prayer for relief seeks a declaration of the Aquinnah Tribe's rights as a matter of federal law.

13. Specifically, the Prayer for Relief of the Complaint on its face requests an Order Declaring that Gaming Ordinance No. 2011-01, and any action taken by the Aquinnah Tribe pursuant to Gaming Ordinance No. 2011-01, are illegal and void because the Ordinance and any actions taken pursuant to the Ordinance are in irreconcilable conflict with the Settlement Agreement and with Massachusetts law. Such Prayer for relief seeks a declaration of the Aquinnah Tribe's rights as a matter of federal law.

14. In addition to federal subject matter jurisdiction identifiable on the face of the Complaint, federal subject matter jurisdiction is present here because substantial question of federal law are necessary elements of both the breach of contract and the declaratory judgment claims.

15. In addition to federal subject matter jurisdiction identifiable on the face of the Complaint, federal subject matter jurisdiction is present here because each claim is in actuality a question of federal law. The crux of the Commonwealth's claim is the federal government incorrectly

determined that the Aquinnah Tribe's existing trust lands are eligible for the conduct of gaming activities pursuant to IGRA, and consequently erred in approving the Tribe's Gaming Ordinance.

16. In addition to federal subject matter jurisdiction identifiable on the face of the Complaint, federal subject matter jurisdiction is present here because IGRA preempts the field on legal disputes related to gaming activities on Indian lands.

17. In the event IGRA's preemption is less than complete, this dispute, particularly the Commonwealth's attempt to have state law govern the gaming activities of a federally recognized Indian Tribe, falls within the scope of IGRA's preemption of the field.

18. To the extent, if any, that the Commonwealth's Complaint does raise claims that are not federal claims, this Court has jurisdiction over such supplemental claims pursuant to 28 U.S.C. § 1367(a).

All Procedural Requirements for Removal Have Been Satisfied

19. The United States District Court for the District of Massachusetts is the District embracing the place where the state court action is pending. All defendants accepted Service of Process on December 26, 2013. See December 18, 2013 letter from Commonwealth Assistant Attorney General Juliana Rice, a copy of which is attached as Exhibit B, and this case was removed to this Court on December 30, 2013, well within the thirty days (30) days required of 28 U.S.C. § 1446(b).

20. On December 7, 2013, the Aquinnah Tribe adopted Resolution No. 2013-43 directing its attorneys to cause the removal of this action, while making clear that the attorneys have no authority to waive the Aquinnah Tribe's sovereign immunity from suit. See Exhibit C.

21. All Defendants join in this Notice of Removal; accordingly, the unanimity of consent requirement is satisfied.

22. A copy of this Notice of Removal is being filed contemporaneously with the Clerk of The Supreme Judicial Court for Suffolk County, Massachusetts, as required by 28 U.S.C. § 1446(d).

23. Within twenty-eight days after filing this Notice of Removal, Aquinnah will file certified or attested copies of all docket entries, records, and proceedings in the State Court Action in paper and will also file a disk with the clerk's office containing the state court record in PDF format.

24. By filing this Notice of Removal, Defendants are making a limited special appearance only. Defendants do not waive, and hereby expressly reserve the right to challenge the court's jurisdiction over the Defendants, including but not limited to the Defendants sovereign immunity from suit.

25. By this removal, Defendants do not waive any objection they may have as to service, jurisdiction or venue, or any other defenses or objections they may have to this action. Defendants intend no admission of fact, law or liability by this Notice, and expressly reserve all defenses.

Conclusion

WHEREFORE, for the reasons set forth herein, THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH), THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. and THE AQUINNAH WAMPANOAG GAMING CORPORATION, hereby remove Case No. 2013-0479 from the Supreme Judicial Court for Suffolk County, Massachusetts pursuant to 28 U.S.C. § 1331, 1441 and 1446 to this honorable federal court.

DATED: December 30, 2013

Respectfully Submitted,

/s/ Bruce A. Singal

BRUCE A. SINGAL (BBO # 464420)
ELIZABETH J. MCEVOY (BBO# 683191)
DONOGHUE, BARRETT & SINGAL
One Beacon Street, Suite 1320
Boston, MA 02108
Telephone: 617-720-5090
Facsimile: 617-720-5092
Email: bsingal@dbslawfirm.com
Email: emcevoy@dbslawfirm.com

SCOTT D. CROWELL (*pro hac vice*
application pending)
TRIBAL ADVOCACY GROUP LLP
1487 W. State Route 89A, Suite 8
Sedona, Arizona
Telephone: 425-802-5369
Facsimile: 509-290-6953
Email: scottcrowell@hotmail.com

LAEL R. ECHO-HAWK (*pro hac vice*
application pending)
GARVEY SHUBERT BARER
1191 Second Ave. 18th Floor
Seattle, Washington 98101
Telephone: 206-816-1355
Facsimile: 206-414-0125
Email: lechohawk@gsblaw.com

JOHN J. DUFFY (*pro hac vice*
application pending)
JOHN R. CASCIANO, BBO #634725
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036
Telephone: 202-429-6268
Facsimile: 202-429-3902
Email: jduffy@steptoe.com
Email: jcasciano@steptoe.com

Attorneys for Proposed Defendants

CERTIFICATE OF SERVICE

I, Bruce A. Singal, hereby certify that this NOTICE OF REMOVAL filed through the ECF System, was served upon counsel for Plaintiff, by email and first class mail at:

Juliana deHaan Rice (Juliana.Rice@state.ma.us)
Carrie Benedon (Carrie.Benedon@state.ma.us)
Bryan Bertram (Bryan.Bertram@state.ma.us)
Government Bureau
Office of Attorney General Martha Coakley
One Ashburton Place
Boston, MA 02108-1698

Dated: December 30, 2013

/s/ Bruce A. Singal

BRUCE A. SINGAL

EXHIBIT A



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

December 2, 2013

BY HAND

Maura S. Doyle, Clerk
Supreme Judicial Court
for Suffolk County
John Adams Courthouse
One Pemberton Square, Suite 1-300
Boston, MA 02108-1707

Re: Commonwealth of Massachusetts v. The Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head, Inc., and The Aquinnah Wampanoag Gaming Corporation, No. SJ-2013-

Dear Ms. Doyle:

Enclosed for filing in the above-referenced matter please find the Complaint and Motion for Appointment of Special Process Server. Because the plaintiff is the Commonwealth, I understand that the filing fee will be waived.

Thank you for your attention to this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Juliana deHaan Rice".

Juliana deHaan Rice
Assistant Attorney General
(617) 727-2200, ext. 2583

JDR/sc



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. 2013-0479

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

THE WAMPANOAG TRIBE OF GAY HEAD
(AQUINNAH), THE WAMPANOAG TRIBAL
COUNCIL OF GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants.



MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

Pursuant to MASS. R. CIV. P. 4(c), the undersigned hereby moves for the appointment of Kevin McCarthy, Director of Investigations for the Office of the Attorney General, or his designee, as special process server in the above-captioned action. Mr. McCarthy and the individuals in his Division are over 18 years of age and are not parties to this action.

COMMONWEALTH OF MASSACHUSETTS,
By its attorneys,

MARTHA COAKLEY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Juliana deHaan Rice".

Juliana deHaan Rice (BBO #564918)
Carrie Benedon (BBO # 625058)
Bryan F. Bertram (BBO # 667102)
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
617-727-2200
Juliana.Rice@state.ma.us
Carrie.Benedon@state.ma.us
Bryan.Bertram@state.ma.us

Dated: December 2, 2013

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT IN AND FOR SUFFOLK COUNTY

No. SJ-2013-0479

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

THE WAMPANOAG TRIBE OF GAY HEAD
(AQUINNAH), THE WAMPANOAG TRIBAL
COUNCIL OF GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants.



COMPLAINT

1. The Wampanoag Tribe of Gay Head (Aquinnah) is a federally recognized Indian Tribe located on lands at the western tip of Martha's Vineyard.¹ On its lands, the Aquinnah Tribe may do as it wishes, so long as it acts consistently with State and local law. The Aquinnah Tribe is entitled to, and receives, the respect and deference of the Commonwealth of Massachusetts with regard to its lawful actions.

2. What the Aquinnah Tribe may not do, however, is operate a gaming (i.e., gambling) establishment on its lands, unless that establishment is licensed and permitted under both State and local law.

3. This matter has been settled since November 1983, when the

¹ As used herein, the terms "Aquinnah Tribe" and "Tribe" shall refer to the defendants Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribal Council of Gay Head, Inc.

Commonwealth, the Aquinnah Tribe, the Town of Aquinnah (the “Town”), and the Taxpayers’ Association of Gay Head, Inc. (the “Taxpayers’ Association”) negotiated and entered into an agreement (the “Settlement Agreement”) (attached as **Exhibit A**) to resolve a lawsuit brought by the Aquinnah Tribe claiming aboriginal property rights to certain tracts of land in the Town.

4. In the Settlement Agreement, the Town and its Taxpayers’ Association conveyed title to over 400 acres of land on Martha’s Vineyard to the Aquinnah Tribe. In return, the Aquinnah Tribe agreed that those lands would remain subject to the Commonwealth’s (and local) laws and jurisdiction, and that the Tribe had no authority or jurisdiction to act in contravention of those laws.

5. The Commonwealth’s laws prohibit any person or entity from operating a gaming establishment without a gaming license issued under State law. Under the terms of the Settlement Agreement, that prohibition applies to the Aquinnah Tribe, just as it would to any other entity that sought to open a gaming establishment in the Commonwealth. In addition, Massachusetts law grants only one entity (i.e., the Massachusetts Gaming Commission) authority to issue the requisite gaming license.

6. Because the Aquinnah Tribe does not have a gaming license issued by the Massachusetts Gaming Commission, the Tribe may not operate a gaming establishment on its lands.

7. Nonetheless, the Aquinnah Tribe recently adopted a Tribal ordinance purporting to permit the Tribe to: license, open, and operate gaming establishments on its lands, all in contravention of Massachusetts law. Moreover, the Tribe has expressed its intent to open a gaming establishment “as soon as possible,” and has acted on that intent

as described in this complaint. Those actions have violated the Settlement Agreement.

8. Accordingly, the Commonwealth brings this action based upon breach of contract and G.L. c. 231A. The Commonwealth seeks judgment declaring that the Aquinnah Tribe must follow the terms of the Settlement Agreement by, among other things, abiding by all laws of the Commonwealth, including those laws that prohibit gaming without a State-issued license.

PARTIES

9. The Commonwealth of Massachusetts is a sovereign state of the United States.

10. Defendant the Wampanoag Tribe of Gay Head (Aquinnah) is a federally recognized Native American Tribe. 25 U.S.C. § 1771(7).

11. The Wampanoag Tribe of Gay Head (Aquinnah) includes the Defendant Wampanoag Tribal Council of Gay Head, Inc., an entity formerly organized as a Massachusetts non-profit corporation whose incorporation was deemed revoked under the laws of the Commonwealth effective June 18, 2012.

12. The Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribal Council of Gay Head, Inc. maintain their principal and usual places of business at 20 Black Brook Road, Aquinnah, Massachusetts.

13. Defendant the Aquinnah Wampanoag Gaming Corporation is, on information and belief, a wholly-owned subsidiary of either or both the Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribal Council of Gay Head, Inc.

14. Upon information and belief, the Aquinnah Wampanoag Gaming Corporation maintains its principal and usual place of business at 20 Black Brook Road, Aquinnah, Massachusetts.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action in accordance with G.L. c. 214, §§ 1, 2, 8.

16. This Court has personal jurisdiction over the Wampanoag Tribe of Gay Head (Aquinnah) pursuant to G.L. c. 223A, § 2, because the Tribe maintains its principal and usual place of business in the Commonwealth.

17. This Court has personal jurisdiction over the Wampanoag Tribal Council of Gay Head, Inc. pursuant to G.L. c. 223A, § 2, because the Tribe maintains its principal and usual place of business in the Commonwealth.

18. This Court has personal jurisdiction over the Aquinnah Wampanoag Gaming Corporation pursuant to G.L. c. 223A, § 2, because that entity, on information and belief, maintains its principal and usual place of business in the Commonwealth.

19. Venue is proper in this Court pursuant to G.L. c. 223, § 5, because this action is brought by the Commonwealth.

FACTS

The Aquinnah Tribe Received Title to Settlement Lands in Return for Its Agreement to Abide by the Laws of the Commonwealth

20. The Town of Aquinnah is located on the western tip of Martha's Vineyard, Massachusetts.

21. Incorporated in 1870 as Gay Head, Massachusetts, the Town formally changed its name to Aquinnah in 1997.

22. Throughout its history, the Town has been home to a community of Wampanoag Native Americans named the Aquinnah.

23. In February 1987, the United States Secretary of the Interior formally recognized the Aquinnah as an Indian Tribe.

24. Previously, in 1974, the Aquinnah Tribe sued the Town claiming aboriginal title to certain tracts of land in Martha's Vineyard. *Wampanoag Tribal Council of Gay Head, Inc. v. Town of Gay Head*, No. 74-5826-G (D. Mass.).

25. On September 28, 1983, the Commonwealth, the Aquinnah Tribe, the Town, and the Town Taxpayers' Association entered into a "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims" (the Settlement Agreement) to resolve the *Wampanoag* lawsuit.

26. The Settlement Agreement was the capstone to nine years of litigation and was a carefully struck, negotiated contract among sophisticated parties represented by legal counsel.

27. The Settlement Agreement conferred benefits and placed obligations on all parties to that agreement.

28. The Town and the Taxpayers Association agreed to convey title to more than 400 acres of public and private lands (the "Settlement Lands") to a specially created, state-formed corporation created by the Aquinnah Tribe "for the purpose of acquiring, managing, and permanently holding lands, including the lands defined in this settlement as the Settlement Lands." Settlement Agreement ¶ 3. On information and belief, the United States Department of the Interior took the Settlement Lands at issue in this action into trust for the Tribe's benefit in December 1988 and March 1993.

29. In return, the Aquinnah Tribe agreed to relinquish all claims of any kind to lands and waters in the Commonwealth. Settlement Agreement ¶ 8(d).

30. In numerous provisions of the Settlement Agreement, the Aquinnah Tribe also agreed that the Settlement Lands would remain under the Commonwealth's jurisdiction and be subject to all State and local laws. In short, the Aquinnah Tribe expressly agreed that it had no authority whatsoever to act in contravention of State and local laws, and conceded that it would be subject to State enforcement power if it did so.

A. Paragraph 3 of the Settlement Agreement states:

The Tribal Land Corporation shall hold the Settlement Lands, and any other land it may acquire, *in the same manner, and subject to the same laws, as any other Massachusetts corporation*, except to the extent specifically modified by this agreement and the accompanying proposed legislation. *Under no circumstances, including any future recognition of the existence of an Indian tribe in the Town of Gay Head, shall the civil or criminal jurisdiction of the Commonwealth of Massachusetts, or any of its political subdivisions, over the settlement lands, or any land owned by the Tribal Land Corporation in the Town of Gay Head, or the Commonwealth of Massachusetts, or any other Indian land in Gay Head, be impaired or otherwise altered, except to the extent modified in this agreement and in the accompanying proposed legislation.*

(emphasis added).

B. Paragraph 11 of the Settlement Agreement states:

The Settlement Land shall be subject to an express federal statutory restriction against alienation. This statutory provision against alienation shall state explicitly that (a) *no Indian tribe or band shall ever exercise sovereign jurisdiction as an Indian tribe other than to the extent agreed herein, over all or part of the*

Settlement lands, or over any other land that may now or in the future be owned by or held in trust for, any Indian entity, but (b) the absence of such sovereignty shall not in any way prejudice Gay Head Indians in their efforts to obtain federal benefits available to Indians or the achieve recognition as a tribe.

(emphasis added).

- C. Paragraph 13 of the Settlement Agreement states: “All Federal, State and Town laws shall apply to the Settlement Lands” subject only to certain narrow restrictions not relevant here.
- D. Paragraph 16 of the Settlement Agreement subjects the Settlement Lands to the Town’s Land Use Plan and to the Town’s zoning laws.

31. The Settlement Agreement was duly executed by authorized individuals on behalf of the Commonwealth, the Aquinnah Tribe, the Town, and the Town Taxpayers’ Association.

32. Both the Massachusetts Legislature and the United States Congress subsequently enacted legislation ratifying the Settlement Agreement.

33. In 1985, the Massachusetts Legislature enacted Chapter 277 of the Acts of 1985, entitled “An Act to Implement the Settlement of the Gay Head Indian Land Claims” (“the Commonwealth Act”). The Commonwealth Act implemented the terms of the Settlement Agreement and incorporated the Settlement Agreement into State law.

34. The Commonwealth Act also reaffirmed the parties’ contractual agreement that the Settlement Lands would be under the Commonwealth’s jurisdiction and subject to the laws of both the Commonwealth and Town. Section 4 of the

Commonwealth Act states that “All federal, state, and town laws shall apply to the settlement lands” subject to certain exceptions not applicable in this action. Section 5 of the Commonwealth Act provides:

Except as provided in this act, all laws, statutes and bylaws of the commonwealth, the town of Gay Head, and any other properly constituted legal body, shall apply to all settlement lands and any other lands owned now or at any time in the future by the Tribal council or any successor organization.

35. On August 18, 1987, the United States Congress enacted the Massachusetts Indian Land Claims Settlement Act (the “Federal Settlement Act”) to implement the Settlement Agreement.

36. As with the Commonwealth Act, the Federal Settlement Act reaffirmed the parties’ contractual agreement that the Settlement Lands would remain subject to the Commonwealth’s (and local) laws and jurisdiction—including those laws governing gaming—and that the Aquinnah Tribe would not exercise jurisdiction over those lands.

[S]ettlement lands and any other land that may now or hereafter be owned or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts (including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance).

25 U.S.C. § 1771g.

37. The Federal Settlement Act further reaffirmed the parties’ contractual agreement that the Aquinnah Tribe may not exercise any jurisdiction inconsistent with Massachusetts law governing the Settlement Lands: the Tribe “*shall not exercise any jurisdiction* over any part of the settlement lands *in contravention* of this subchapter, the civil regulatory and criminal laws of the Commonwealth of Massachusetts, the town of

Gay Head, Massachusetts, and applicable Federal laws.” 25 U.S.C. § 1771e(a) (emphasis added).

The Aquinnah Tribe Has Not Obtained a License to Open a Gaming Establishment Pursuant to Massachusetts Law

38. Massachusetts law prohibits any person or entity from opening or operating a gaming establishment without a gaming license issued by the Massachusetts Gaming Commission pursuant to the statutory process set forth in Chapter 23K of the General Laws and regulations promulgated thereunder.

39. The Settlement Agreement subjects the Aquinnah Tribe and the Settlement Lands to the jurisdiction of the Commonwealth and to the Commonwealth’s criminal and civil laws.

40. Accordingly, the Aquinnah Tribe—like any other entity subject to Massachusetts law—cannot operate a gaming establishment without first obtaining a gaming license issued by the Massachusetts Gaming Commission pursuant to Chapter 23K and regulations promulgated thereunder.

41. The Aquinnah Tribe does not presently hold and has never held a gaming license issued by the Massachusetts Gaming Commission.

42. Nor would the Aquinnah Tribe be currently eligible to receive a gaming license.

43. The Chapter 23K licensing process requires an entity to apply for a gaming license, and the application process involves an extensive determination whether an applicant is suitable to operate a gaming establishment. *E.g.*, G.L. c. 23K, §§ 9-18.

44. Among other requirements, an applicant must have reached an agreement with its host community and “received a certified binding vote on a ballot question at an election in the host community in favor of such license.” G.L. c. 23K, § 15.

45. The Aquinnah Tribe has not reached any agreement with the Town, nor has it received the approval of the Town’s voters to open a gaming establishment.

46. The Aquinnah Tribe is therefore currently prohibited from opening a gaming establishment because it does not possess a gaming license issued by the Massachusetts Gaming Commission.

47. Accordingly, any actions taken by the Aquinnah Tribe to open or operate a gaming establishment would violate Massachusetts law.

**The Aquinnah Tribe Adopted a Tribal Gaming Ordinance in
Violation of Massachusetts Law**

48. The Aquinnah Tribe has taken actions to license, open, and operate gaming establishments on Settlement Lands in violation of Massachusetts and local law and in breach of the Settlement Agreement’s provisions requiring the Aquinnah Tribe to abide by that law.

49. On February 4, 2012, the Aquinnah Tribe passed Resolution 2012-04 (“Resolution Adopting Wampanoag Tribe of Gay Head (Aquinnah) Gaming Ordinance No. 2011-01”) adopting a Tribal gaming ordinance, Gaming Ordinance No. 2011-01 (attached as **Exhibit B**).

50. Among other things, Gaming Ordinance No. 2011-01 purportedly:

- A. Authorizes gaming to be conducted on Settlement Lands;²
- B. Establishes an Aquinnah Tribal Gaming Commission;³ and

² Gaming Ordinance No. 2011-01, §§ 1.5 and 1.6.

C. Authorizes that Commission to issue gaming licenses and Tribal work permits in furtherance of gaming activities.⁴

51. In other words, Gaming Ordinance No. 2011-01 purportedly authorizes the Aquinnah Tribe to license, open, and operate gaming establishments *without* first obtaining a Chapter 23K license from the Massachusetts Gaming Commission. Gaming Ordinance No. 2011-01 also purportedly establishes a governing body for such unlawful gaming separate from and outside of the very same laws the Aquinnah Tribe agreed to follow in the Settlement Agreement: the laws of the Commonwealth.

52. The Aquinnah Tribe's adoption of Gaming Ordinance No. 2011-01 violates Massachusetts law, is void, and breaches the Aquinnah Tribe's contractual obligation to abide by Massachusetts law as set forth in the Settlement Agreement.

The Aquinnah Tribe Has Taken Further Actions Aimed at Opening a Gaming Establishment in Violation of Massachusetts Law

53. After adopting Gaming Ordinance No. 2011-01, the Aquinnah Tribe has taken additional actions violating the Commonwealth's gaming laws.

54. The Aquinnah Tribe submitted its Gaming Ordinance No. 2011-01 to the National Indian Gaming Commission ("NIGC") for review and approval. By letter dated February 21, 2012, the NIGC approved Gaming Ordinance No. 2011-01 for gaming on Indian Lands as defined by the Federal Indian Gaming Regulatory Act ("IGRA").

³ *Id.* at § 2.

⁴ *Id.* at § 3.

55. The Aquinnah Tribe subsequently re-submitted Gaming Ordinance No. 2011-01 to the NIGC accompanied by a new Tribal resolution making the ordinance specific to the Settlement Lands.⁵

56. On August 29, 2013, NIGC wrote to the Aquinnah Tribe that the NIGC once again considered Gaming Ordinance No. 2011-01—now site-specific to the Settlement Lands—“to be approved to the extent that it is consistent with the provisions of IGRA.”

57. The Aquinnah Tribe requested a legal opinion from NIGC stating that the Tribe may conduct gaming on Settlement Lands. On October 25, 2013, NIGC informed the Tribe by letter of its legal opinion that the Settlement Lands are Indian Lands under IGRA and that those lands are eligible for gaming under Gaming Ordinance No. 2011-01.

58. Neither the Aquinnah Tribe nor the NIGC informed the Commonwealth that the Tribe had submitted gaming ordinances for NIGC’s approval or that the Tribe had requested legal opinions from the NIGC concerning eligibility for gaming on Settlement Lands.

59. The Commonwealth only first learned of these matters in a letter from the Aquinnah Tribe dated November 12, 2013—after NIGC approved the Aquinnah Tribe’s gaming ordinance and after NIGC issued its legal opinion.

60. The Aquinnah Tribe has publicly and repeatedly expressed its intent to license, open, and operate one or more gaming establishments under Gaming Ordinance No. 2011-01 “as soon as possible.”⁶

⁵ Resolution 2012-23, “Identification of Indian Lands for the Purposes of the Wampanoag Tribe of Gay Head (Aquinnah) Gaming Ordinance 2011-11,” Apr. 7, 2012.

61. Consistent with its expressed intent, the Aquinnah Tribe has, on information and belief, submitted notice to the NIGC that it will license a gaming facility on its Settlement Lands. On information and belief, the NIGC received the Aquinnah Tribe's notice—together with a proposed license—on or about August 5, 2013.

**COUNT I:
BREACH OF CONTRACT**

62. The allegations set forth in paragraphs 1 through 61 are incorporated by reference as if set forth herein.

63. The Settlement Agreement is a valid and enforceable contract that created obligations on the part of the Aquinnah Tribe to observe and comply with the Commonwealth's laws, including those regulating gaming establishments.

64. The Aquinnah Tribe may not license, open, or operate gaming establishments on Settlement Lands without a gaming license issued by the Commonwealth.

65. The Aquinnah Tribe's actions, as alleged in this complaint, have breached the terms of the Settlement Agreement.

66. The Commonwealth has suffered and will continue to suffer injury resulting from the Aquinnah Tribe's breach of the Settlement Agreement.

67. The Aquinnah Tribe's actions, as alleged in this complaint, are so considerable that they go to the very essence of the parties' contractual bargain in the Settlement Agreement.

⁶ See, e.g., Mark Arsenault, "Tribe Says it Will Open Small Casino on Vineyard," *The Boston Globe* A1 (Nov. 12, 2013).

68. The Aquinnah Tribe's actions, as alleged in this Complaint, are anticipatory breaches of the Tribe's contractual obligations to the Commonwealth.

69. The Commonwealth has suffered and will continue to suffer injury resulting from the Aquinnah Tribe's anticipatory breaches of the Settlement Agreement.

70. Relief in the form of damages or restitution is not adequate to remedy the injury the Aquinnah Tribe has inflicted upon the Commonwealth through its actual and anticipatory breaches of the Settlement Agreement.

**COUNT II:
DECLARATORY JUDGMENT (G.L. c. 231A)**

71. The allegations set forth in paragraphs 1 through 70 are incorporated by reference as if set forth herein.

72. Under General Laws c. 231A, § 2, this Court is authorized to determine the rights, duties, status, or other legal relations of parties under written contracts, such as the Settlement Agreement, and under the laws of the Commonwealth.

73. The Aquinnah Tribe's actions, as alleged in this Complaint, are actual or anticipatory breaches of the Settlement Agreement and actual violations or contemplated and impending violations of Massachusetts law.

74. As a party to the Settlement Agreement, the Commonwealth may seek to enforce the terms of the Settlement Agreement.

75. The Commonwealth is also responsible for the enforcement of laws prohibiting gaming without a gaming license.

76. An actual controversy has therefore arisen between the Aquinnah Tribe and the Commonwealth concerning the Tribe's actual or anticipatory breaches of the

Settlement Agreement and actual violations or contemplated and impending violations of Massachusetts law.

77. No administrative remedies exist to terminate this controversy.

78. A judgment of this Court concerning those actions would terminate the uncertainty giving rise to this controversy.

[Reminder of page intentionally blank]

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully asks this Court enter judgment:

- a. In favor of the Commonwealth and against the Aquinnah Tribe on all Counts;
- b. Declaring that the Aquinnah Tribe has no right to license, open, or operate a gaming establishment on the Settlement Lands without complying with all laws of the Commonwealth pursuant to the terms of the Settlement Agreement;
- c. Declaring that Gaming Ordinance No. 2011-01, and any action taken by the Aquinnah Tribe pursuant to Gaming Ordinance No. 2011-01, are illegal and void because the Ordinance and any actions taken pursuant to the Ordinance are in irreconcilable conflict with the Settlement Agreement and with Massachusetts law; and
- d. Awarding the Commonwealth such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE COMMONWEALTH OF
MASSACHUSETTS,

By and through its attorney,

MARTHA COAKLEY
ATTORNEY GENERAL



Juliana deHaan Rice (BBO # 564918)
Carrie Benedon (BBO # 625058)
Bryan Bertram (BBO # 667102)
Assistant Attorneys General
Government Bureau
Office of Attorney General Martha Coakley
One Ashburton Place
Boston, MA 02108-1698
(617) 963-2107
Juliana.Rice@state.ma.us
Carrie.Benedon@state.ma.us
Bryan.Bertram@state.ma.us

Dated: December 2, 2013

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT IN AND FOR SUFFOLK COUNTY

No. SJ-_____

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

THE WAMPANOAG TRIBE OF GAY HEAD
(AQUINNAH), THE WAMPANOAG TRIBAL
COUNCIL OF GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants.

EXHIBITS TO COMPLAINT

Exhibit A: Joint Memorandum of Understanding Concerning Settlement
of the Gay Head Massachusetts Indian Land Claims (Sept. 28, 1983).....1

Exhibit B: Wampanoag Tribe of Gay Head (Aquinnah) Ordinance No.
2011-01, Tribal Gaming Ordinance66

EXHIBIT A

DEC 8 10 25 AM '83

JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE GAY HEAD,
MASSACHUSETTS INDIAN LAND CLAIMS

WAMPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC.

September 28, 1983

1. The Parties to the Settlement are the parties in the litigation before the United States District Court for the District of Massachusetts known as Wampanoag Tribal Council of Gay Head, Inc., et al. v. Town of Gay Head, et al., Civil Action No. 74-5826-G (including intervenors).

The Parties shall seek to have all others who may be interested in the Settlement act so as to assure that the Settlement becomes effective.

2. The Parties agree to the following settlement, all provisions of which are to be considered as inseparable and interdependent, except as otherwise specifically provided herein, and which are all conditioned upon requisite favorable action within 18 months of the execution of this settlement by other entities, including appropriate executive and legislative branches of the governments of the Town of Gay Head, the Commonwealth of Massachusetts, and the United States of America.

3. A state-chartered corporation (hereinafter called the Tribal Land Corporation) will be created by the Wampanoag Tribal Council of Gay Head, Inc. (hereinafter the Tribal Council) for the purpose of acquiring, managing, and permanently holding lands, including the lands defined in this settlement as the Settlement Lands. The Tribal Land Corporation shall hold the Settlement Lands, and any other land it may acquire, in the same manner, and subject to the same laws, as any other Massachusetts corporation, except to

the extent specifically modified by this agreement and the accompanying proposed legislation. Under no circumstances, including any future recognition of the existence of an Indian tribe in the Town of Gay Head, shall the civil or criminal jurisdiction of the Commonwealth of Massachusetts, or any of its political subdivisions, over the settlement lands, or any land owned by the Tribal Land Corporation in the Town of Gay Head, or the Commonwealth of Massachusetts, or any other Indian land in Gay Head, or the Commonwealth of Massachusetts, be impaired or otherwise altered, except to the extent modified in this agreement and in the accompanying proposed legislation.

4. The Town of Gay Head will convey all its rights, title and interest in the Town Common Lands (except for the shoreline as defined in Paragraph 10) to the Tribal Land Corporation. These lands comprise about 238 acres (which include the Cranberry Lands, the Face of the Cliffs, and the Herring Creek), and are described roughly on the map attached hereto and made part of this agreement. A survey shall be made in order to determine the precise acreage and boundaries of the Common Lands. The cost of the survey shall be regarded as part of the cost of the Tribal Land Corporation's acquisition of lands under this settlement and shall be financed out of the Federal funds appropriated pursuant to Paragraph 8. Existing surfaced roads across the Common Lands will continue to be owned and maintained by the Town of Gay Head or the Commonwealth of Massachusetts, as the case may be,



and shall be open to the public. Present unsurfaced roads providing access across the Common Lands to private lands beyond shall continue to be available for access to such private lands.

5. The Town of Gay Head shall convey the so-called Cook Lands (L. No. 395) to the Tribal Land Corporation. Such property, however, shall not be part of the Settlement Lands, and shall remain subject to taxation and foreclosure in the same manner as any other privately owned property in Gay Head. Any structure placed on this property shall be subject to all Federal, State and local laws, including Town zoning laws, State and Federal conservation laws, and the regulations of the Martha's Vineyard Commission, and in no event shall any structure or structures erected on this land comprise more than 3,000 square feet or exceed a height of twelve feet with a maximum peak of 16 feet. Changes in Town zoning laws made subsequent to the date of this Memorandum may be made applicable to such Cook lands only in the manner provided for changes to the Land Use Plan as described in Paragraph 16 of this Memorandum. If the said property is used for any purpose not permitted by the Land Use Plan, or is sold, leased or otherwise alienated by the Tribal Land Corporation to any entity other than one which is Indian controlled, all right, title and interest in the property shall revert to the Town of Gay Head, provided however, that nothing herein shall prevent the granting of a valid mortgage on the said property. All residents and property owners of Gay Head, their guests and

assigns, shall have an easement to use the pond beach on the Cook Lands for such recreational activities as are now carried out on such beach, including, but not limited to, fishing, swimming, outdoor recreation, or the beaching or anchorage of small boats, and shall have guaranteed access to such beach by land as provided in the Land Use Plan.

6. The Owners of the former Strock Estate will convey their ownership interest in certain lands formerly known as the Strock Estate in Gay Head to the Tribal Land Corporation. These lands consist of three parcels separate from each other--one parcel of about 57 acres, one of about 33 acres and one of about 85 acres, or a total of about 175 acres. (The precise lot numbers falling within these three parcels are listed in Appendix A.) These lands are to be sold to the Tribal Land Corporation at fair market value established without regard to Indian claims extinguished in accordance with Paragraph 8(d).

7. If the owners of the land located between the so-called Cranberry Lands portion of the Common Lands and Menemsha Creek (hereinafter called the Menemsha Neck Lands) are willing to sell their land, the parties will support the principle that the Federal Government should provide funds in order to acquire these lands so that they may become part of and be treated as Common Lands for purposes of this settlement. Such sales shall be at fair market value established without regard to Indian claims extinguished in accordance with Paragraph 8(d). If any owner refuses to sell

or if the Federal Government refuses to provide funds for these lands, the other provisions of this settlement will nevertheless remain in effect.

8. The parties to the settlement support the principle that:

(a) The Federal Government will appropriate funds to finance the survey of the Common Lands and the Cook property described in Paragraphs 4 and 5;

(b) The Federal Government will appropriate funds, in a sufficient amount to pay for the lands of the former Strock Estate described in Paragraph 6, based upon fair appraisal;

(c) The Parties will also seek Federal funds to pay for the Menemsha Neck Lands described in Paragraph 7, if any owners desire to sell, but if such funds are not obtained, the other provisions of this settlement will nevertheless remain in effect;

(d) Congress will enact legislation that eliminates all Indian claims of any kind, whether possessory, monetary, or otherwise, whether aboriginal or under recognized title involving lands and waters in the Town of Gay Head, and that effectively clears the titles to all land in Gay Head of any such claims, whether asserted in the past, present or future. That legislation will also extinguish all claims of any kind by the alleged Gay Head Tribe, whether possessory, monetary or otherwise, whether aboriginal or under recognized title involving any other

lands and waters within the Commonwealth of Massachusetts and that effectively clears the titles to all land in the Commonwealth of any such claims, whether asserted in the past, present or future. The alleged Gay Head Tribe and the Tribal Council on behalf of all persons of Indian descent hereby agree that this settlement is in full compensation for the claims so extinguished. This legislation shall not eliminate or affect the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians.

9. Neither the provisions of Paragraph 8 nor this Joint Memorandum of Understanding as a whole shall be deemed an admission of the existence of a tribe and are instead intended simply to extinguish claims made by any Indians, whether advanced by individuals, groups or tribes.

10. The Settlement Lands shall comprise the following:

(a) The Common Lands described in Paragraph 4, excluding the shoreline abutting on ocean, sound, or pond. Such shoreline, consisting of a strip of land extending 50 feet inland of mean high water along the ocean and sound and 30 feet inland of mean high water along Menemsha Pond, Menemsha Creek and any other body of water, shall continue to be owned by the Town of Gay Head and shall be available to all Gay Head residents and property owners, their guests and assigns, for recreational and other uses now commonly made of such shoreline, and shall be subject to a conservation trust

with the Town of Gay Head as Trustee that shall insure the continued right of such uses by such persons. Access to the shoreline across the common lands shall be preserved and the roads and paths established in accordance with the Land Use Plan mentioned in paragraph 16 for such access shall be maintained by the Town of Gay Head.

(b) The three parcels of the former Strock Estate described in paragraph 6.

(c) The Menemsha Neck Lands described in Paragraph 7 which, so far as they are acquired pursuant to this Settlement, shall be treated as though they were part of the Common Lands.

11. The Settlement Land shall be subject to an express federal statutory restriction against alienation. This statutory provision against alienation shall state explicitly that (a) no Indian tribe or band shall ever exercise sovereign jurisdiction as an Indian tribe other than to the extent agreed herein, over all or any part of the Settlement lands, or over any other land that may now or in the future be owned by or held in trust for, any Indian entity, but (b) the absence of such sovereignty shall not in any way prejudice Gay Head Indians in their efforts to obtain federal benefits available to Indians or to achieve recognition as a tribe. Notwithstanding the foregoing, the federal restriction against alienation shall permit the Tribal Land Corporation to convey a strip of land up to 70 feet wide beginning 30 feet inland from mean high water and 500 feet long, starting from the

terminus of the West Basin Road and running in an easterly direction along an area of West Basin now used for mooring boats, so that the Town may construct a bulkhead and related structures at this site, subject to the limitations set forth in the Land Use Plan.

12. Subject to the conditions expressly provided in this Agreement, the Settlement Lands are to be held in trust by the Tribal Land Corporation for the benefit of Gay Head Indians, defined as all descendants of the Indians listed in the census taken in 1869. A copy of the said census is included as Appendix B of this Agreement.

13. All Federal, State and Town laws shall apply to the Settlement Lands subject only to the following special provisions, regardless of any federal recognition the alleged Gay Head Tribe may acquire:

(a) The Settlement Lands will not be treated as real property subject to taxation pursuant to Massachusetts General Laws Chapter 59, or any successor State Law, but the Tribal Land Corporation will make payments in lieu of property taxes to the Town of Gay Head or other appropriate entity on the former Strock Estate, if and when improvements are placed on those lands. The fraction of land subject to such payments shall be determined in accordance with the density requirements of Town zoning ordinances. For example, if a house is placed on land which is zoned for two-acre homesites, then two acres of the land shall be subject to payments in lieu of



taxes. The amount of such payment shall be determined by assessing the value of the improvements and the value of the land attributable to such improvement, as determined in accordance with this section, and applying the town property tax rate or any other applicable tax rates just as though the improvements and attributable land were held by any private person. With respect to in-lieu payments that remain unpaid, neither the Town nor any other person will have the right of foreclosure against the Settlement Lands. ~~Instead of its right of foreclosure, the Town or~~ any other person otherwise entitled to foreclosure may enforce a lien against other assets of the Tribal Land Corporation or any subsidiary thereof, or any other entity controlled by the Tribal Council. If the in-lieu payments are not fully paid three years after they are due, the Town may seize the land and improvement on which the in-lieu payments are in arrears and lease such land and improvements on reasonable terms for periods of time not to exceed five years, the sums realized from such leases to be applied, after costs, to the payment of the amount in arrears. Seizure by the Town under this provision shall in no way affect title to the land, which shall remain with the Tribal Land Corporation, and at the expiration of any lease period during which all arrearages have been paid in full, control of the land and improvements shall be returned to the Tribal Land Corporation.

(b) The Tribal Land Corporation will have the right (after consultation with appropriate State and local officials) to establish its own regulations concerning hunting (but not trapping or fishing) by Indians on the Settlement Lands by means other than firearms or crossbow. These regulations by the Tribal Land Corporation shall impose reasonable standards of safety for persons and protection of wild life and the absence of such regulations imposing such standards of safety shall be deemed unreasonable. These safety and protection standards shall be subject to judicial review for reasonableness and may be enforced by State and local law enforcement officers. Hunting by firearm or crossbow shall remain subject to the State law.

14. The Gay Head Indians will not receive Federal recognition as a Tribe as a result of Congressional legislation to carry out the provisions of this Settlement, but they shall have the same right to petition for such recognition as other groups.

15. Plaintiffs in the lawsuit against the Town of Gay Head, known as Wampanoag Tribal Council of Gay Head, Inc., et al. v. Town of Gay Head, et al., agree to cause the lawsuit to be dismissed with prejudice at the time that the Federal legislation referred to in Paragraph 8 becomes effective.

16. The Settlement Lands will be subject to the Land Use Plan attached hereto and made a part hereof. The Land Use Plan shall be enacted as part of the zoning law of the Town of

Gay Head. Future amendments of the Land Use Plan as applicable to the Settlement Lands and embodied in the Town Zoning Law will require approval by the Tribal Land Corporation, by the Town of Gay Head (by whatever majority is usually required for such amendments) at two town meetings not less than one month apart, at least one of which shall be held during the month of July or August, and by such officials, if any, of the Commonwealth whose approval is required for amendments to zoning laws.

ACCEPTED:

For the Wampanoag Tribal Council of Gay Head, Inc.

By: Malcolm P. Buddin Date: 11/19/83 Witness: [Signature]

For the Town of Gay Head:

By: [Signature] Date: 11/19/83 Witness: [Signature]

For the Taxpayers' Association of Gay Head, Inc.

By: Hannah L. Mackin Date: 11/19/83 Witness: [Signature]

For the Commonwealth of Massachusetts:

By: Thomas H. Kelly Date: 11/22/83 Witness: [Signature]

True Copy of Attach.

Thomas H. Kelly Town Clerk

WALUPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC.

October 3, 1983

LAND USE PLAN

I. The Cranberry Lands and the Gay Head Cliffs

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 with respect to any State roads, by the Commonwealth of Massachusetts. Such rights of way, as shown on the attached map, shall include:

(1) By foot and by vehicle along the Lobsterville and West Basin Road, inclusive of the parking areas at their ends; from the end of these roads to the West Basin anchorage and to the Menemsha Pond; and by two existing roads leading from Lobsterville Road to the properties above the clay pits, the one proceeding from Menemsha Sound, the other from the terminus of the Lobsterville Road at Menemsha Pond;

(2) By foot from the Lobsterville Road to the Sound, wherever the center line of that Road is within 125 feet of mean high water;

(3) By foot along an easement 10 feet wide, extending from the West Basin parking area to the Sound, along a line approximately 80 feet west of, and parallel to, the top of the stone revetment along the west bank of Menemsha Creek, and by foot along existing paths from West Basin Road, as shown on the attached map. The Town of Gay Head shall retain the right to enter on these shores and rights of way in order to clean and repair them, and to regulate behavior on them, as

necessary to maintain the natural condition of the land, or to keep its use within the capacity of anchorages, roads, or parking areas.

B. The Common Lands will not be subdivided, but will be held in their entirety by the Tribal Land Corporation and will be subject to normal health and building regulations of Gay Head and of the Commonwealth as they are in force at the time in question.

C. Except as noted below, all the Common Lands will be left in their existing natural condition, and used only for recreation, food gathering, ceremony, environmental research and education, or nature reserve. There will be no clearance or planting of vegetation, no extension of paving or erecting of structures, no parking of vehicles beyond the existing paved roads and parking areas, no storage of equipment and no installation of utilities. All with the following exceptions:

1. Work may be done which is necessary to preserve the present natural condition (such as planting, anchoring, the re-establishment of dunes, or works to prevent erosion), or to improve conditions for wildlife or for natural crops such as berries, fish, and shellfish (for example: planting, draining, irrigating, shaping of the pond bottom, or the installation of traps or shellfish rafts).

2. Existing walks, road and parking areas may be repaired and improved. No road may be built or widened to give a travel surface wider than 15 feet. Additional parking spaces may be provided between the West Basin Road and the

proposed bulkhead at West Basin, and at Menemsha Pond, and the unpaved parking areas along Lobsterville Road may be improved as necessary to protect the beach and vegetation.

3. New walkways, roads, and parking areas may be constructed, but only if they serve the purposes of this section, and do not disturb the nesting grounds on the peninsula.

4. Signs and symbolic objects may be erected to explain the meaning of the site, or to regulate behavior on it. They shall not be illuminated, nor be over six feet high or six square feet in area.

5. A bulkhead and related structures may be constructed on the strip of land 100 feet inland from mean high water and 500 feet long, starting from the terminus of West Basin Road and running in an easterly direction along the area of West Basin now used for mooring boats. Such structures may be installed at this site for the gathering or processing of fish or shellfish, or the harboring, servicing, launching or repair of small boats but shall be subject to Town zoning and may not be over twelve feet high from mean ground level nor may their aggregate floor area exceed 2000 square feet. As far as possible, these structures should be of traditional form, and be sited and finished so as to be visually unobtrusive and blend with the land. Utilities must be placed underground. The Tribal Land Corporation will grant an easement across settlement land to ensure that necessary utilities may be brought to this site. Any bulkhead and related facilities

built on this site shall be available on the same terms, without distinction, to all residents of Gay Head, their heirs, guests and assigns.

6. Temporary utilities may be provided and related activities undertaken to facilitate such traditional activities as the Gay Head Pageant.

7. Any facility built with Town funds on the Cranberry Lands such as a bulkhead or a parking lot shall remain in the ownership of the Town, provided, however, that no such facility may be built by the Town without the consent of the Tribal Land Corporation.

II. The Cook Lands.

A. These lands will not be subdivided, but will be held in entirety by the Tribal Land Corporation.

B. This land will be subject to normal health and building regulations of Gay Head and the Commonwealth, as they are in force at the time in question, and to state and federal conservation laws and the regulations of the Martha's Vineyard Commission. Town zoning laws applicable to these lands may be changed only in the manner provided in the Settlement Agreement.

C. In addition, the aggregate floor area of all structures on the land may not exceed 3,000 square feet and such structures may not exceed a height of twelve feet with a maximum peak of sixteen feet. All structures must be set back at least 100 feet from the State Road, and at least 100 feet from the recreational beach, and

should as far as possible be traditional in form, and sited and finished to be unobtrusive and to blend with the land. All utilities must be placed underground, and any fishery development at the shore shall be kept easterly and separate from the pond beach to which residents have access, and no obstruction of any kind may be placed in the water that would interfere with the recreational use of the beach and adjacent waters.

D. Residents and property owners of Gay Head, their guests and assigns, will have a right of access on foot along the shore of Menemsha Pond, to a point 30 feet inland of mean high water, and from the western boundary of the property to a point 300 feet to the east along the shore. They may use these shores for fishing, swimming, outdoor recreation, or the beaching and anchorage of small boats. They will also have a right of access by foot and by car to this shore along an easement 30 feet wide beginning at the present entrance from State Road, and running approximately 100 feet east of and parallel to the western boundary of the property, including a parking area 40 x 60 feet at the beach as shown on the attached map. The Town retains the right to enter on this shore and this right of way, in order to clean or repair them, or to regulate behavior on them, as necessary to maintain the natural condition of the land, or to keep its use within its capacity.

III. The Strock Lands

A. These lands will not be subdivided, but will be held in entirety by the Tribal Land Corporation.

B. This land will be subject to normal health and building regulations of Gay Head and the Commonwealth, as they are in force at the time in question, and to the zoning regulations and the substantive standards of the subdivision regulations of the Town of Gay Head as they exist at the time of this agreement, as included herein as appendix "C". No special permit or approval by the Planning Board, the Board of Appeals, the Conservation Commission or the Martha's Vineyard Commission shall be required for any use which complies in all respects with the substantive requirements of the said zoning and subdivision regulations. Such permits and approvals may be requested and issued in the same manner as for other land in Gay Head with respect to any exception to, or other variation from such requirements, which is authorized by the said regulations.

Mac
HLM
E.C.S. 11/14/83

TRK 11/22/83

GAY HEAD

ZONING BY-LAW

SECTION I: PURPOSE

The purpose of this By-Law is to promote the health, safety, convenience and welfare of the inhabitants of the Town of Gay Head, to prevent flood damage, maintain water quality, assure adequate water supply, prevent pollution, promote wildlife habitats, assure and maintenance of cultural and historic sites and values, preserve and enhance the character of views, prevent damage to structures land and water as a result of erosion, promote economic development of fisheries and related industries, maintain and enhance the overall economy of the Town of Gay Head, and to provide them with the benefits and protection authorized by Chapter 303 of the Acts of the Commonwealth of 1975.

SECTION II: DISTRICTS

DISTRICTS

The Town of Gay Head is divided into the following districts:

1. Rural-Residential Districts
2. Marine Commercial Districts
3. Special Overlay Districts (a district whose regulations are in addition to the regulations of the underlying district). These districts include the Island Food District, the Chapel District, the Marine Trail District, and the Special Places District of Critical Planning Concern.

These districts are located on a map entitled "Zoning Map of Gay Head", on file in the office of the Town Clerk. This map, with all explanatory matter concerning the special overlay districts, is hereby made part of the By-Law.

B. HAZARDOUS USE

In any district, no use of any building or parcel of land may be established which is hazardous to health, or dangerous due to the possibility of fire, explosion, or other cause.

C. PERMITTED USES IN A RURAL-RESIDENTIAL DISTRICT

The following uses are permitted in a Rural-Residential District:

1. detached one-family dwellings, not including temporary or mobile structures except as provided below;
2. religious, educational, or municipal uses;
3. farm, forest, plant nursery, or other agricultural or horticultural use;
4. the harvesting and processing of fish and shellfish;
5. any use customarily accessory to and clearly incidental to a permitted principal use on the lot including:
 - a. a home occupation employing no more than five persons not members of the resident family;
 - b. the display and sale of natural products raised or prepared in the Town;
 - c. the renting of rooms or boarding of not more than eight persons not members of the resident family;
 - d. the use of no more than two tents for the sleeping of members of the resident family or their guests;
 - e. the storage of unoccupied vehicles, boats, boat and



equipment trailers and tents for the use of the

resident family, if screened from view of the public

road;

f. the keeping of horses, ponies, small animals and poultry for the enjoyment of the resident family.

D. USES BY SPECIAL PERMIT IN A RURAL-RESIDENTIAL DISTRICT

Any uses not specifically permitted above and not prohibited by other provisions of the By-Law are permitted in a Rural-Residential District, but only if the Planning Board grants a special permit for an exception. Such special permits shall be granted if all other provisions of this By-Law are met, and if the following criteria are also met:

1. The use is not likely to generate more auto trips to and from the premises at the busiest hour of a normal operating day than is given by the number 10 multiplied by the number of acres contained in the lot. The estimation of likely auto traffic will be based on current available experience with the type and size of the use in question.

2. Space for off street parking will be provided which is at least twice the floor area of all structures on the lot, and this parking arrangement will require no backing out onto the public right-of-way.

3. All outdoor parking, storage, loading, and service areas will be screened from the view of the public road from adjacent residences.

4. There will be no odor, noise, smoke, glare, or flashing light which is perceptible without instruments more

except for warning devices, construction or maintenance work, or other special circumstances.

5. The use will not cause continued erosion of the land or increased surface drainage from the lot.
6. The use will not cause pollution of the surface or groundwater; salt-water intrusion into water supply wells; or an inadequate water supply to meet the anticipated demands of the proposed activity or of those existing or permissible on adjacent properties.
7. No temporary or mobile structures not otherwise permitted under this By-Law will be used or stored except if incidental to a fair, a special event, or a public construction project, and then only if for no more than 60 days.
8. Where possible, the site design will preserve and enhance existing trees over 12 inch caliber, water courses, hills, and other natural features, as well as vistas, ocean views, and historic locations, and will minimize the intrusion into the character of existing development.
9. The use will not cause the destruction of wildlife habitats, damage to wetlands or littoral ecology, damage to marine fisheries and shellfish, or any unnecessary decrease in agricultural use or potential productivity of the land.

H. PERMITTED USES IN A MARINE COMMERCIAL DISTRICT

The following uses are permitted in a Marine Commercial District:

1. the harvesting and processing of fish and shellfish;
- Exhibits To Complaint -- Page 23
- storage of boats, provided

that no more than four boats will be stored or assembled there;

- 3. religious, educational, or municipal uses;
- 4. farm, forest, plant nursery, or other agricultural, aquacultural, or horticultural use;
- 5. any use customarily accessory to and clearly incidental to a permitted use on the lot, but not including the use or storage of tents, trailers, mobile homes, camper vehicles, and other temporary or portable dwelling or structures.

F. USES BY SPECIAL PERMIT IN A MARINE COMMERCIAL DISTRICT.

Any commercial or industrial use not specifically permitted above, inclusive of marinas and boat repair yards of larger size, which are not prohibited by other provisions of this By-Law, and which are dependent on marine transportation, or marine products or which service marine transportation, are permitted in a Marine Commercial District, but only if the Planning Board grants a special permit for an exception.

Such permits shall be granted if all other provisions of this By-Law are met, and if the criteria listed in Section II-F are also met.

SIGNS

There shall be no more than one sign per lot, and that sign may only be used to identify the premises or to refer to products or services available there. All signs shall be under square feet in size, with no moving or flashing elements and shall be unlighted unless by a steady white reflected light. There shall be no signs in the Special Overlay

Moshup Trail District of Critical Planning Concern unless by special permit from the Planning Board Plan Review Committee.

H. REQUIREMENTS FOR DEVELOPMENT IN SPECIAL OVERLAY DISTRICTS WHICH ARE IMPOSED IN ADDITION TO THE REQUIREMENTS OF THE UNDERLYING DISTRICTS.

1. Construction:

There shall be no construction of buildings or structures within 200 feet of wetlands, waterbodies, beaches, dunes, or the crests of bluffs over 15 feet high until a special permit is obtained from the Planning Board Plan Review Committee, providing that within 100 feet of said wetlands, waterbodies, beaches, dunes or bluffs, a special permit may only be granted for a fishing related marine commercial structures. Additions to existing structures may be allowed by special permit from the Planning Board Plan Review Committee provided that any such addition is less than 500 square feet in area. In order to minimize visual prominence of man-made features, avoid erosion or other land instabilities and otherwise preserve the cultural, historic and visual integrity of the Moshup Trail Cultural and Historic District of Critical Planning Concern, the following shall exist:

1. A special permit shall be required from the Planning Board Plan Review Committee for the siting of a building on its lot. Buildings should be sited on or at least near the side slope of a



valley and never into the center of a valley.

Buildings should not be sited at the top of a slope

where their entire front will be starkly silhouetted

against the sky. Buildings should be sited down

the grade so that the slope contains the build-

ing(s) and serves as a partial backdrop for them.

2. Buildings shall be constructed of natural wood

shingles with neutral trim color (refer to SECTION

VIII: DEFINITIONS).

3. Roofing materials shall be black asphalt, wood or

cedar shingles.

4. Building eave heights shall be no more than 1 inches

in height from the median natural grade without a

special permit from the Planning Board Plan Review

Committee.

5. Accessory structures and additions to pre-existing

structures shall conform in materials, scale and

proportion to the principal structure. In cases

where pre-existing structures are not compatible

with the requirements for new construction, acces-

sory structures shall conform to the requirements

for new construction (Numbers one (1) through four

(4) of the above).

2. Vehicular and Pedestrian Ways

Vehicular accesses shall be located ~~at~~ closer to

1,000 feet from existing vehicular accesses on the same

side of the road, and such accesses shall not be greater

than 12 feet in width, except that lots in existence

a public road shall continue to have such right of access. Variations from this requirement may be allowed by special permit from the Planning Board Plan Review Committee, provided safety and the visual character of the road are assured.

Old Lobsterville Road and additional sections of Old South Road, except for that part which connects Church Street with Moshup Trail, shall not be paved with impervious material. There shall be no new vehicular access to Old Lobsterville Road, Old Church, and Old South Roads, except when no other access is available, and it shall require a special permit from the Planning Board Plan Review Committee. Said roads shall continue to be kept open for non-vehicular public access.

No new vehicular way may be constructed in a Special Overlay District whose traveling surface exceeds 15 feet in width, except by special permit from the Planning Board Plan Review Committee.

In order to maintain the visual integrity and to promote public health and safety, no driveway (i.e. curbcut) shall be permitted within the Moshup Trail Cultural and Historic District of Critical Planning Concern without a special permit from the Planning Board Plan Review Committee. The Planning Board Plan Review Committee shall consider but is not limited to the following criteria in granting a special permit:

1. Road frontage of lot(s);
2. Frequency and duration of use;



4. Safety (line of unobstructed vision to the public road);

5. Ability to share joint access with adjacent property owner(s); and

C. The use of pervious paving materials such as gravel, bluestone, crushed shell, or wood chips shall be employed.

3. Stone Walls and Fences

No stone wall shall be removed, moved or otherwise altered, except for repair or except by special permit from the Planning Board Plan Review Committee.

In order to minimize the visual prominence of manmade structures and otherwise protect the cultural, historical and visual integrity of the Woshup Trail Cultural and Historic District of Critical Planning Concern, a special permit

will be required by the Planning Board Plan Review Committee for new fences.

4. Utilities

All new utilities shall be placed underground. However, above ground utilities may be allowed by permit from the Planning Board Plan Review Committee provided that it finds that (a) it is technically infeasible to install underground utilities, or (b) the cost of such underground utilities will be more than \$1,500.00 greater than the cost of overhead utilities per lot served.

5. Historic and Cultural Places

Construction within 100 feet of Historic and Cultural Places shall only be by special permit from the Planning

Review Committee shall issue a special permit only if it finds that the proposed construction is in harmony with the cultural and historic aspects of the site. The Cultural and Historic Places in the Town of Gay Head are: Toad Rock, The Clay Pits, Occoch Pond, Mittark's Grave, Silas Paul's Grave, Gay Head Pound, Cook's Spring, Gay Head Baptist Church and Parsonage, Old Indian Cemetary, Indian Burial Grounds Lot #1, Indian Burial Ground - Old Lobsterville Road, Gay Head School, Deacon Simon Johnson House.

6. Private Parking Areas

Within the Special Overlay Moshup Trail Cultural and Historic District of Critical Planning Concern, a special permit shall be required by the Planning Board Plan Review Committee for a private parking area on a lot (Refer to SECTION VIII: DEFINITIONS). The Planning Board Plan Review Committee shall consider but is not limited to the following criteria in granting a special permit:

1. Access to the parking area;
2. Siting or placement of a parking area on a lot;
3. The number of cars allowable on a lot;
4. Frequency and duration of the use of a parking area;
5. Pervious paving materials such as gravel, wood chips, bluestone, or crushed shell shall be employed; and
6. Adequate screening with plants and shrubs as recommended by the Site Review Committee.

No commercial parking area will be permitted except those which benefit the Town's people, such as Philbin Beach.

In order to preserve the visual integrity of the Moshup



Trail Cultural and Historic District of Critical Plan-
ning Concern, no person(s) shall place, store or main-

tain on unimproved land not a whole or a lot(s).

SECTION III. DIMENSIONAL AND DENSITY REGULATIONS

A. MINIMUM LOT SIZES

No existing lot shall be changed in any size or shape so as to result, if developed, in a violation of any of the dimensional regulations set forth below. No structures may be erected on any lot which is less than 2 acres in extent, except as provided by the rules for compact siting in Section V below, or unless that lot is a pre-existing lot as provided in section VI.

B. STRUCTURAL DENSITY

On any lot, the total enclosed floor area of all structures may not exceed 3,500 square feet for every 2 acres contained in that lot, except as provided in Section VI, and providing also that this limitation shall not restrict the interior area of any single family residential building; the interior area of any single family residential building on a lot shall be included in determining the limitation imposed by this section on all other structures on such lot.

C. USE DENSITY

On any lot, there may be no more than one dwelling for every 2 acres contained in the lot. No commercial enterprise may occupy the same lot as a dwelling unit, unless it is a home occupation accessory to that dwelling unit.

D. SETBACK

lot line, and at least 40 feet from Old Lobsterville, Old Church and Old South Roads, except as provided in Section V and VI.

E. BUILDING HEIGHT

The highest point in any structure may not be more than 28 feet above the mean finished grade within 20 feet of the structure or two (2) stories, whichever is less. However, the highest point may be no more than 18 feet high for a gable or hip roof and 13 feet high for a flat or shed roof in open areas within a Special Overlay District except by special permit from the Planning Board Plan Review Committee. But slender and unoccupied projections customarily carried above the roof, such as chimneys, spires, flagpoles and windmills may rise 40 feet above that grade, or higher by special permit from the Planning Board where they will not block or damage the view from the public road or from adjacent property. Roof types other than gables or hip, flat or shed, added roof walks and/or second story porches on new or pre-existing structures shall require a special permit from the Planning Board Plan Review Committee within the Moshup Trail Cultural and Historic District of Critical Planning Concern.

(Refer to SECTION VIII: DEFINITIONS)

F. WELLS AND SANITARY DISPOSAL SYSTEMS

All wells and sanitary disposal systems shall comply with the following regulations:

1. no sanitary disposal system may be located closer than 200 feet from any water body or existing well or sanitary disposal system. No well may be located closer

than 200 feet from any saltwater body or existing sanitary disposal system except for wells used in connection

with fish or shellfish hatcheries where a lesser distance may be allowed by special permit from the Planning Board Plan Review Committee.

2. There shall be a minimum of 5 feet separation between the lowest point of the leaching field and the high seasonal water table for all sanitary disposal systems.

3. No sanitary disposal system shall be located within 30 feet of any adjacent lot in separate ownership.

SECTION IV: CONSERVATION REGULATIONS

A. CONSERVATION AREAS

No structure may occupy, nor may any regrading, excavation, or filling be done in any wetland, land subject to flood, cliff, beach, or dune immediately behind a beach except by special permit from the Planning Board and subsequent review and approval by the Conservation Commission. These conservation areas are intended to include those areas regulated by Chapter 131, Section 40 of the General Laws, and also to include all land which is less than 10 feet above mean high water. In granting a special permit the Board must be satisfied there will be no irreparable damage to the natural resources of the Town, and no hazard to the health or safety, such as might arise from pollution, the backing up of sewage, increased flooding, structural damage, lack of safe egress, or a rupture of utility systems

B. EXCAVATION

No gravel, loam, sand, clay, or stone may be removed from any site without a special permit from the Board of Selectmen.

C. USE OF WATER AREAS

There may be no shellfishing in any body of water or disturbance of its bed or bank without a permit from the Board of Selectmen, in accordance with General Laws Chapter 130, Section 52.

D. CLEARINGS AND VEGETATION

There shall be no clear-cutting of trees in any area over 1/2 acre, without a special permit from the Planning Board.

Within the Special Overlay Moshup Trail Cultural and Historic District of Critical Planning Concern, there shall be no removal of ground cover, shrubs, or trees in any area without a special permit from the Planning Board Plan Review Committee. Within the District, plantings shall be indigenous or easily naturalized plant types and materials, (refer to SECTION VIII: DEFINITIONS and to Suggestions for Planting Materials on file with the Site Review Committee in the Town Clerk's office). No special permit shall be required for a vegetable, herb or plant garden not exceeding 100 square feet.

SECTION V. REVIEW OF DEVELOPMENTS

A. COMPACT SITING

The Planning Board may, by special permit, allow that no more than 20 dwellings with their normal accessory uses may be placed on a contiguous group of lots of no less than 5,000 square feet each, and with side and rear but not street

setbacks reduced to no less than 10 feet from the lot lines;

provided this group of lots is immediately adjacent to an

open area whose extent, together with the house lots equal

at least 2 acres multiplied by the number of dwellings. The

Board must also find:

1. the open area is legally established to remain permanently unbuilt-upon, permanently associated with these dwelling lots, and owned and maintained by their owners;
2. satisfactory and permanent provision is made for water supply and sewage disposal without cost or responsibility to the Town;
3. and the resulting compact development will be superior to conventional development in preserving open space, utilizing natural features, and allowing more efficient services while not being inferior to conventional development in any other respect.

B. DEVELOPMENTS OF REGIONAL IMPACT

Developments which meet the qualifications as Developments of Regional Impact will be referred to the Martha's Vineyard Commission for review under the provisions of Chapter 637, Acts of 1974 and Chapter 803 of the Acts of 1975. No permits or special permits may be issued for such developments which have been so referred until the Martha's Vineyard Commission has approved, or approved with conditions, and referred the proposal back to the Town for action.

SECTION VI: NON-CONFORMING USES AND PRE-EXISTING LOTSA. PRE-EXISTING LOTS.

Any pre-existing lot containing an area of at least 5,000 square feet and held in separate ownership from any adjoining land may have erected on it any structure otherwise permitted on a lot of the minimum allowable area, even if the pre-existing lot does not comply with the minimum area requirements.

B. NON-CONFORMING USE

Any pre-existing structure or use of structure or land which does not conform to the provisions of this By-Law or any amendment thereto may nevertheless continue in that use. It may also be changed to conform to the provisions of the By-Law at any time. Any such non-conforming use or structure may be extended or altered by a special permit from the Planning Board provided that the alteration bears a reasonable relationship to the original size and nature of the non-conforming use, and that the Planning Board finds that the change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. Construction or operations under a building or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction authorized thereby is commenced within a period of not more than six months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable for non-conforming use or



structure is damaged or destroyed it may be restored to its previous non-conforming status. Non-conforming uses or structures abandoned or not used for a period of not less than five years shall not thereafter be revived.

SECTION VII: ADMINISTRATION

A. BOARD OF SELECTMEN

This By-Law shall be enforced by the Building Inspector, acting under the Board of Selectmen. No building shall be built or altered and no use of land or building shall be begun or changed without a permit having been issued by the Building Inspector, acting under the Board of Selectmen.

Permits not used within a year's time shall become void.

Each application for a permit shall be accompanied by such plans, surveys, and other data as may be necessary in the opinion of the Building Inspector to insure full compliance with this By-Law.

If the Building Inspector is requested in writing to enforce this By-Law against any person allegedly in violation of the same and declines to act, he shall notify in writing the party who requested such enforcement of any action or refusal to act and the reasons therefore within 14 days of receipt of such request.

B. BOARD OF APPEALS

There is hereby established a Board of Appeals consisting of five members and two associate members to be appointed by the Board of Selectmen as provided in Chapter 808 of the General Laws. The Board of Appeals shall have the power:

the conduct of

1. to hear and decide appeals; an appeal hereunder may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A of the General Laws, by the Martha's Vineyard Commission, or by any person, including an officer or board of the Town, or of the abutting town, aggrieved by an order or decision of the Inspector of Buildings, or other administrative official, in violation of any provision of ~~said chapter or this By-Law.~~
2. and to authorize variances according to requirements of Chapter 808 of the General Laws.

C. PLANNING BOARD PLAN REVIEW COMMITTEE

In addition to its customary responsibilities, the Planning Board shall hear and decide on applications for special permits for exceptions as provided in this By-Law; and as authorized by Chapters 637 and 808 of the General Laws.

When reviewing applications for special permits in Special Overlay Districts, the Planning Board shall be joined by a member appointed by and from the Conservation Commission and a member appointed by and from the Board of Selectmen and shall function as both a Plan Review Committee and Special Permit Granting Board.

In granting any special permit, the Planning Board must be satisfied that the general criteria in Section II-D are met as well as any special criteria for that type of special permit, and it may impose such conditions and safe-

10

the conduct of its business and procedures for the submission of applications, including required maps, plans, views, reports and other information.

D.

A special permit under this By-Law shall only be issued following a public hearing held within 65 days after the filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant. A special permit granted under this By-Law shall lapse one year from the granting thereof, including the time required to pursue or await the determination of an appeal under General Laws Chapter 40A, Section 17, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Uses accessory to activities permitted as a matter of right, whether or not on the same parcel as activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

SITE REVIEW COMMITTEE

There shall be a Site Review Committee acting in an advisory capacity to the Planning Board and the Planning Board Plan Review Committee. The Site Review Committee may adopt Site

Design Guidelines which may be revised from time to time, and take into consideration the special characteristics of the Moshup Trail Cultural and Historic District of Critical Planning Concern. The Site Design Guidelines shall be kept on file in the Town Clerk's office and copies shall be made available for inspection to applicants for special permits.

The Site Review Committee shall consist of the Building Inspector, one member appointed by and from the Conservation Commission, Planning Board, Board of Health and Board of Selectmen.

The Planning Board Plan Review Committee will receive applications for special permits within the Moshup Trail Cultural and Historic District of Critical Planning Concern, and will refer the applicant to the Site Review Committee. The Site Review Committee shall review the application and may make a site visit to determine if the application conforms to the District regulations and to suggest guidelines for development. The guidelines will be assisted by the Site Design Guidelines and are non-binding but intended to assist and advise. The Planning Board Plan Review Committee will be guided by the comments, suggestions and recommendations of the Site Review Committee when granting special permits.

Special permits within the Moshup Trail Cultural and Historic District of Critical Planning Concern will be granted only for proposals determined by the Site Review Committee to be consistent with the purpose of the By-Law as stated



in SECTION I and taking into consideration the special characteristics of the District.

The Board of Appeals may appoint a zoning administrator, subject to confirmation by the Board of Selectmen, to serve at its pleasure pursuant to such qualifications as may be established by the Board of Selectmen. The Board of Appeals may delegate to said Zoning Administrator some of its powers and duties. Any person aggrieved by a decision or order of the Zoning Administrator, whether or not previously a party to a proceeding, or any municipal officer or board, may appeal to the Board of Appeals, as provided in Section 14 of Chapter 40A of the General Laws, within 30 days after the decision of the Zoning Administrator has been filed in the office of the Town Clerk. Any appeal, application or petition filed with the Zoning Administrator as to which no decision has been issued within 35 days from the date of filing shall be deemed denied and shall be subject to appeal to the Board of Appeals as provided in Section 8 of Chapter 40A of the General Law.

SECTION VIII: DEFINITIONS

A. ACCESSORY: A building structure or use which is subordinate to, and the use of which is incidental to, that of the main building, structure or use of the lot.

F. BLUFF: For purposes of this By-Law, bluffs shall mean coastal elevation lying within 200

- feet of the mean high water mark of any ocean or tidal pond, with a height exceeding 15 feet (as measured from mean high water to the crest of the bluff) and the slope of whose seaward face exceeds 30 percent.
- C. **FLOOR AREA:** The total floor area on all levels having a ceiling height of 6 feet or more and enclosed by walls and roof, inclusive of floored cellars and attics.
- D. **LOT:** A continuous parcel of land in single ownership with the legally definable boundaries.
- E. **STRUCTURE:** A combination of materials assembled at a fixed location to give support or shelter. A structure includes any building. A fence or wall over 6 feet high is considered a structure. An open terrace not more than 3 feet above grade is not considered a structure.
- F. **BODY OF WATER:** Any exposed natural water surface, whether running or still, permanent or seasonal, including but not limited to ponds, swamps, streams, ocean and springs.
- G. **NEUTRAL:** Colors which have no strong hue, intensity, or brightness. Examples are on file with the Site Review Committee in the Gay Head Town Hall.
- H. **NATURAL:** Existing in a condition that is not altered or improved in any way.



I. NATURALIZE: (Refers to vegetation) Plant materials

which can be introduced into a region or area and flourish as if they were native

J. INDIGENOUS: Originating in or innate to a specific region or area.

K. SITING: The position of a structure in relation to the boundaries and size of the lot on which it sits, the contour and general character of the landscape, other structures, drive ways, walks, and vegetation.

L. PRIVATE PARKING AREA: A defined parcel of land owned privately by an individual(s), association, corporation, trust, or other organization which is used for parking on a regular basis by one or more vehicles.

M. OPEN AREA: An expanse of land which is characterized by low-lying groundcover, shrubs, or other vegetation.

N. ROOFTYPES: 1. Flat: A roof with a single plane with no pitch or gable.

2. Shed: A roof with a single pitch and no gable.

3. Gable: The verticle triangle shape of a building wall above the cornice height formed by two sloping roof planes.

4. Hip: A roof with planes that slope

- 5. Roof A porch enclosed by a balus-
Walk: trade placed on or around the
roof of a building.
- 6. Second A structure attached to the
Story second story of a building
Porch: which serves as a semi- or
fully enclosed space.

SECTION IX: AMENDMENT

This By-Law may be amended from time to time at an annual or special Town Meeting in accordance with the provisions of Chapter 803.

SECTION X: VALIDITY

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision of it.

SECTION XI: PENALTIES

Any violation of this By-Law shall be enforceable pursuant to the authority granted by Massachusetts General Laws, Chapter 40, Section 21D.

Violations shall be disposed of by the Building Inspector. Any person violating any of the provisions of this By-Law shall be fined not more than two-hundred dollars (\$200.00) for each offense. Each day that any violation is permitted to exist after written notification thereof by the Building Inspector shall constitute a separate offense.

True Copy Attest
Exhibits To Complaint - Page 43

*Richard J. ...
Town Clerk
November 2,*

BASELINE GENEALOGY 1870 ROLL BY NUMBER

NUMBER	NAME	TO WHOM MARRIED
1	JOHNSON, Simon	= Cooper, Hannah
2-12	DIVINE, Patrick	= Pocknett, Louisa
13-22	JEFFERS, William	= Johnson, Laura(1), Cooper, Elizabeth(2)
23-30	BELAIN, George J.	= Peters, Sophia
31-34	CUFF, Levi	= Jeffers, Alice(1), Belain, Melissa(2)
35-41	MADISON, Michael	= Peters, Diane
43-45	HASKINS, Samuel J.	=Madison, Charlotte
46-56	COOPER, Aaron	= Cooper, Abiah
57-59	SYLVIA, Francis	= Peters, Elenora
60-65	COOPER, Zaccheus	= Attaquin, Martha R.
66-79	VANDERHOOP, William Adrian	= Salsbury, Beulah
80-89	BASSETT, Leander	= Jeffers, Huldah
90-96	ANTHONY, John	= Peters, Mary C. (2)
97-99	MINGO Charles H.	= Jeffers, Lydia
100-108	PETERS, Johnson	= Cooper, Mary
109-110	CORSEY, Landon	= Jeffers, Julia F.
111-114	JAMES, William Spencer	= Divine, Avis
115-121	JEFFERS, Thomas	= James, Lucinda
122-131	MANNING, Thomas	= Howwaswee, Rosabella M.
132-135	RANDOLPH, John P.	= Swazey, Serena C.
136-137	MORTON, William	= Mingo, Patience
138-140	MANNING, Alvin	= Lowe, Roxa(1), Kent, Mary(2)
141-146	DAVID, Prudence	= NEVERS, Alexander
147-149	JERRET, Josiah	= Howwaswee, Olive
150-154	RODMAN, Abraham	= Wamsley, Charlotte(1), David, Rosanna Ger. h.
155-162	WAMSLEY, Hebron	= Peters, Elenor
163-170	JOHNSON, Simon, 2nd	= Salsbury, Emily G.
171-178	DIAMOND, James	= Manning, Abiah
179-181	FRANCIS, Jonathan	= Weeks, Mary Ann
182-192	POCKNETT, Moses	= Johnson, Julia Ann
	JOHNSON, Peter	= Turner, Rachel
193-194	WAMSLEY, Jane Francis	= Wamsley, Hebron
	HOWWASWEE, Esther	
195-196	HOWWASWEE, Zaccheus	= Wamsley, Elizabeth
197-200	WEEKS, Tristram	= Bunker, Tamson
201-204	COOPER, Thomas Green	
	BCWYER, James	= , Mehitable
205-203	ROSE, Isaac D.	= Wamsley, Harriet A.
209-217	DODGE, Betsy	
	SEWELL, Maria	
	CUFF, Hosea	
	COLE, Fanny	
	MANNING, Marshal	= Talknot, Hannah
	DIVINE, John	= Jeffers, Parnell
219-222	NEVERS, Daniel	= Nevers, Ann Elizabeth
223-227	SALSBURY, HOLMES, OCCOUCH, BROACHER, WILLIAMS	

Census of the Inhabitants of Gay Head—Continued.

No.	When married.	Parents		Parents' residence.	Father's birthplace.	Mother's birthplace.	Father's occupation.
		Father.	Mother.				
61	-	Alexander David,	Ann J. Madison,	Gay Head,	Gay Head	Gay Head.	Seaman.
62	1835, Jan. 2,	Amos Haskins,	Bathsheba Orrouch,	Mattapoisett.	Mattapoisett.	"	Boat builder.
63	-	Michael Madison,	Dianna Peters,	Gay Head,	Chathamville,	"	Seaman.
64	-	Samuel J. Haskins,	Charlotte Madison,	"	Mattapoisett,	"	"
65	-	"	"	"	"	"	"
66	-	Thomas Cooper, (2)	Susannah Talknot,	"	Gay Head,	"	"
67	-	Aaron Cooper,	Abiah Cooper,	"	"	"	"
68	-	"	Bellinda Cooper,	"	"	"	"
69	-	Aaron Cooper,	Abiah Cooper,	"	"	"	Seaman.
70	1837, Sept. 18,	Moses Focknet,	Mersey,	Marshpee,	Marshpee,	Marshpee,	"
71	1838, 27,	Aaron Cooper,	Phebe Focknet,	Gay Head,	Gay Head,	"	Seaman & farmer.
72	-	"	"	"	"	"	"
73	-	"	"	"	"	"	"
74	-	"	"	"	"	"	"
75	-	"	"	"	"	"	"
76	-	"	"	"	"	"	"
77	-	Henry Peters,	Dorcas Rogers,	"	"	Gay Head,	"
78	-	Francis Sylvia,	Eleanora Peters,	"	"	"	Seaman.
79	-	"	Eleanora F. Sylvia,	"	"	"	"
80	1853, Dec. 18,	Thomas Cooper, (2)	Susannah Talknot,	"	Gay Head,	"	Seaman & farmer.

81	-	George W. Cooper,	Sarah Focknet,	Gay Head,	Gay Head,	Marshpee,	Seaman & farmer.
82	1844, April 4,	Thomas Cooper, (2)	Susannah Talknot,	"	"	Gay Head,	"
83	-	"	"	Marshpee,	"	"	Seaman & farmer
84	-	Zaccheus Cooper,	Martha R. Attaquin,	Gay Head,	Gay Head,	Marshpee,	"
85	-	"	"	"	"	"	"
86	1837, Mar. 24,	Frs. F. S. C. Vanderhoop,	Jacquilena De-Montell,	Surinam,	Holland,	Surinam,	Tax receiver.
87	-	John Salisbury,	Naomi Accouch,	Gay Head,	"	Gay Head	Farmer.
88	-	"	"	"	"	"	"
89	-	Wm. A. Vanderhoop,	Beulah Salisbury,	Gay Head,	Surinam,	Gay Head,	Farmer.
90	-	"	"	"	"	"	"
91	-	"	"	"	"	"	"
92	-	"	"	"	"	"	"
93	-	"	"	"	"	"	"
94	-	"	"	"	"	"	"
95	1871, Feb. 21,	"	"	"	"	"	"
96	-	"	"	"	"	"	"
97	-	"	"	"	"	"	"
98	1871, Jan. 15,	Wm. A. Vanderhoop,	Beulah Salisbury,	Gay Head,	Surinam,	Gay Head	Farmer.
99	-	Landon Corney,	Julia F. Jeffers,	"	"	"	Seaman
100	-	James Bassett,	Esther Sharper,	Edgartown,	Farm Neck,	"	"
101	1872, July 25,	Amos Jeffers,	Bethiah Cooper,	Gay Head,	Middleborough,	"	"
102	-	Leander Bassett,	Huldah Jeffers,	"	Farm Neck,	"	"

Census of the Inhabitants of Gay Head.

No.	Name	Sex	When Born.	Where Born	Residence.	Condition.	Occupation.
62	George Andrew Dwyer.	F.	1887, Aug. 6,	Gay Head.	Gay Head.	-	-
63	Edward J. Haskins.	M.	1879, Jan. 22,	"	"	m	Seaman.
64	Charlotte Watkins, wife.	F.	1849, Jan. 10,	"	"	-	-
65	Aaron Haskins.	M.	1844, Oct. 10,	"	"	-	-
66	Christine E. Haskins.	F.	1868, Nov. 29,	"	"	-	-
67	Abiah Cooper.	F.	1840, Apr. 3,	"	"	Wid. of Aaron Cooper.	-
68	Phyllis _____.	F.	1829, July 18,	"	Lynn.	m Thomas Morse.	-
69	Andrew Cooper.	M.	1819, Nov. 14,	"	Gay Head.	-	-
70	Aaron Cooper.	M.	1822, Jan. 3,	"	"	m Lucy Peters.	Seaman and farmer.
71	Tracie Packard, wife.	F.	1831, Jan. 8,	"	"	m Silvester Fowell.	-
72	Quintana E. Cooper.	F.	1849, Mar. 4,	"	"	-	-
73	Abiah E. Cooper.	F.	1861, Sept. 14,	"	"	-	-
74	Aaron E. Cooper.	M.	1867, April 14,	"	"	-	-
75	Abner J. Cooper.	F.	1834, Dec. 24,	"	"	-	-
76	Jessie F. Cooper.	M.	1863, Jan. 15,	"	"	-	-
77	Keene F. Cooper.	M.	1868, June 2,	"	"	-	-
78	Dorothy S. J. J. J.	F.	1818, Sept. 7,	"	"	-	-
79	Elizabeth F. S. J. J.	F.	1811, Oct. 24,	"	"	Wid. of Francis S. J. J.	-
80	Samuel F. S. J. J.	F.	1864, Nov. 24,	"	"	-	-
81	George W. Cooper.	M.	1814, Feb. 7,	"	"	Widower.	Seaman and farmer.

81	Barrab Cooper.	F.	1804, June 7,	Gay Head.	Gay Head.	-	Seaman and farmer.
82	Zachariah Cooper.	M.	1794, Feb. 14,	"	"	m Martha E. Alliquin.	-
83	Martha E. Alliquin, wife.	F.	1823, July 9,	Marshpee.	"	-	-
84	Abraham F. Cooper.	M.	1822, Mar. 8,	Gay Head.	"	-	-
85	Seaman F. Cooper.	F.	1794, Nov. 12,	"	"	-	-
86	William Adriaan Vanderhoop.	M.	1814, Jan. 8,	Farmington, Burlington.	"	m Beulah Saltbury.	Farmer.
87	Charles Harrison.	M.	1815, 7,	Gay Head.	"	-	Teacher.
88	Deulah Saltbury, wife.	F.	1828, Mar. 13,	New Bedford.	"	m Charles Harrison.	-
89	Louisa Eva Harrison.	F.	1828, July 12,	"	"	-	Teacher.
90	Pauline Alberta Vanderhoop.	F.	1841, May 18,	"	"	-	Seaman.
91	Anna Elizabeth Vanderhoop.	F.	1847, Feb. 12,	Gay Head.	"	-	-
92	Elizbeth DeVries Vanderhoop.	M.	1844, Dec. 11,	"	"	-	-
93	Nasaretta Caroline Vanderhoop.	F.	1850, Jan. 4,	"	"	-	-
94	Cumalige Bray Vanderhoop.	M.	1853, Mar. 15,	"	"	-	-
95	Loonard Lewis Vanderhoop.	M.	1855, Feb. 20,	"	"	-	Seaman.
96	William A. Vanderhoop, Jr.	M.	1811, June 28,	"	"	m Louisa T. Wood.	-
97	Louisa T. Wood, wife.	F.	1816, Mar. 24,	Gay Head.	"	m Abby Ann Curry.	Seaman.
98	Julia Troopner Vanderhoop.	M.	1811, Feb. 24,	"	"	-	-
99	Abby Ann Curry, wife.	F.	1810, Oct. 15,	Farm Neck, Ellipton.	"	m Eliza J. J. J.	Seaman and farmer.
100	Leander Bassett.	M.	1804, Dec. 7,	Gay Head.	"	-	-
101	Heleah Jeffers, wife.	F.	1817, July 23,	"	"	-	-
102	Father S. Bassett.	F.		"	"	-	-

1 Second wife, Phoebe Packard.

Census of the Inhabitants of Gay Head - Continued.

No.	Parents.		Female's residence.	Father's birthplace.	Mother's birthplace.	Father's occupation.
	Zucker.	Mother.				
1	Simon Johnson,	Hannah Cooper,	Gay Head,	Gay Head,	Gay Head,	Seaman & Farmer.
2	John Divilis,	"	"	Sturtevant,	"	"
3	Patrick Dirias,	Louisa Fortner,	Gay Head,	Gay Head,	Marshpee,	Farmer.
4	"	"	"	"	"	"
5	"	"	"	"	"	"
6	"	"	"	"	"	"
7	"	"	"	"	"	"
8	"	"	"	"	"	"
9	"	"	"	"	"	"
10	"	"	"	"	"	"
11	"	"	"	"	"	"
12	"	"	"	"	"	"
13	Colonus Jeffers,	Mercy Ann Ertbe,	"	"	Gay Head,	"
14	"	Lara Weeks,	"	"	Christiantown,	Seaman.
15	1829, April 18,	Loelise Cooper,	"	"	Gay Head,	"
16	William Jeffers,	Laura Johnson,	Gay Head,	Christiantown,	"	Seaman.
17	"	"	"	"	"	"
18	"	"	"	"	"	"

19	William Jeffers,	Elizabeth M. Cooper,	Gay Head,	Christiantown,	Gay Head,	Seaman.
20	"	"	"	"	"	"
21	"	"	"	"	"	"
22	Peter Balala,	Berah Johnson,	Chabawquidick,	Chabawquidick,	Chabawquidick,	Seaman & Farmer.
23	Johnson Peters,	Mary Cooper,	Gay Head,	"	(Gay Head,	"
24	George J. Balala,	Rophia Peters,	"	"	"	"
25	"	"	"	"	"	"
26	"	"	"	"	"	"
27	"	"	"	"	"	"
28	"	"	"	"	"	"
29	"	"	"	"	"	"
30	"	"	"	"	"	"
31	David Cud,	Mary Dodder,	"	Gay Head,	"	Seaman.
32	"	Melisse Balala,	"	"	"	"
33	"	"	"	"	"	"
34	"	"	"	"	"	"
35	Johnson Peters,	Mary Cooper,	Chabawquidick,	Chabawquidick,	Chabawquidick,	Seaman & Farmer.
36	Michael Madison,	Hannah Peters,	"	"	"	"
37	"	"	"	"	"	"
38	1864, July 16,	Ann J. Madison,	"	"	"	"
39	"	"	"	"	"	"
40	Alexander David,	"	"	Gay Head,	"	Seaman.

[B.]

Census of the Inhabitants of Gay Head.

No.	NAME.	Sex.	When Born.	Where Born.	Residence.	Condition.	Occupation.
1	Simon Johnson (deacon)	M.	1794, Aug. 25,	Gay Head,	Gay Head,	Never married,	W.aver and farmer
2	Patrick Divino,	M.	1808, Aug. 9,	"	"	"	Farmer.
3	Louisa Fockett, wife,	F.	1828, Feb. 10,	Marshpee,	"	"	"
4	Merry Ann Divino,	F.	1848, May 10,	Gay Head,	"	"	"
5	Hannah C. Divino, ¹	F.	1850, Sept. 27,	"	"	"	"
6	Patrick Lawrence Divino,	M.	1854, April 29,	"	"	"	"
7	Simon Johnson Divino,	M.	1867, Feb. 11,	"	"	"	"
8	Grafton Earle Divino,	M.	1859, July 11,	"	"	"	"
9	Ida May Divino,	F.	1861, June 20,	"	"	"	"
10	Jeanetta Gracia Divino,	F.	1864, June 17,	"	"	"	"
11	Louisa Divino,	F.	1867, Jan. 30,	"	"	"	"
12	C. Frederick Divino,	M.	1869, Jan. 27,	"	"	"	"
13	William Jeffers,	M.	1811, July 28,	Christiantown,	"	m Laura Johnson, ²	Seaman and farmer
14	Elizabeth H. Cooper, 3d wife,	F.	1825, Sept. 2,	Gay Head,	"	"	"
15	James W. Jeffers,	M.	1834, about,	"	"	m Melissa Belain,	"
16	Laura H.,	F.	1833, about,	"	Chabbaquiddick,	m William Belain,	"
17	Hepzibah G. Jeffers,	F.	1848, about,	"	Gay Head,	Single,	"
18	Lydia C. Jeffers,	F.	1850, about,	"	Chabbaquiddick,	m Frederick Webquish,	"

19	Moses B. Jeffers,	M.	1860, April 16,	Gay Head,	Gay Head,	"	"
20	Louisa D. Jeffers,	F.	1-62, March 17,	"	"	"	"
21	Gilbert Lafayette Jeffers,	M.	1863, March 26,	"	"	"	"
22	Serena R. Jeffers,	F.	1869, Jan. 28,	"	"	"	"
23	George J. Belain,	M.	1813, Nov. 7,	Chabbaquiddick,	"	"	Seaman and farmer
24	Sophia Peters, wife,	F.	1817, May 14,	Gay Head,	"	"	Seaman
25	Peter Belain,	M.	1847, March 21,	"	"	"	"
26	Joseph Belain,	M.	1848, Nov. 27,	"	"	"	"
27	Alonso Belain,	M.	1820, Dec. 6,	"	"	"	"
28	Daniel W. Belain,	M.	1834, Aug. 11,	"	"	"	"
29	John W. Belain,	M.	1838, Aug. 23,	"	"	m James W. Jeffers, ³	"
30	Melissa Belain,	F.	1837, April 10,	"	"	m Alice Jeffers, ⁴	Seaman.
31	Levi Cuff,	M.	1819, Feb. 17,	Gay Head,	Gay Head,	"	"
32	Nellie Cuff,	F.	1805, Jan. 8,	"	"	"	"
33	Beatie B. Cuff,	F.	1808, Jan. 3,	"	"	"	"
34	George B. Cuff,	M.	1809, Oct. 25,	"	"	Wid of Mich. Madson	"
35	Diana Madison,	F.	1807, Apr. 15,	"	"	"	"
36	Charles B. Madison,	M.	1842, June 15,	"	"	"	"
37	Issac E. Madison,	M.	1843, Mar. 18,	"	"	Wid of Alex. David	"
38	Ann Judson David,	F.	1836, Nov. 9,	"	"	"	"
39	Raymond B. Madison,	M.	1858, Aug. 6,	"	"	"	"
40	Johnston P. David,	M.	1868, Jan. 23,	"	"	"	"

¹ Died November 4, 1870.

² Second husband, Levi Cuff

³ Second wife, Melissa Belain.

- 5. Roof Walk: A porch enclosed by a balustrade placed on or around the roof of a building.
- 6. Second Story Porch: A structure attached to the second story of a building which serves as a semi- or fully enclosed space.

SECTION IX: AMENDMENT.

This By-Law may be amended from time to time at an annual or special Town Meeting in accordance with the provisions of Chapter 803.

SECTION X: VALIDITY

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision of it.

SECTION XI: PENALTIES

Any violation of this By-Law shall be enforceable pursuant to the authority granted by Massachusetts General Laws, Chapter 40, Section 21D.

Violations shall be disposed of by the Building Inspector. Any person violating any of the provisions of this By-Law shall be fined not more than two-hundred dollars (\$200.00) for each offense. Each day that any violation is permitted to exist after written notification thereof by the Building Inspector shall constitute a separate offense.

True Copy & Attest:
Exhibits To Complaint -- Page 49

Richard J. ...
Town Clerk
November 2:

BASELINE GENEALOGY 1870 ROLL BY NUMBER

NUMBER	NAME	TO WHOM MARRIED
1	JOHNSON, Simon	= Cooper, Hannah
2-12	DIVINE, Patrick	= Pocknett, Louisa
13-22	JEFFERS, William	= Johnson, Laura(1), Cooper, Elizabeth(?)
23-30	BELAIN, George J.	= Peters, Sophia
31-34	CUFF, Levi	= Jeffers, Alice(1), Belain, Melissa(2)
35-41	MADISON, Michael	= Peters, Diane
43-45	HASKINS, Samuel J.	=Madison, Charlotte
46-56	COOPER, Aaron	= Cooper, Abiah
57-59	SYLVIA, Francis	= Peters, Elenora
60-65	COOPER, Zaccheus	= Attaquin, Martha R.
66-79	VANDERHOOP, William Adrian	= Salsbury, Beulah
80-89	BASSETT, Leander	= Jeffers, Huldah
90-96	ANTHONY, John	= Peters, Mary C. (2)
97-99	MINGO Charles H.	= Jeffers, Lydia
100-108	PETERS, Johnson	= Cooper, Mary
109-110	CORSEY, Landon	= Jeffers, Julia F.
111-114	JAMES, William Spencer	= Divine, Avis
115-121	JEFFERS, Thomas	= James, Lucinda
122-131	MANNING, Thomas	= Howwaswee, Rosabella M.
132-135	RANDOLPH, John P.	= Swazey, Serena C.
136-137	MORTON, William	= Mingo, Patience
138-140	MANNING, Alvin	= Lowe, Roxa(1), Kent, Mary(2)
141-146	DAVID, Prudence	= NEVERS, Alexander
147-149	JERRET, Josiah	= Howwaswee, Olive
150-154	RODMAN, Abraham	= Wamsley, Charlotte(1), David, Rosanna Ger. n.
155-162	WAMSLEY, Hebron	= Peters, Elenor
163-170	JOHNSON, Simon, 2nd	= Salsbury, Emily G.
171-178	DIAMOND, James	= Manning, Abiah
179-181	FRANCIS, Jonathan	= Weeks, Mary Ann
182-192	POCKNETT, Moses	= Johnson, Julia Ann
	JOHNSON, Peter	= Turner, Rachel
193-194	WAMSLEY, Jane Francis	= Wamsley, Hebron
	HOWWASWEE, Esther	
195-196	HOWWASWEE, Zaccheus	= Wamsley, Elizabeth
197-200	WEEKS, Tristram	= Bunker, Tamson
201-204	COOPER, Thomas Green	
	BCWYER, James	= , Mehitable
205-208	ROSE, Isaac D.	= Wamsley, Harriet A.
209-217	DODGE, Betsy	
	SEWELL, Maria	
	CUFF, Hosea	
	COLE, Fanny	
	MANNING, Marshal	= Talknot, Hannah
	DIVINE, John	= Jeffers, Parnell
218-222	NEVERS, Daniel	= Nevers, Ann Elizabeth
223-227	SALSBURY, HOLMES, OCCOUCH, BROACHER, WILLIAMS	

Census of the Inhabitants of Gay Head—Continued.

No.	When married.	PARENTS		Parents' residence.	Father's birthplace.	Mother's birthplace.	Father's occupation.
		Father.	Mother.				
61	-	Alexander David,	Ann J. Madison,	Gay Head,	Gay Head,	Gay Head,	Seaman.
62	1845, Jan. 2,	Amos Haskins,	Bathsheba Orrouch,	Mattapoisett,	Mattapoisett,	"	Boat builder.
63	-	Michael Madison,	Diana Peters,	Gay Head,	Chathamquidick,	"	Seaman.
64	-	Samuel J. Haskins,	Charlotte Madison,	"	Mattapoisett,	"	"
65	-	"	"	"	"	"	"
66	-	Thomas Cooper, (2)	Susannah Talknot,	"	Gay Head,	"	"
67	-	Aaron Cooper,	Ablah Cooper,	"	"	"	"
68	-	"	Bellinda Cooper,	"	"	"	"
69	-	Aaron Cooper,	Ablah Cooper,	"	"	"	"
70	1847, Sept. 18,	Moos Pocknet,	Mercy,	Marshpee,	Marshpee,	Marshpee,	Seaman.
71	1850, 27,	Aaron Cooper,	Thebe Pocknet,	Gay Head,	Gay Head,	"	Seaman & farmer.
72	-	"	"	"	"	"	"
73	-	"	"	"	"	"	"
74	-	"	"	"	"	"	"
75	-	"	"	"	"	"	"
76	-	"	"	"	"	"	"
77	-	Henry Peters,	Dorcas Rogers,	"	"	"	"
78	-	Francis Sylvia,	Eleanora Peters,	"	"	Gay Head,	"
79	-	"	Eleanora F. Sylvia,	"	"	"	Seaman.
80	1851, Dec. 18,	Thomas Cooper, (2)	Susannah Talknot,	"	Gay Head,	"	Seaman & farmer.

81	-	George W. Cooper,	Sarah Pocknet,	Gay Head,	Gay Head,	Marshpee,	Seaman & farmer.
82	1848, April 6,	Thomas Cooper, (2)	Susannah Talknot,	"	"	Gay Head,	"
83	-	"	"	Marshpee,	"	"	"
84	-	Zacchens Cooper,	Martha R. Attaqua,	Gay Head,	Gay Head,	Marshpee,	Seaman & farmer.
85	-	"	"	"	"	"	"
86	1837, Mar. 28,	Frs. F. S. C. Vanderhoop,	Jacqueline DeMontell,	Surinam,	Holland,	Surinam,	Tax receiver.
87	-	John Salisbury,	Naomi Accouch,	Gay Head,	"	Gay Head,	Farmer.
88	-	"	"	"	"	"	"
89	-	Wm. A. Vanderhoop,	Beulah Salisbury,	Gay Head,	Surinam,	Gay Head,	Farmer.
90	-	"	"	"	"	"	"
91	-	"	"	"	"	"	"
92	-	"	"	"	"	"	"
93	-	"	"	"	"	"	"
94	-	"	"	"	"	"	"
95	1871, Feb. 23,	"	"	"	"	"	"
96	-	"	"	"	"	"	"
97	-	"	"	"	"	"	"
98	1871, Jan. 15,	Wm. A. Vanderhoop,	Beulah Salisbury,	Gay Head,	Surinam,	Gay Head,	Farmer.
99	-	Landon Corsey,	Julia F. Jeffers,	"	"	"	Seaman.
100	1832, July 28,	James Bassett,	Esther Sharper,	Edgartown,	Farm Neck,	"	"
101	-	Amos Jeffers,	Bethiah Cooper,	Gay Head,	Middleborough,	"	"
102	-	Leander Bassett,	Huldah Jeffers,	"	Farm Neck,	"	"

Census of the Inhabitants of Gay Head.

No.	Name	Sex	When Born.	Where Born	Residence.	Condition.	Occupation.
1	Burt Arthur Dorel,	F.	1887, Aug. 4,	Gay Head,	Gay Head,	"	"
2	Isabel J. Easlick,	M.	1879, Jan. 22,	"	"	m	Seaman.
3	Charles Keelson, wife,	F.	1849, Jan. 10,	"	"	"	"
4	Aaron Hebble,	M.	1844, Oct. 10,	"	"	"	"
5	Christus E. Hebble,	F.	1868, Nov. 29,	"	"	"	"
6	Abiah Cooper,	F.	1829, Apr. 1,	"	"	"	"
7	Philda _____,	F.	1829, July 18,	"	Lynn,	"	"
8	Andrew Cooper,	M.	1819, Nov. 14,	"	Gay Head,	m Thomas Krom,	"
9	Aaron Cooper,	M.	1822, Jan. 2,	"	"	m Lucy Feterl,	Seaman and farmer.
10	Truba Fuchsen, wife,	F.	1823, Jan. 8,	"	"	m Silvester Powell,	"
11	Georgiana E. Cooper,	F.	1849, Mar. 4,	"	"	"	"
12	Abiah K. Cooper,	F.	1811, Sept. 16,	"	"	"	"
13	Aaron E. Cooper,	M.	1827, April 14,	"	"	"	"
14	Alma J. Cooper,	F.	1844, Dec. 24,	"	"	"	"
15	James P. Cooper,	M.	1843, Jan. 15,	"	"	"	"
16	Keene P. Cooper,	M.	1861, June 2,	"	"	"	"
17	Emerson Byrta,	F.	1818, Sept. 7,	"	"	wid. of Francis Byrta,	"
18	Emerson F. Byrta,	F.	1811, Oct. 24,	"	"	"	"
19	Isabel F. Byrta,	F.	1824, Nov. 24,	"	"	"	"
20	George W. Cooper,	M.	1814, Feb. _____,	"	Widower,	"	Seaman and farmer.

21	Bern Cooper,	F.	1884, June _____,	Gay Head,	Gay Head,	"	Seaman and farmer.
22	Zachose (Cooper),	M.	1874, Feb. 14,	"	"	m Martha E. Aluquila,	"
23	Martha R. Aluquila, wife,	F.	1824, July 9,	Marthope,	"	"	"
24	Abraham F. Cooper,	M.	1821, Mar. 2,	Gay Head,	"	"	"
25	Susanah F. Cooper,	F.	1824, Nov. 12,	"	"	m Beulah Salubury,	Farmer.
26	William Adriaan Vanderhoop,	M.	1814, Jan. 8,	Parliament, Surinam,	"	"	Teacher.
27	Beulah Salubury, wife,	F.	1815, _____,	Gay Head,	"	"	Teacher.
28	Charles Harrison,	M.	1828, Mar. 15,	New Bedford,	"	m Charles Harrison,	Teacher.
29	Leolan Eva Harrison,	F.	1828, July 12,	"	"	"	"
30	Paulina Adriaan Vanderhoop,	F.	1843, May 18,	"	"	"	"
31	Anna Elizabeth Vanderhoop,	F.	1827, Feb. 12,	Gay Head,	"	"	Seaman.
32	Elmer De Vries Vanderhoop,	M.	1848, Dec. 11,	"	"	"	"
33	Nansetta Caroline Vanderhoop,	F.	1829, Jan. 4,	"	"	"	"
34	Guerninga Rrey Vanderhoop,	M.	1831, Mar. 15,	"	"	"	"
35	Loosew Lawta Vanderhoop,	M.	1825, Feb. 20,	"	"	"	Seaman.
36	William A. Vanderhoop, Jr.,	M.	1811, June 28,	"	"	m Louisa T. Wood,	"
37	Louisa T. Wood, wife,	F.	1846, Mar. 24,	Gay Head,	"	m Abby Ann Correy,	Seaman.
38	Julia Froelopers Vanderhoop,	F.	1811, Feb. 24,	"	"	"	"
39	Abby Ann Correy, wife,	F.	1810, Oct. 15,	Farm Neck, England,	"	m the John R. Correy,	Seaman and farmer.
40	Leander Baswell,	M.	1829, Dec. _____,	Gay Head,	"	"	"
41	Isidiah Jeffers, wife,	F.	1817, July 25,	"	"	"	"
42	Fallier S. Baswell,	F.	_____	"	"	"	"

1. Seemed wife, Phibe Fuchsen.

Census of the Inhabitants of Gay Head—Continued.

No.	Whom married	Parents		Parents' residence.	Father's birthplace.	Mother's birthplace	Father's occupation.
		Father.	Mother.				
1	1854, April 2,	Simon Johnson,	Hannah Cooper,	Gay Head,	Gay Head,	Gay Head,	Seaman & farmer.
2	"	John Divine,	"	"	Marblehead,	"	"
3	"	"	"	"	"	"	"
4	"	Patrick Divine,	Louisa Fockett,	Gay Head,	Gay Head,	Marshpee,	Farmer.
5	"	"	"	"	"	"	"
6	"	"	"	"	"	"	"
7	"	"	"	"	"	"	"
8	"	"	"	"	"	"	"
9	"	"	"	"	"	"	"
10	"	"	"	"	"	"	"
11	"	"	"	"	"	"	"
12	"	"	"	"	"	"	"
13	"	"	Mercy Ann Divine,	"	"	"	"
14	1850, April 16,	Solomon Jeffers,	Lova Weeks,	"	"	Gay Head,	"
15	"	"	Louisa Cooper,	"	"	Christiantown,	Seaman.
16	"	William Jeffers,	Laura Johnson,	Gay Head,	Christiantown,	Gay Head,	"
17	"	"	"	"	"	"	Seaman.
18	"	"	"	"	"	"	"

19	"	William Jeffers,	Elizabeth N. Cooper,	Gay Head,	Christiantown,	Gay Head,	Seaman.
20	"	"	"	"	"	"	"
21	"	"	"	"	"	"	"
22	"	"	"	"	"	"	"
23	1850,	Peter Belain,	Sarah Johnson,	Chabbaquiddick,	Chabbaquiddick,	Chabbaquiddick,	Seaman & farmer.
24	"	Johnson Peters,	Mary Cooper,	Gay Head,	"	Gay Head,	"
25	"	George J. Belain,	Sophia Peters,	"	"	"	"
26	"	"	"	"	"	"	"
27	"	"	"	"	"	"	"
28	"	"	"	"	"	"	"
29	"	"	"	"	"	"	"
30	"	"	"	"	"	"	"
31	"	David Cuff,	Mary Dodge,	"	Gay Head,	"	Seaman.
32	"	"	Melissa Belain,	"	"	"	"
33	"	"	"	"	"	"	"
34	"	"	"	"	"	"	"
35	"	Johnson Peters,	Mary Cooper,	"	Chabbaquiddick,	"	Seaman & farmer.
36	"	"	"	"	"	"	"
37	"	Michael Madison,	Hannah Peters,	"	"	"	"
38	"	"	"	"	"	"	"
39	1855, July 16,	"	"	"	"	"	"
40	"	"	Ann J. Madison,	"	"	"	"
41	"	"	"	"	"	"	"
42	"	Alexander David,	"	"	Gay Head,	"	Seaman.

[B.]

Genealogy of the Inhabitants of Gay Head.

No.	Name.	Sex.	When Born.	Where Born.	Residence.	Condition.	Occupation.
1	Simon Johnson (deceased)	M.	1791, Aug. 22,	Gay Head.	Gay Head.	Never married.	W. acre and farmer.
2	Patrick Dwyer,	M.	1802, Aug. 9,	"	"	"	Farmer.
3	Lucia Poole, wife,	F.	1823, Feb. 16,	Marblehead,	"	"	"
4	Mary Ann Dwyer,	F.	1814, May 10,	Gay Head.	"	"	"
5	Thomas C. Dwyer, ¹	F.	1850, Sept. 27,	"	"	"	"
6	Patrick Larsson Dwyer,	M.	1854, April 29,	"	"	"	"
7	Simon Johnson Dwyer,	M.	1847, Feb. 11,	"	"	"	"
8	Griffin Earle Dwyer,	M.	1850, July 11,	"	"	"	"
9	Ida May Dwyer,	F.	1841, June 20,	"	"	"	"
10	Josephine Grace Dwyer,	F.	1844, June 17,	"	"	"	"
11	Lucas Dwyer,	F.	1827, Jan. 29,	"	"	"	"
12	C. Frederick Dwyer,	M.	1829, Jan. 27,	"	"	"	"
13	William Jeffery,	M.	1811, July 25,	Christiantown,	"	"	Beaman and farmer.
14	Katharine M. Cooper, 2d wife,	F.	1831, Sept. 2,	Gay Head.	"	"	"
15	James W. Jeffery,	M.	1834, about,	"	"	"	"
16	Laura M.,	F.	1823, about,	"	Chabbequidick.	m Melissa Belain,	"
17	Elizabeth Q. Jeffery,	F.	1818, about,	"	Gay Head.	m William Belain,	"
18	Lynna C. Jeffery,	F.	1820, about,	"	Chabbequidick.	m Frederick Webquith,	"

19	Moses B. Jeffery,	M.	1820, April 16,	Gay Head.	Gay Head.	"	"
20	Lois D. Jeffery,	F.	1-2, March 17,	"	"	"	"
21	Gilbert Leidyville Jeffery,	M.	1851, March 26,	"	"	"	"
22	Serena R. Jeffery,	F.	1879, Jan. 28,	"	"	"	"
23	George J. Belain,	M.	1813, Nov. 7,	Chabbequidick.	"	"	Beaman and farmer.
24	Augusta Peters, wife,	F.	1817, May 14,	Gay Head.	"	"	"
25	Peter Belain,	M.	1817, March 21,	"	"	"	"
26	Joseph Belain,	M.	1815, Nov. 27,	"	"	"	"
27	Alonzo Belain,	M.	1820, Dec. 6,	"	"	"	"
28	Paul W. Belain,	M.	1831, Aug. 11,	"	"	"	"
29	John W. Belain,	M.	1839, Aug. 24,	"	"	"	"
30	William Belain,	F.	1837, April 10,	"	"	"	"
31	Lari C. B.,	M.	1810, Feb. 17,	Gay Head.	Gay Head.	"	"
32	Keller C. B.,	F.	1808, Jan. 6,	"	"	"	"
33	Frederick C. B.,	F.	1809, Jan. 7,	"	"	"	"
34	George H. C. B.,	M.	1800, Oct. 29,	"	"	"	"
35	Debra Stillman,	F.	1807, Apr. 15,	"	"	"	"
36	Charles B. Medison,	M.	1811, June 15,	"	"	"	"
37	Isaac E. Medison,	M.	1811, Mar. 19,	"	"	"	"
38	Ann Jackson David,	F.	1823, Nov. 9,	"	"	"	"
39	Raymond B. Medison,	M.	1848, Aug. 6,	"	"	"	"
40	Johnston F. David,	M.	1854, Jan. 23,	"	"	"	"

¹ Died November 4, 1870.

² Present wife, Elizabeth M. Cooper.

³ Present husband, Lari C. B.

⁴ Present wife, William Belain.

Census of the Inhabitants of Gay Head

No.	Name	Sex	Year Born.	Where Born.	Residence.	Condition.	Occupation.
101	Elizabeth J. Bennett,	F.	1848, July	Gay Head,	Gay Head,		
102	Samuel Bennett,	M.	1879, Nov.	New York,	"	m Julia Ann Bennett,	Farmer.
103	John Ann Bennett, wife,	F.	1841, June 11,	Gay Head,	"		
104	Josephine Ida Bennett,	F.	1859, Feb. 1,	"	"		
105	Erilia Elizabeth Bennett,	F.	1861, Jan. 18,	"	"		
106	Leander Bennett Bennett,	M.	1843, June 10,	"	"		
107	Samuel Bennett,	M.	1870, July 21,	"	"		
108	John Anthony,	M.	1818, Mar. 10,	Adhon,	"	m Betsy Mingo,	Seaman and Farmer.
109	Mary C., 2d wife,	F.	1811, Feb. 15,	Gay Head,	"		
110	Joseph B. Anthony,	M.	1828, Aug. 2,	Christiansburg,	"	Single,	Seaman.
111	John H. Taylor,	M.	1827, April 22,	Baderick Island,	"	m Rachel Anthony,	"
112	Bachel Anthony, wife,	F.	1844, Aug. 9,	Christiansburg,	"		
113	John A. Taylor,	M.	1867, April 22,	Gay Head,	"		
114	Samuel Johnson Anthony,	M.	1869, April 14,	"	"		
115	Charles H. Kings,	M.	1824, about,	New Bedford,	"	m Lydia Jeters,	Merchant.
116	Lydia Jeters, wife,	F.	1816, Feb. 28,	Gay Head,	"		
117	William C. Kings,	M.	1862, Feb. 19,	"	"		
118	Johnston Pevony,	M.	1798, Jan. 27,	Chubbuck Island,	"	m Mary Cooper,	Seaman and Farmer.
119	Mary Cooper, wife,	F.	1794, Jan. 28,	Gay Head,	"		
120	Betsy Peters,	F.	1811, Aug. 28,	"	"	Single,	

No.	Name	Sex	Year Born.	Where Born.	Residence.	Condition.	Occupation.
121	Mary O'Leary,	F.	1841, Dec. 4,	Gay Head,	Gay Head,	Single,	Seaman and Farmer.
122	Samuel Peters,	M.	1809, Feb. 17,	"	"	m Sarah Jeters,	
123	Frances A. Essey, 2d wife,	F.	1818, April 27,	Taunton,	"	Widower,	Seaman.
124	Samuel Peters, Jr.,	M.	1840, July 14,	Gay Head,	"	Single,	"
125	Joseph Peters,	M.	1850, Dec. 7,	"	"	"	"
126	Frederic Peters,	M.	1822, Aug. 7,	"	"	Wid. of Leanda Correy,	Seaman.
127	John F. Correy,	M.	1818, Nov. 12,	"	"	Single,	Farmer.
128	William W. Wallace James,	M.	1848, May 23,	Christiansburg,	"	m Avia Hivins,	Farmer.
129	Thomas Jeffers,	M.	1836, Sept. 15,	"	"		
130	Lurline James, wife,	F.	1836, Aug. 4,	Gay Head,	"	m Lurline James,	Farmer.
131	Thomas Cassal Jeffers,	M.	1864, Jan. 10,	"	"		
132	Corbel's Howard Jeffers,	F.	1859, Sept. 1,	"	"		
133	Ladna Alinda Jeffers,	F.	1861, Dec. 20,	"	"		
134	Henry Hubbard Jeffers,	M.	1847, June 5,	Middleborough,	"	Widower,	Seaman and Farmer.
135	Amos Jeffers,	M.	1785, Nov. 4,	Gay Head,	"	m Elizabeth H. H.,	"
136	Thomas Karslag,	M.	1811, Oct. 1,	"	"	Widower,	"
137	Rosalie M. Howmanee, wife,	F.	1821, Feb. 17,	"	"		
138	Ladna Karslag,	F.	1824, Aug. 7,	"	"		

on 1871.

1 second wife, Mary James.

1 second wife, Frances A. Lefflog.

Census of the Inhabitants of Gay Head.

No.	Name.	Sex.	When Born.	Where Born.	Residence.	Condition.	Occupation.
200	Brimley Dodge.	F.	1786, May 24.	Gay Head.	Gay Head.	Single.	
209	Maria Sewell.	F.	1809, about.	Hatfield.	"	"	
211	Josiah Cuff.	M.	1810, about.	Gay Head.	"	"	Seaman.
212	Fred Cuff.	M.	1820, about.	"	"	"	"
213	John A. Cole.	M.	1817, about.	"	"	Single.	"
214	Thirza R. Cole.	F.	1818, about.	"	"	"	"
215	Abel Manning.	M.	1814, about.	"	"	"	Seaman.
216	John Divine, Jr.	M.	1815, about.	"	"	"	"
217	Farnell Divine, ¹	F.	1833, April 25.	"	"	"	"
218	Daniel Nevers.	M.	1828, Sept. 4.	"	"	Anna Hovuit, ²	Seaman.
219	Ann Elizabeth Nevers, wife.	F.	1844, about.	"	"	"	"
220	Walter Scott Nevers.	M.	1864, about.	"	"	"	"
221	Eath Ellen Nevers.	F.	1866, May	"	"	"	"
222	Eunice Nevers.	F.	1870, Nov. 25.	Christiantown.	"	"	"
223	Johannes Salisbury.	M.	1824, about.	"	"	"	Seaman.
224	William Holmes.	M.	1811, about.	New York.	Gay Head.	Single.	"
225	Catharine Oocouch.	F.	1810, about.	"	New Bedford.	"	"
226	Georgiana Broncher.	F.	1833, about.	Gay Head.	"	"	"
227	Frisetia Williams.	F.	1832, Sept.	Chabbaquiddick.	"	m John Williams.	"

¹ Died December 27, 1869.

² Second wife, Ann Elizabeth Nevers.

Census of the Inhabitants of Gay Head—Concluded.

No.	When married.	PARENTAGE.		Parents residence.	Father's birthplace.	Mother's birthplace.	Father's occupation.
		Father.	Mother.				
200	-	Henry Dodge.	Abigail Oocouch.	Gay Head.	Gay Head.	Gay Head.	Seaman.
210	-	Herakiah Sewell.	Martha.	"	"	"	"
211	-	-	Aliah Cuff.	Gay Head.	"	"	"
212	-	David Cuff.	Mary Dodge.	"	Gay Head.	"	Seaman.
213	-	-	Fanny Cole.	"	"	"	"
216	-	-	"	"	"	"	"
218	-	Marshall Manning.	Hannah Talknot.	"	Wilton.	"	Seaman.
216	-	John Divine.	Farnell Divines.	"	Gay Head.	"	"
217	-	-	"	"	"	"	"
218	1868, Jan 18.	-	"	"	"	"	"
218	-	-	Louisa Nevers.	Gay Head.	"	Gay Head.	"
220	-	-	Ann Elizabeth Nevers.	"	"	"	"
221	-	-	"	"	"	"	"
222	-	-	"	"	"	"	"
223	-	-	Abiah Fy Knish.	"	"	"	"
224	-	William Holmes.	Hephah Oocouch.	Gay Head.	"	"	"
225	-	-	Rathsho Oocouch.	"	"	"	"
226	-	-	"	"	"	"	"
227	-	-	Detsey Bows.	Gay Head.	"	Gay Head.	"

Census of the Inhabitants of Gay Head—Continued.

No.	When married	PARENTAGE.		Father's residence.	Father's birthplace.	Mother's birthplace.	Father's occupation.
		Father.	Mother.				
167		Simon Johnson, 2d.	Emily G. Salisbury.	Gay Head.	Gay Head.	Gay Head.	Seaman & farmer.
168		Thaddeus Cook.	"	"	"	"	"
169		"	"	"	"	"	"
170		"	Christina P. Cook.	"	"	"	"
171	1817, June 6.	Thomas Diamond.	Rachel Fey.	Waterford, N.Y.	Waterford.	Waterford.	Farmer.
172		Marshall Manning.	Hannah Talknot.	Gay Head.	Faxton.	Gay Head.	Seaman.
173		James Diamond.	Abiah Manning.	"	Waterford, N.Y.	"	Laborer.
174		"	"	"	"	"	"
175		"	"	"	"	"	"
176		Lewis Cook.	"	"	Gay Head.	"	Seaman.
176		"	"	"	"	"	"
177		"	"	"	"	"	"
178		"	"	"	"	"	"
179		Nathan Francis.	Barah Amos.	"	"	"	"
180		"	Lova Weeks.	Christiantown.	"	Christiantown.	"
181		Thomas Cooper, (3)	Susannah Talknot.	Gay Head.	Gay Head.	Gay Head.	Seaman.
182		Prince Johnson.	Eliza Hazard.	"	"	Chilmark.	"
183	1876, Mar. 6.	"	"	"	"	"	"
184		Prince Johnson.	Eliza Hazard.	Gay Head.	Gay Head.	Chilmark.	Seaman.
185		"	Julia Ann Johnson.	"	"	"	"
186		Moses Fooknot.	"	"	"	"	"

187		"	Mary C. Jeffers.	Gay Head.	"	Gay Head.	"
184		Prince Johnson.	Eliza Hazard.	"	Gay Head.	Chilmark.	Seaman.
188		"	"	"	"	"	"
189		"	Rachel Turner.	"	"	"	"
191		Prince Johnson.	Eliza Hazard.	Gay Head.	Gay Head.	Chilmark.	Seaman.
192		"	"	"	"	"	"
193		Nathan Francis.	Barah Amos.	"	"	Gay Head.	"
94		Moses Howwassee.	Jane Tallman.	"	"	"	"
196		"	Margaret Howwassee.	"	"	"	"
198		Salisbury Wamsley.	Jane Robbins.	Gay Head.	Rochester.	Marshpee.	Carpenter.
197	1868, April 22.	William Weeks.	Elizabeth Talknot.	"	Gay Head.	Gay Head.	Seaman.
198		"	Betsy Hunker.	"	"	"	"
199		Tristram Weeks.	Tameon Hunker.	"	Gay Head.	"	Seaman & farmer.
200		"	"	"	"	"	"
201		"	Anna Cooper.	"	"	"	"
202	1884, Dec. 1.	David Bowyer.	Jane HONEY.	Alexandria, Va.	Fairfax Co., Va.	Fairfax Co., Va.	"
203		"	R. Catharine Francis.	Chilmark.	"	Gay Head.	"
204		"	Olive B. Francis.	"	"	"	"
205		Samuel Rose.	Julianah House.	Taunton.	"	Connecticut.	Laborer.
206		Salisbury Wamsley.	Jane Robbins.	Gay Head.	Rochester.	Marshpee.	Seaman & farmer.
207		Isaac D. Rose.	Harriet A. Wamsley.	"	Taunton.	"	"
208		"	Frances A. Rose.	"	"	Taunton.	"

Census of the Inhabitants of Gay Head

No.	Name	Sex	When Born.	Where Born.	Residence.	Condition.	Occupation.
167	Leroy Avery Johnson,	M.	1867, June 1,	Gay Head,	Gay Head,	-	-
168	Christina Peters Cook,	F.	1853, Dec. 18,	"	"	-	-
169	Ada Cook,	F.	1859, Jan. 21,	"	"	-	-
170	Messilla Cook,	M.	1868, June 22,	"	"	-	-
171	James Diamond,	M.	1825, May 10,	Waterford, N. Y.,	"	m Adiah Cook,	Laborer.
172	Abiah Manning, wife,	F.	1831, Mar. 18,	Gay Head,	"	m Lewis Cook, ¹	-
173	Rachel Diamond,	F.	1857, June 8,	"	"	-	-
174	Enetta Ella Diamond,	F.	1862, July 18,	"	"	-	-
175	Lewis Cook,	M.	1848, Jan. 11,	"	"	-	Seaman.
176	William Harrison Cook,	M.	1849, June 2,	"	"	-	"
177	Faustina Frances Cook,	F.	1853, May 1,	"	"	-	-
178	Maria Inana Cook,	F.	1856, Sept. 23,	"	"	-	-
179	Jonathan Francis,	M.	1800, Mar. 1,	"	"	m Mary Ann Weeks,	Seaman and farmer.
180	Mary Ann Weeks, wife,	F.	1804, Oct. 25,	Christiantown,	"	-	-
181	Thomas Cooper,	M.	1803, May 8,	Gay Head,	"	Single,	Laborer.
182	William Francis Johnson,	M.	1850, Mar. 15,	"	"	-	Seaman.
183	Moses Pecknet,	M.	1841, about,	-	"	m Julia Ann Johnson,	"
184	Julia Ann Johnson, wife,	F.	1848, May 11,	Gay Head,	"	-	-
185	Elna Ann Johnson,	F.	1868, Jan. 7,	"	"	-	-
186	Nathan Elton Pecknet,	M.	1870, May 12,	"	"	-	-

187	Mary Ellen Peters,	F.	1864, Dec 17,	Gay Head,	Gay Head,	-	-
188	Peter Johnson,	M.	1832, Oct. 12,	"	"	m Rachel Turner,	Seaman.
189	Rachel Turner, wife,	F.	1842, about,	Plymouth,	Plymouth,	-	-
190	Nathaniel Turner,	M.	1840, Oct. 1,	"	"	-	-
191	Nathan Johnson,	M.	1840, about,	Gay Head,	Gay Head,	-	Seaman.
192	Algerne Sidney Johnson,	M.	1844, about,	Chilmark,	"	Single,	"
193	Jan Wamsley,	F.	1798, Feb 12,	Gay Head,	"	Wid. of Hebron Wamsley,	-
194	Esther Howwaswee,	F.	1794 Oct. 8,	"	"	Single,	-
195	Zacchens Howwaswee,	M.	1792, Jan. 11,	"	"	m Elizabeth Wamsley,	Seaman and farmer
196	Elizabeth Wamsley,	F.	1809 Dec. 26,	"	"	-	-
197	Tristram Weeks,	M.	1800 Dec 25,	"	"	m Mary Ann Cole, ²	Seaman and farmer
198	Tamson Bunker, 3d wife,	F.	1803 July 12,	"	"	m William Thomas,	-
199	Elizabeth Weeks,	F.	1810, Feb 28,	"	"	Single,	-
200	Tristram Weeks, Jr.,	M.	1820, Aug 28,	"	"	-	Seaman.
201	Thomas Green Cooper,	M.	1827 about,	"	"	-	-
202	James Sawyer,	M.	1812 Feb. 12,	Alexandria, Va.	"	m Elizabeth, ³	-
203	Olive B Francis, 2d wife,	F.	1818 Sept 27,	Chilmark,	"	-	-
204	Carolina Francis,	F.	1811 Jan 24,	"	"	-	-
205	Isaac D. Rose,	M.	1811 Nov 11,	Taunton Mass	"	m Prudence A Wamsley, ⁴	Seaman and farmer
206	Harriet A. Wamsley, 2d wife,	F.	1818, Sept 2,	Gay Head,	"	-	-
207	Harriet Etta Rose,	F.	1820, Feb. 15,	"	"	-	-
208	Minocla Cassandra Rose,	F.	1833, Nov 5,	Boston,	"	-	-

¹ 3d husband, James Diamond. ² 2d wife, Margaret Francis; 3d wife, Tamson Bunker. ³ 2d husband, Tristram Weeks. ⁴ 2d wife, Olive B. Francis

Census of the Inhabitants of Guy Head—Continued.

No.	When married.	PARENTAGE.		Parents' residences.	Father's birthplace.	Mother's birthplace.	Father's occupation.
		Father.	Mother.				
117		Thomas Manning,	Rosebella M. Howwaswee,	Gay Head,	Gay Head,	Gay Head,	Seaman & farm
118		"	"	"	"	"	"
119		"	"	"	"	"	"
120		"	"	"	"	"	"
121		"	"	"	"	"	"
122	1848, Feb. 23	John Randolph,	Margaret ———,	Philadelphia,	San Domingo,	San Domingo,	Laborer.
123		"	Elijah Swasey,	Gay Head,	"	Gay Head,	"
124		John F. Randolph,	Serena C. S. Swasey,	"	San Domingo,	"	Seaman.
125		"	Margaret P. Randolph,	"	"	"	"
126		William Morton,	Patience Mingo,	"	"	"	Seaman.
127		"	"	"	"	"	"
128		Marshall Manning,	Hannah Talknot,	"	Easton,	Gay Head,	Seaman.
129		"	"	"	"	"	"
130		Alvin Manning,	Roxa Lowe,	"	Gay Head,	Marshpee,	Seaman & farm
131		Thomas Cooper, (2)	Susannah Talknot,	Gay Head,	"	Gay Head,	Farmer.
132		"	Frances David,	"	"	"	"
133		"	"	"	"	"	"
134		"	Elizabeth N. Cooper,	"	"	"	"

135	1878, Mar. 2,	George David,	Louisa Cooper,	Gay Head,	"	Gay Head,	Farmer.
136		"	"	"	"	"	"
137		Josiah Howwaswee,	Desire Ompany,	"	Marshpee,	"	Laborer.
138		Josiah Jerrett,	Olive Howwaswee,	"	"	"	"
139		"	Sally Gershom,	"	"	"	"
140		"	"	"	"	"	"
141		Abram Rodman,	Mary Trino,	Rhode Island,	Rhode Island,	Rhode Island,	Farmer.
142		"	"	"	"	"	"
143	1882, May 16,	George David,	Louisa Cooper,	Gay Head,	"	Gay Head,	Seaman & farm
144		Abram Rodman,	Charlotte Wamsley,	"	Rhode Island,	"	"
145		"	"	"	"	"	"
146		"	"	"	"	"	"
147		"	Rosanna G. David,	"	"	"	"
148		Salsbury Wamsley,	Jane Robbins,	"	Rochester,	Middleborough,	"
149		Hebron Wamsley,	Eleanor Peters,	"	Middleborough,	Gay Head,	Carpenter.
150		"	"	"	"	"	"
151		"	"	"	"	"	"
152		"	"	"	"	"	"
153		"	"	"	"	"	"
154		"	"	"	"	"	"
155	1882, June 18,	John Spencer,	Mary James,	Christiantown,	Cape de Verde,	Christiantown,	Seaman.
156		Hebron Wamsley,	Eleanor Peters,	Gay Head,	Middleborough,	Gay Head,	Carpenter.
157		Francis Spencer,	Amy Wamsley,	"	Christiantown,	"	Seaman.
158		"	"	"	"	"	"
159		"	Hannah Johnson,	"	"	"	"
160		John Salsbury,	Abiah Johnson,	"	"	"	"
161		Simon Johnson, 11,	Fanny G. Salsbury,	"	Gay Head,	"	Seaman & far
162		"	"	"	"	"	"

Census of the Inhabitants of Gay Head.

No.	Name.	Sex.	When Born.	Where Born.	Residence.	Condition.	Occupation.
125	Thomas Stewart Manning.	M.	1822, June 22,	Gay Head,	Gay Head,	-	-
126	Robert John Manning.	F.	1822, May 15,	"	"	-	-
127	Mary Marshall Manning.	F.	1822, Mar. 10,	"	"	-	-
128	Mortimer Ann Manning.	F.	1824, Feb. 24,	"	"	-	-
129	Jessie Franklin Manning.	M.	1828, Feb. 2,	"	"	-	-
130	Samuel M. Manning.	F.	1828, May 28,	"	"	-	-
131	Francis Manning.	M.	1870, June 11,	"	"	-	-
132	John P. Randolph.	M.	1818, Dec. 23,	San Domingo,	"	m Serena C. B. Swasey,	Seaman.
133	Serena C. Swasey, wife.	F.	1819,	Gay Head,	"	-	-
134	Margaret F. Randolph.	F.	1822, May 9,	"	"	-	-
135	John P. Randolph, 2d.	M.	1824, Jan. 23,	"	"	-	-
136	William Morton.	M.	1825, June 2,	"	"	Single,	Seaman.
137	Robert Henry Morton.	M.	1826, Dec. 31,	"	"	"	"
138	Alvin Manning.	M.	1816, May 20,	"	"	m Roxa Lowe, ¹	Farmer.
139	Mary Keat, wife.	F.	1823, about	Vermont,	"	-	"
140	Marshall Manning.	M.	1824, June	Gay Head,	"	-	Seaman.
141	Louisa David.	F.	1811, April 8,	"	"	Widow of Geo. David,	-
142	George Henry David.	M.	1822, April 23,	"	"	-	-
143	Alexander David.	M.	1822, Nov. 18,	"	"	-	-
144	James H. Cooper.	M.	1827, Jan. 25,	"	"	-	-

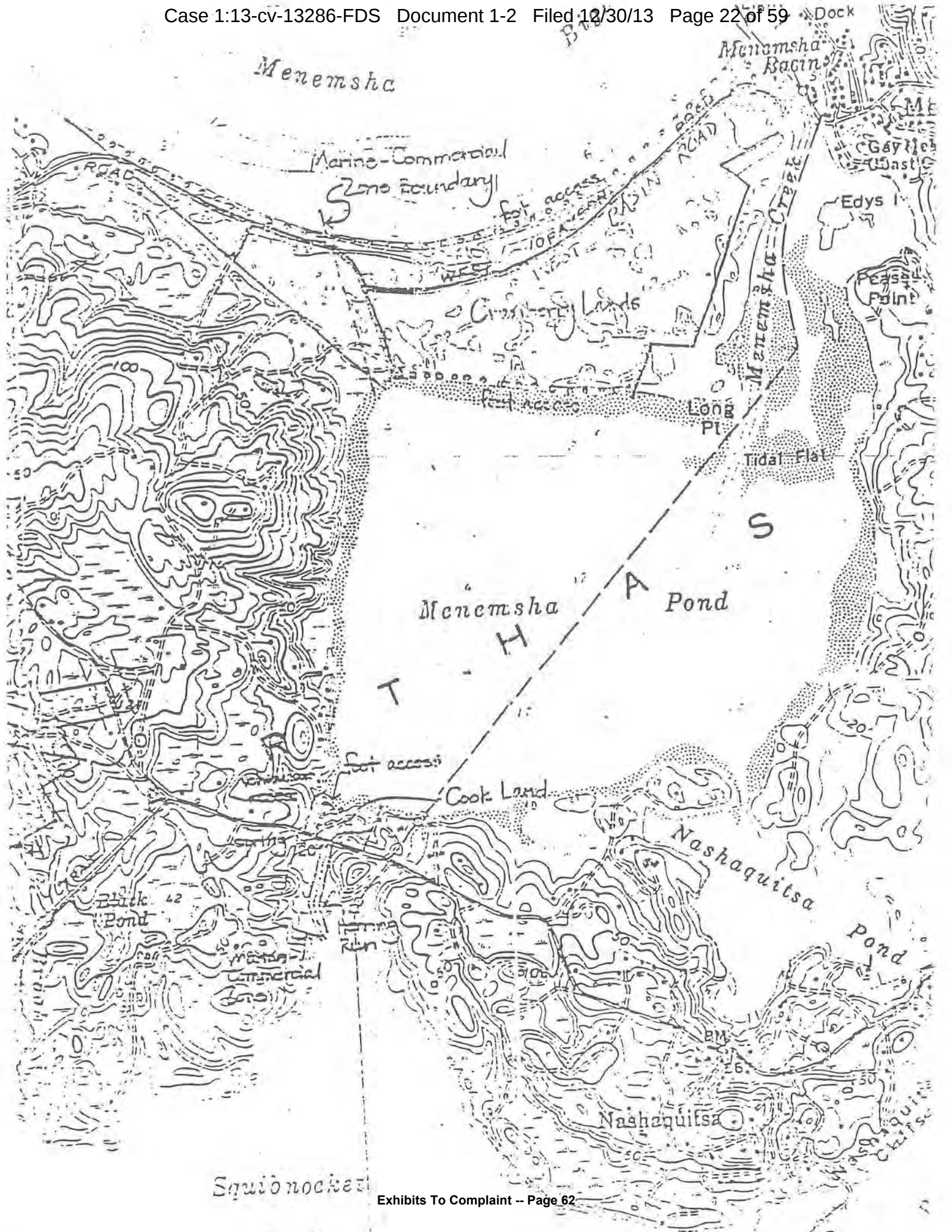
145	Alexander Nevins.	M.	1827, Oct. 19,	Gay Head,	Gay Head,	m Prudence David,	Seaman.
146	Prudence David, wife.	F.	1826, Jan. 13,	"	"	m William Kings, ²	-
147	Oliver Jerrett.	F.	1820, Aug. 30,	"	"	Single	Laborer.
148	Jediah Jerrett.	M.	1822, Nov. 3,	"	"	"	Seaman.
149	Abraham Jerrett.	M.	1821, about,	"	"	m Charlotte Wamsley, ³	Seaman and farmer.
150	Abram Rodman.	M.	1809, Sept. 30,	Rhode Island,	"	m Joel Jerrett, ⁴	Seaman.
151	Noemias Gershom David, 2d wife.	F.	1829, April 28,	Gay Head,	"	-	-
152	Benjamin Ephraim Rodman.	M.	1824, Feb. 18,	"	"	-	-
153	Elizabeth V. Rodman.	F.	1830, Mar. 9,	"	"	-	-
154	Abraham Lincoln Rodman.	M.	1870, Mar. 16,	"	"	Widower,	Carpenter & farmer.
155	Hebron Wamsley.	M.	1818, Jan. 17,	Middleborough,	"	-	-
156	Hebron Wamsley, Jr.	M.	1820, Mar. 31,	Gay Head,	"	-	-
157	Larissa M. Wamsley.	F.	1827, Feb. 6,	"	"	-	-
158	Valentine Wamsley.	M.	1827, Aug. 21,	"	"	-	-
159	Priscilla R. Wamsley.	F.	1825, Dec. 22,	"	"	m Amy Wamsley,	Seaman.
160	Francis Spencer.	M.	1826, June 9,	Christiantown,	"	-	-
161	Amy Wamsley, wife.	F.	1-15, Dec. 13,	Gay Head,	"	-	-
162	Celestine W. Spencer.	F.	1870, May 21,	"	"	m Emily C. Cook, ⁵	Seaman & laborer.
163	Simon Johnson, 2d.	M.	1811, Jan. 6,	"	"	m Harriett Cook, ⁶	-
164	Emily G. Salisbury, wife.	F.	1833, June 21,	"	"	-	-
165	Hattie Mary Abby Johnson.	F.	1863, May 23,	"	"	-	-
166	Hannah Johnson.	F.	1865, Sept. 26,	"	"	-	-

¹ 2d wife, Mary Keat. ² 2d husband, James Jerrett. ³ 2d husband, Abram Rodman. ⁴ 2d husband, Simon Johnson.

Census of the Inhabitants of Gay Head—Continued.

No.	When born.	PARENTAGE.		Parents' real locs.	Father's birthplace.	Mother's birthplace.	Father's occupation.
		Father.	Mother.				
83		Leander Bassett, . . .	Huldah Jeffers, . . .	Gay Head, . . .	Farm Neck, . . .	Gay Head, . . .	Seaman.
84	1828, Jan. 23,	Leander Bassett, . . .	Huldah Jeffers, . . .	Gay Head, . . .	Farm Neck, . . .	Gay Head, . . .	Seaman & farmer.
85	- - -	Samuel Smalley, . . .	Julia Ann Bassett, . . .	" . . .	New York, . . .	" . . .	" . . .
86	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
87	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
88	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
89	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
90	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
91	- - -	Johnson Peters, . . .	Mary Cooper, . . .	Gay Head, . . .	Chalbaquiddick, . . .	Gay Head, . . .	" . . .
92	- - -	John Anthony, . . .	Betsy Mingo, . . .	" . . .	Africa, . . .	Christiantown, . . .	" . . .
93	1828, Jan. 16,	" . . .	" . . .	Sandwich Isl., . . .	Sandwich Isl., . . .	Sandwich Isl., . . .	" . . .
94	- - -	John Anthony, . . .	Betsy Mingo, . . .	Gay Head, . . .	Africa, . . .	Christiantown, . . .	Seaman & farmer.
95	- - -	John H. Laley, . . .	Rachel Anthony, . . .	" . . .	Sandwich Isl., . . .	" . . .	" . . .
96	- - -	" . . .	Sarah Johnson, . . .	" . . .	" . . .	" . . .	" . . .
97	1861, Nov. 21,	William Mingo, . . .	Oliva Howwaswer, . . .	New Bedford, . . .	Full River, . . .	Gay Head, . . .	Cabinet-maker.
98	- - -	Amos Jeffers, . . .	Bethiah Cooper, . . .	Gay Head, . . .	Middleborough, . . .	" . . .	Seaman.
99	- - -	" . . .	Mary C. Jeffers, . . .	" . . .	" . . .	" . . .	" . . .
100	1837, Oct. 7,	Samuel Peters, . . .	Fatty Johnson, . . .	Chalbaquiddick, . . .	Marshfield, . . .	Chalbaquiddick, . . .	Seaman.
101	- - -	Thomas Cooper, (1) . . .	Mary Harris, . . .	Gay Head, . . .	Gay Head, . . .	Gay Head, . . .	" . . .
102	- - -	Johnson Peters, . . .	Mary Cooper, . . .	" . . .	Chalbaquiddick, . . .	" . . .	Seaman & farmer.

103	- - -	Jonathan Cuff, . . .	Hannah Peters, . . .	Gay Head, . . .	Gay Head, . . .	Gay Head, . . .	Seaman & farmer.
104	- - -	Johnson Peters, . . .	Mary Cooper, . . .	" . . .	Chalbaquiddick, . . .	" . . .	" . . .
105	- - -	Samuel Ross, . . .	Rehannah Dowse, . . .	Taunton, . . .	" . . .	Connecticut, . . .	Seaman & farmer.
106	- - -	Samuel Peters, . . .	Sarah Jeffers, . . .	Gay Head, . . .	Gay Head, . . .	Gay Head, . . .	" . . .
107	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
108	- - -	" . . .	" . . .	" . . .	Middleborough, . . .	" . . .	" . . .
109	1839, May 7,	Amos Jeffers, . . .	Bethiah Cooper, . . .	" . . .	" . . .	" . . .	" . . .
110	- - -	London Corsey, . . .	Julia F. Jeffers, . . .	Christiantown, . . .	" . . .	" . . .	" . . .
111	1859, Feb. 3,	Thomas James, . . .	Judith Weeks, . . .	" . . .	Christiantown, . . .	Gay Head, . . .	Farmer.
112	- - -	William Spencer James, . . .	Ava Divine, . . .	" . . .	" . . .	" . . .	" . . .
113	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	Seaman & farmer.
114	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
115	1857, Apr. 12,	Amos Jeffers, . . .	Bethiah Cooper, . . .	Gay Head, . . .	Gay Head, . . .	" . . .	" . . .
116	- - -	Henry James, . . .	Mary C. Peters, . . .	Christiantown, . . .	Christiantown, . . .	Gay Head, . . .	Farmer.
117	- - -	Thomas Jeffers, . . .	Lucina James, . . .	Gay Head, . . .	Gay Head, . . .	" . . .	" . . .
118	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
119	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
120	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
121	- - -	" . . .	" . . .	" . . .	" . . .	" . . .	" . . .
122	1856, Nov. 21,	Marshall Manning, . . .	Hannah Lakin, . . .	Gay Head, . . .	Gay Head, . . .	Gay Head, . . .	Seaman & farmer.
123	- - -	" . . .	Rebecca Howwaswer, . . .	" . . .	" . . .	" . . .	" . . .
124	- - -	Thomas Manning, . . .	Rosabella M. Howwaswer, . . .	" . . .	" . . .	" . . .	" . . .



Census of the Inhabitants of Gay Head.

No.	Name.	Sex	When Born.	Where Born.	Residence	Condition.	Occupation.
209	Henry Dodge,	F.	1780, May 21	Gay Head	Gay Head.	Single.	
210	Maria Sewell,	F.	1789, about	Hatfield			
211	Joseph Cuff,	M.	1800, about	Gay Head			Seaman
212	Paul Cuff,	M.	1800, about.				
213	John A. Cole,	M.	1800, about.	"		Single.	"
214	Theresa R. Cole,	F.	1800, about	"			"
215	Abel Manning,	M.	1811, about	"			Seaman.
216	John Divine, Jr.,	M.	1800, about.	"			"
217	Fergell Divine, ¹	F.	1830, April 25,	"			"
218	Daniel Nevers,	M.	1820, Sept. 4,	"		Anna Hosquit	Seaman.
219	Ann Elizabeth Nevers, wife,	F.	1811, about,	"			
220	Walter Scott Nevers	M.	1840, about.				
221	Ruth Ellen Nevers,	F.	1850, May				
222	Eunice Nevers,	F.	1870, Nov. 25,	Christiantown,			
223	Jophonas Salisbury,	M.	1820, about.	"			Seaman.
224	William Holmes,	M.	1811, about,	New York.	Gay Head.	Single.	
225	Catharina Croocuch,	F.	1810, about,		New Bedford.		
226	Georgiana Brucher,	F.	1823, about	Gay Head.			
227	Frisella Williams,	F.	1820, Sept.	Chabbanquidick,		m. John Williams,	

¹ Died December 27, 1897

² Second wife Ann Elizabeth Nevers.

Census of the Inhabitants of Gay Head—Concluded.

No.	When married.	Father.	Mother	Parents residence	Father's birthplace.	Mother's birthplace	Father's occupation.
209		Henry Dodge,	Abigail Croocuch,	Gay Head.	Gay Head	Gay Head.	Seaman.
210		Herkliah Sewell,	Martha,				"
211			Atiah Cuff,	Gay Head.	"		"
217		David Cuff,	Mary Dodge,		Gay Head		Seaman
213			Fauny Cole				
216							
218		Marshall Manning,	Hannah Talknot		ington.		Seaman
216		John Divine	Patrici Jones		Gay Head		
217							
218	1840, Jan. 10,						
219			Emma Nevers,	Gay Head		Gay Head.	
220			Ann Elizabeth Nevers				
221							
222			Alice Talknot				
224		William Holmes,	Hannah Croocuch	Gay Head			
225			Ruth-hannah Croocuch				
226							
227			Hester Bowes	Gay Head		Gay Head	

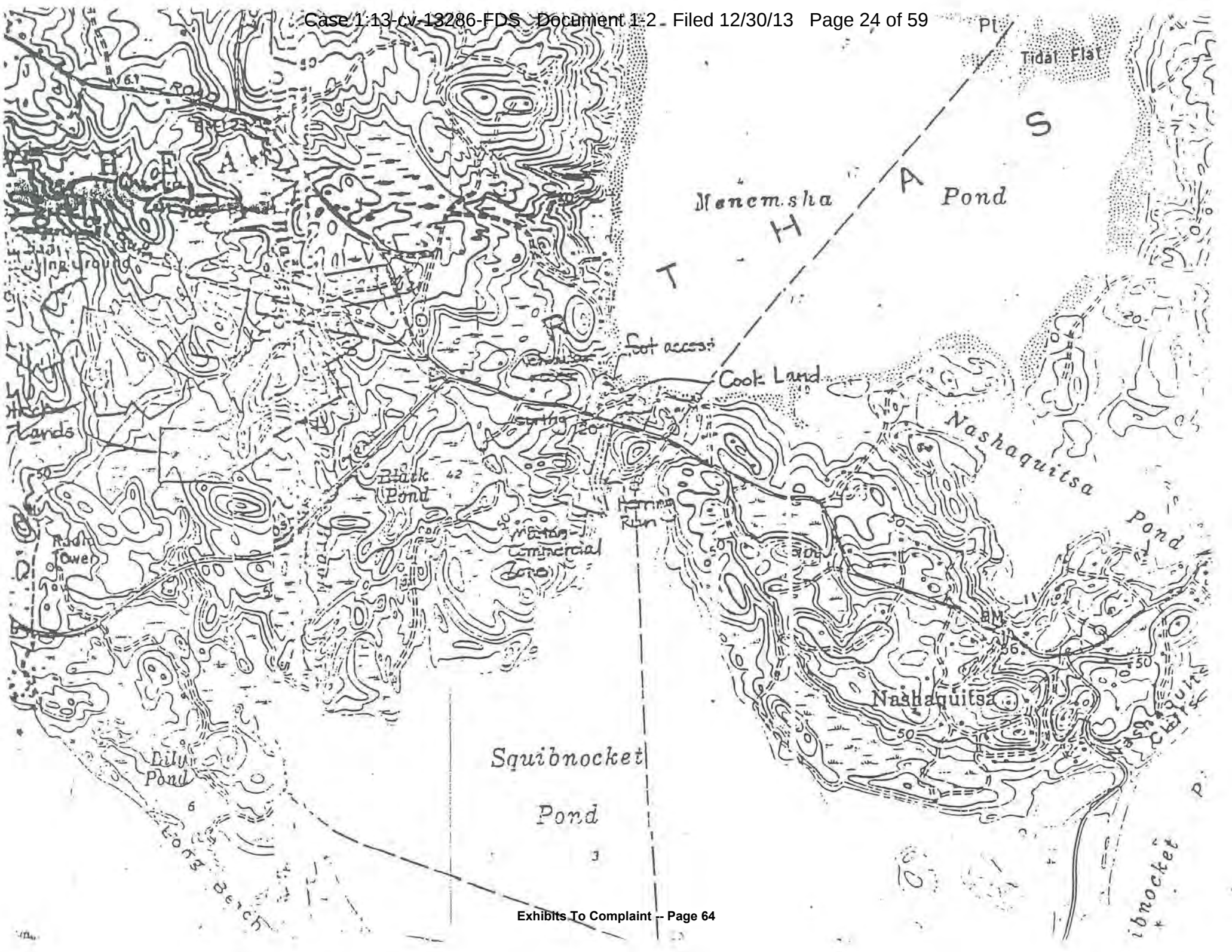




EXHIBIT B

WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
ORDINANCE NO. 2011-01

TRIBAL GAMING ORDINANCE
WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
ORDINANCE

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SECTION 1. IN GENERAL

1.1. Definitions.

Unless a different meaning is set forth below, the terms used in this Ordinance shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701 et seq., and its implementing regulations, 25 C.F.R. § 500 et seq., as amended from time to time.

(a) "Applicant" means any person, partnership, corporation, joint venture or other entity applying for any license described in or required by this Ordinance.

(b) "Application" means a request for the issuance of a license described in or required by this Ordinance.

(c) "Cheat" or "cheating" means to: employ or attempt to employ any device, scheme, or artifice to defraud any other participant or the operator; engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator; engage in any act, practice, or course of operation while participating in Gaming with the intent of defrauding or deceiving any other participant or the operator to gain an advantage in the game over the other participant or operator; altering the selection of criteria which determine the result of the game or the amount or frequency of payment in a game; aid, abet or conspire to commit any of the foregoing conduct.

(d) "Cheating device" means any machine, mechanism, equipment, card, die, or other device used, or attempted to be used, to Cheat.

(e) "Class I Gaming" means Class I Gaming as defined at 25 U.S.C. § 2703(6), and any regulations promulgated thereunder.

(f) "Class II Gaming" means Class II Gaming as defined at 25 U.S.C. §2703(7), and any regulations promulgated thereunder.

(g) "Commission" means the Wampanoag Tribe of Gay Head (Aquinnah) Gaming Commission.

(h) "Commissioner" means an individual member of the Wampanoag Tribe of Gay Head (Aquinnah) Gaming Commission.

(i) "Council" or "Tribal Council" means the Tribal Council of the Wampanoag Tribe of Gay Head (Aquinnah).

(j) "Gaming" means any Class I Gaming, Class II Gaming or Class III Gaming activity, individually or collectively, whether authorized or unauthorized.

(k) "Gaming Device" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, used remotely or directly in connection with any gaming which affects the result of a wager by determining or predicting the outcome of such game or the odds of winning or losing such game. The term shall be broadly construed to promote the purposes of this Ordinance and shall also include any devices, machines, components or contrivances which do or are capable of affecting, in any way, the playing of any game.

(l) "Gaming Facility" means the room or rooms, building or buildings, or portions thereof located on Indian Lands in which Gaming as authorized by this Ordinance is operated or conducted .

(m) "Gaming Operation" means each economic entity that is owned by the Tribe and which operates the games, receives the revenues, issues the prizes, and pays the expenses.

(n) "IGRA" shall mean the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. § 2701 et seq., as currently enacted and any amendments thereto.

(o) "Indian Lands" means:

(1) all lands within the limits of the Tribe's reservation;

(2) any lands title to which is held in trust by the United States for the benefit of the Tribe or individual tribal member of the Tribe, or held by the Tribe or individual member of the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power; and

(3) for all lands acquired into trust for the benefit of the Tribe after October 17, 1988, lands that meet the requirements set forth in 25 U.S.C. § 2719.

(p) "Key Employee" means:

(1) A person who performs one or more of the following functions:

- (i) Bingo caller,
- (ii) Counting room supervisor,
- (iii) Chief of security,

- (iv) Custodian of gaming supplies or cash,
- (v) Floor manager,
- (vi) Pit boss,
- (vii) Dealer,
- (viii) Croupier,
- (ix) Approver of credit, or
- (x) Custodian of gambling terminals or other devices operated by the management of any gaming operation, including persons with access to cash and accounting records for such devices;

(2) If not otherwise included, any other person whose total cash compensation from employment in any Gaming Operation exceed \$50,000.00 per year;

(3) If not otherwise included, the four most highly compensated persons in any gaming operation; or

(4) Any other employee of any Gaming Operation that the Commission designates by its rules as a Key Employee.

(q) "License" means any authorization granted by the Commission, pursuant to this Ordinance, to any person that is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such license for the benefit of the licensee.

(r) "Licensee" means any person who has been issued a valid and current license pursuant to the provisions of this Ordinance.

(s) "Net Revenue" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total Operating Expenses, excluding management fees.

(t) "NIGC" means the National Indian Gaming Commission.

(u) "Operating Expense" means any expense incurred in the operation of gaming which by operation of generally accepted accounting principles, consistently applied, is so treated.

(v) "Ordinance" means this Ordinance, which is the Tribal Gaming Ordinance of the Wampanoag Tribe of Gay Head (Aquinnah), as amended from time to time by the Tribal Council.

(w) "Patron" means any person who participates in gaming or who is physically present on premises where gaming is conducted.

(x) "Person" means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.

(y) "Primary Management Official" means:

(1) The person(s) having management responsibility over all or any part of any Gaming Operation;

(2) Any person who has authority:

(i) To hire and fire employees of a Gaming Operation; or

(ii) To establish working policy for a Gaming Operation;

(3) The chief financial officer or other person who has financial management responsibility for any Gaming Operation; or

(4) Any person the Commission designates by Commission Regulations as a Primary Management Official.

(z) "Regulations" means any regulations governing the conduct of games or the control of internal fiscal affairs of Gaming Operations as may be promulgated by the Commission established pursuant to this Ordinance.

(aa) "Supplier of Gaming Goods and Services" means any person who manufactures, sells, leases, distributes, supplies or makes modifications to any gaming goods and services including, but not limited to any Gaming Device of the Tribe and all Persons holding any direct or indirect financial interest in such supplier.

(bb) "Tribe" means, and "Tribal" shall refer to, the Wampanoag Tribe of Gay Head (Aquinnah).

1.2 Short Title.

This Ordinance shall be known and may be cited as the Wampanoag Tribe of Gay Head (Aquinnah) Gaming Ordinance.

1.3 Statement of Purpose.

An Ordinance to govern and regulate the operation, conduct and playing of (1) Class I Gaming, and (2) Class II Gaming, as defined by IGRA, so that revenue may be produced for the support of Tribal government programs, to promote economic development, and for the health, education and welfare of the Tribe and its members. The Tribal Council of the Wampanoag Tribe of Gay Head (Aquinnah) enacts this Ordinance in order to regulate all forms of Gaming on the Tribe's Indian Lands.

1.4 Public Policy.

(a) All Gaming which is conducted within the Tribe's Indian Lands and which is otherwise authorized by applicable law shall be regulated and licensed pursuant to the provisions of this Ordinance.

(b) The Tribal Council hereby finds and declares it to be the public policy of the Tribe that:

(1) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and that gaming is free from criminal and corruptive elements.

(2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed Gaming Facilities and the manufacture or distribution of gaming devices.

(3) All Primary Management Officials, Key Employees, Gaming Facilities and Suppliers of Gaming Goods and Services must therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Tribe.

1.5 Class I Gaming Authorized.

Class I Gaming is hereby authorized to be conducted on lands within the Tribe's Indian Lands; provided, however, that such Class I Gaming shall be conducted only in accordance with the provisions of this Ordinance, the Regulations, IGRA, and its implementing regulations, as amended from time to time.

1.6 Class II Gaming Authorized.

Class II Gaming is hereby authorized to be conducted on lands within the Tribe's Indian Lands; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this Ordinance, the Regulations, IGRA, and its implementing regulations, as amended from time to time.

1.7 Location of Gaming.

The Commission shall ensure that (i) such Gaming as it authorizes and licenses pursuant to this Ordinance is conducted on the Tribe's Indian lands, and (ii) such Gaming is not otherwise specifically prohibited by applicable federal law.

1.8 Ownership of Gaming.

The Tribe shall have the sole proprietary interest, authority and responsibility for the conduct of Gaming in any Gaming Operation authorized by this Ordinance. Individually owned Gaming Operations are prohibited.

1.9 Use of Gaming Revenue.

(a) Net Revenue from any Gaming authorized under this Ordinance shall be used only for the following purposes:

(1) to fund Tribal government operations and programs;

- (2) to provide for the general welfare of the Tribe and its members;
- (3) to promote Tribal economic development;
- (4) to make donations to charitable organizations; or
- (5) to help fund operations of local government agencies of the Commonwealth of Massachusetts and its political subdivisions.

(b) The Tribe may make per capita payments of Net Revenue from Gaming to Tribal members as long as such payments are in accordance with IGRA, 25 U.S.C. § 2710(b)(3).

1.10 Unauthorized Gaming.

Any person who commits any act of unauthorized Gaming on the Tribe's Indian Lands shall be guilty of a crime and shall be prosecuted in any court of competent jurisdiction.

1.11 Conduct of Games.

All Gaming shall be conducted by persons duly licensed by the Commission. No person licensed by the Commission shall engage in, conduct or condone any Gaming that is not conducted in accordance with such Regulations governing the conduct of games as may be promulgated by the Commission under this Ordinance.

1.12 Applicability of Ordinance.

Unless specifically indicated otherwise, all provisions of this Ordinance shall apply to all Gaming on the Tribe's Indian Lands.

1.13 Interpretation.

This Ordinance shall be deemed an exercise of the sovereign power of the Tribe and all provisions of this Ordinance shall be liberally construed for the accomplishment of the statement of purpose.

1.14 Cooperation with Law Enforcement.

Tribal officials may cooperate with law enforcement officials of the Commonwealth of Massachusetts, the Bureau of Indian Affairs, the Federal Bureau of Investigation, and other law enforcement agencies, to assure that fair, honest and efficient Gaming is conducted by the Tribe.

SECTION 2. TRIBAL GAMING COMMISSION

2.1 Establishment.

(a) The Wampanoag Tribe of Gay Head (Aquinnah) Gaming Commission is hereby established. The Commission shall consist of three (3) members appointed by majority vote of the Tribal Council. There shall be among them a Chairperson, Vice-Chairperson, and at least one additional Commissioner, all as designated by a majority vote of the Tribal Council.

(b) Terms of Office for Commissioners shall be as follows: the Chair shall serve an initial term of three years, with subsequent Chairs serving three-year terms. The Vice-Chair shall serve an initial term of two (2) years, with subsequent Vice-Chairs serving three-year terms. The additional Commissioner shall serve an initial term of one year, with subsequent Commissioners serving three-year terms. Any Commissioner may be removed from office prior to the end of the Commissioner's term by the Tribal Council only pursuant to the process set forth in 2.17.

(c) Vacancies on the Commission shall be filled within thirty (30) calendar days by nominations and a majority vote of the Council.

2.2 Licensing of Commissioners.

(a) Requirements; application. Nominees for the position of Commissioner must meet the requirements of Sections III and IV of this Ordinance and must obtain a License from the Tribal Council prior to assuming office. A Commissioner shall complete an Application for a License and shall be subject to the same background investigation as a Key Employee and Primary Management Official under this Ordinance. Such background investigation shall be performed at the direction of the Tribal Council by a duly appointed agent. Upon completion of the background investigation, the Tribal Council shall, by majority vote, (i) either approve by Council Resolution the appointment of a Commissioner or (ii) notice the Commissioner for a hearing before the Tribal Council. All investigations and hearings under this section shall be conducted as provided in Section 5 of this Ordinance, except that all hearings shall be conducted by and before the Tribal Council.

(b) Failure to meet License requirements or License violations. If the Tribal Council has reason to believe that a licensed Commissioner fails at any time to meet the License requirements under this Ordinance or that the Commissioner has violated this Ordinance, the Regulations, or IGRA and/or any regulations promulgated thereunder or any other applicable law, the Tribal Council shall direct an investigation to be conducted and may notice the Commissioner for a hearing before the Tribal Council. Any action to remove a Commissioner from office for failure to meet the License requirements, violation of this Ordinance, misfeasance, malfeasance, or nonfeasance in office shall be conducted in compliance with Section 2.17.

2.3 Restrictions on Commissioners.

No person shall serve on the Commission if such:

(a) Person's other employment or responsibilities conflict with, or could potentially conflict with, the duties and responsibilities of a member of the Commission;

(b) Person is an employee of any Gaming Operation or the person's other employment or responsibilities create an impression or appearance of impropriety in the fulfillment of the duties and responsibilities of a member of the Commission; or

(c) Person is a:

- (1) Member of the Tribal Council; or
- (2) Judge in any Tribal Court.

2.4 No Financial Interest in Gaming.

No Commissioner or any employee of the Commission:

- (a) Shall have any direct or indirect financial interest in a Gaming Operation other than his share of per capita payments;
- (b) Shall provide services to a Gaming Operation or have an interest in an entity (such as retail sales) that is subject to control or oversight by a Gaming Operation; or
- (c) Be directly or indirectly employed by any Gaming Operation.

2.5 Compensation of Commissioners.

Commissioners shall be compensated at a rate set forth in a uniform schedule established by the Tribal Council. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

2.6 Meetings.

- (a) Regular meetings. The Commission shall meet at least once a month at the Commission's main office or at any other designated meeting place.
- (b) Special meetings. Special meetings shall be convened by the Chair of the Commission as necessary to carry out the official duties of the Commission. Notice of each special meeting shall be given by the Commission Chair by telephone, mail, or electronic mail to each Commissioner. Notice shall be received at least 24 hours in advance of such meeting and shall include the date, time and place of the proposed meeting.
- (c) Emergency meetings. An emergency meeting may be called by the Chair of the Commission with less than 24 hours' notice; provided, however, that the Chair of the Commission shall use best efforts to ensure that all Commissioners are notified of such meeting, with as much prior notice as possible under the circumstances.
- (d) Meetings open to the public. All meetings of the Commission may be open to the public; provided, however, that the Commission may, in its discretion, close any portion of any meeting

to the public when discussing any information which the Commission deems confidential pursuant to the provisions of this Ordinance.

2.7 Commission Office.

The Commission shall maintain an office on the Tribe's Indian Lands that shall be the site at which the Commission's records and documents are maintained and stored on a permanent basis. No individual, except a Commissioner or a duly authorized employee or agent of the Commission, may possess a key to or may enter any Commission office without the permission of the Commission.

2.8 Quorum.

A quorum of the Commission shall consist of three (3) Commissioners. All decisions shall be made by a majority vote of a quorum of the Commission, unless indicated otherwise in this Ordinance.

2.9 Organization.

The Commission may organize itself into any functional division it deems necessary, and may alter such plan of organization as it deems expedient.

2.10 Recordkeeping.

(a) The Commission shall maintain complete records regarding the following:

- (1) License applications, financial statements, fingerprints, contracts, Licenses, suspension and cancellation notices and correspondences of all Applicants, including Key Employees, Primary Management Officials, Gaming Facilities and Suppliers of Gaming Goods and Services;
- (2) Commission Licenses;
- (3) Meeting minutes from all Commission meetings;
- (4) Compact compliance;
- (5) Reports relating to customer disputes, complaints or other issues that affect the integrity of any Gaming Operation;
- (6) Commission budget and expenditures;
- (7) Tribal Council communications and correspondences;
- (8) Gaming Device list; and

(9) Any other records or documents the Commission deems necessary or appropriate.

(b) No person may access such records except a person duly authorized by the Commission.

2.11 Reports.

The Commission shall submit written quarterly reports to the Council within 45 days after the end of each quarter. All such reports shall be kept confidential. Such reports shall contain the following information:

(a) Number and types of Licenses issued during the previous quarter;

(b) Information regarding License denials, suspensions or revocations;

(c) Reports of any events of noncompliance, breach or violations of this Ordinance, Regulations, Compact, IGRA and its implementing regulations, any License or any other applicable law or regulation; provided, however, that these reports are not the subject of, or relating to a pending investigation being conducted by the Commission, or a hearing before the Commission;

(d) A summary of any Commission travel and training;

(e) All other information which the Commission deems relevant in order to keep the Tribal Council informed and current on all Gaming regulatory matters.

All information pertaining to a pending investigation being conducted by the Commission or hearing before the Commission shall be kept confidential. Nothing in this section shall authorize or permit the Commission to provide the Tribal Council with any information pertaining to a pending investigation or hearing before the Commission. Any willful or careless breach of this provision shall present due cause for removal of the Commissioner from office. Claims of such disclosure shall be presented to the Commission within sixty (60) calendar days of the act complained of, or within sixty (60) calendar days after the disclosure becomes known, whichever is later.

2.12 Budget.

The Commission shall establish a budget for its operations, including personnel costs. It shall acquire such furnishings, equipment, supplies, stationery, books and other items as it deems necessary or desirable to carry out its functions, and incur such other expenses, within the limit of funds available to it, as it deems necessary.

2.13 Powers.

The Commission shall exercise all powers necessary to effectuate the purposes of this Ordinance.

In addition to and in conjunction with the other powers and responsibilities identified in this Ordinance, Regulations and other applicable laws and regulations, the Commission shall have the power to:

- (a) Promulgate Gaming Regulations;
- (b) Issue orders of temporary and permanent closure of gaming activities for violations of this Ordinance, Regulations, IGRA and its implementing regulations and any other applicable law;
- (c) Initiate civil and criminal actions in court to enforce provisions of this Ordinance, Regulations, IGRA and its implementing regulations and any other applicable law;
- (d) Approve, deny or revoke Gaming Licenses;
- (e) Make findings of suitability;
- (f) Impose fines or sanctions upon any Licensee, subject to the hearing process set forth in Section 5;
- (g) Monitor all Gaming conducted on the Tribe's Indian Lands on a continuing basis;
- (h) Ensure that background investigations are conducted as required by this Ordinance and the IGRA and its implementing regulations, as well as conduct such additional investigations as the Commission may deem necessary;
- (i) Demand access to and inspect, examine, copy and audit all papers, books and records concerning activities and revenues of any Gaming conducted on the Tribe's Indian Lands and any other matters necessary to carry out its duties under this Ordinance;
- (j) Conduct such hearings as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas for documents and/or to compel witnesses to appear at such hearings;
- (k) When information is received through audits or other investigations that indicates a violation of Tribal, or applicable federal law or state law, to treat as confidential and provide such information to the appropriate law enforcement officials;
- (l) Adopt a Wampanoag Tribe of Gay Head (Aquinnah) Gaming License application; and
- (m) Within the limits of its budget, employ and fix the salaries of, or contract for the services of, such professional, technical and operational personnel and consultants as the execution of the Commission's duties may require.

2.14 Promulgation of Gaming Regulations.

The Commission shall promulgate Regulations governing the conduct of all games authorized by a Compact or IGRA and its implementing regulations, including Regulations governing the equipment, (chips, cards, tiles, etc.), used in such games. These Regulations shall include Tribal Internal Control Standards that meet or exceed the requirements of the NIGC's Minimum Internal Control Standards as provided at 25 C.F.R. Part 543. The rules of each authorized game offered at any duly licensed Gaming Facility shall be posted in a conspicuous location in such Gaming Facility.

2.15 Access of Commission Officers.

The Commission shall be present in the Gaming Operations during all hours of operation through Commission Officers, and shall have immediate access to all areas of each Gaming Facility and Operation for the purpose of ensuring compliance with the provisions of this Ordinance, and applicable Tribal, federal and state laws. Any violation of this Ordinance or applicable Tribal, federal and state laws by the Tribe, a Gaming Operation employee or any other person shall be reported immediately to the Commission.

2.16 Certification of Gaming Devices.

All Gaming Devices purchased, leased or otherwise acquired by any Gaming Operation must meet the technical equipment standards set forth by the Commission. The Commission shall maintain a complete list of all Gaming Devices (whether or not such devices are in use) located at any Gaming Facility.

2.17 Removal of Gaming Commissioners.

(a) A Commissioner may be removed from office prior to the end of the Commissioner's term by the Tribal Council for failure to meet the License requirements, violation of this Ordinance, misfeasance, malfeasance or nonfeasance in office. Removal of a Commissioner shall require a determination by no less than eight (8) members of the Tribal Council members at a duly called meeting of the Council that there is clear and convincing evidence that the Commissioner has failed to meet the License requirements, violated this Ordinance, or committed misfeasance, malfeasance or nonfeasance in office.

(b) Any Commissioner whose proposed removal shall be considered by the Tribal Council pursuant to subsection (a) of this section shall be given written notice at least fourteen (14) calendar days before the Tribal Council convenes to consider the proposed removal. The written notice shall set forth with specificity the reasons for the Commissioner's proposed removal. The notice also shall inform the Commissioner of the date, time and location when the Tribal Council will consider the proposed removal.

(c) The Commissioner whose proposed removal shall be considered by the Tribal Council pursuant to subsection (a) of this section shall be afforded the opportunity to present written and oral testimony and other evidence to the Tribal Council before it renders a decision. The Tribal Council shall make a final decision on removal within ten (10) calendar days from the date of the proceeding. The Tribal Council's decision shall be in writing and shall set forth specific findings

on each alleged act relating to the Commissioner's proposed removal. The Tribal Council's written decision, which is final, shall be sent to the Commissioner and to the NIGC.

SECTION 3. GAMING LICENSE, OTHER LICENSE AND WORK PERMIT APPLICATIONS AND PROCEDURES

3.1 Licenses and Tribal Work Permits.

The Commission is hereby authorized to issue all Licenses for the conduct of all Gaming authorized under this Ordinance, or any other Licenses related to Gaming, and work permits which the Commission may require.

(a) Persons. The following Persons must obtain Licenses or Tribal work permits as a precondition to employment or providing goods and services to the gaming and nongaming portions of the Tribe's gaming/hotel operations, as applicable:

- (1) All Primary Management Officials;
- (2) All Key Employees;
- (3) Suppliers of Gaming Goods and Services; and
- (4) Any other employee or class of employees as determined by Commission Regulations.

(b) Gaming Facilities. Each place, facility, or location where Gaming is conducted on the Tribe's Indian Lands must obtain a separate Facility License from the Tribal Council.

3.2 Standards for Licenses and Tribal Work Permits.

Licenses issued hereunder shall be issued according to requirements at least as stringent as those set forth at 25 C.F.R. Parts 556 and 558, and any amendments thereto.

3.3 Application for License or Work Permit.

(a) No License or Tribal work permit shall be issued under this Ordinance except upon a sworn application filed with the Commission, in such form as may be prescribed by the Commission, containing a full and complete showing, at a minimum, of the following:

- (1) If applicable, a complete description of the premises at which Gaming will be conducted;
- (2) Agreement by the Applicant to abide by all conditions of the License, this Ordinance, Regulations, and IGRA and its implementing regulations, as applicable;

(3) A statement that the Applicant has never been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:

(i) Any felony within the preceding ten years;

(ii) Any gaming-related offense;

(iii) Fraud, misrepresentation or any other crimes of moral turpitude in any context; or

(iv) A violation of any provision of this Ordinance, Regulations, or any other ordinance or rules of the Tribe regulating or prohibiting gaming; and

(4) The Applicant's fulfillment of all applicable requirements of IGRA, its implementing regulations, and all provisions of this Ordinance.

(b) No License or Tribal work permit shall be issued to any Applicant who is determined by the Commission to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

(c) The issuance of Licenses and Tribal work permits shall also be subject to the provisions of Section 3 and Section 4 of this Ordinance regarding background investigations.

3.4 Required Application Forms.

(a) Each individual, including a Primary Management Official or Key Employee, applying for a License or Tribal work permit, and any person who is subject to a background investigation in connection with an entity application for a License, shall be required to complete the following forms:

(1) Application for License or Tribal work permit by individual, if applicable;

(2) Personal history record;

(3) Fingerprints, electronic submission(s) and/or fingerprint cards as requested/required; and

(4) Request to release individual information.

(b) To the extent not otherwise covered in paragraph (a) of this section, each applicant for a Primary Management Official or Key Employee position shall be required to provide the following information:

- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;
- (4) Current business and residence telephone numbers;
- (5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
- (10) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (a)(8) or (a)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A photograph;
- (13) Any other information the Commission deems relevant; and
- (14) Fingerprints consistent with procedures adopted by the Commission according to Section 3.5.

(c) The following notices shall be placed on the application form for a Key Employee, Primary Management Official or Supplier of Gaming Goods and Services before such form is completed by an applicant:

(1) "In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission (NIGC) members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate federal, Tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the NIGC in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to license you for a Primary Management Official or Key Employee position."

(2) "The disclosure of your social security number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

(3) "A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. (18 U.S.C. 1001)"

(d) The Commission may request any additional forms or information from an Applicant as it deems necessary or appropriate.

(e) The Commission shall create and maintain an individual file for each Applicant which includes the Applicant's personal history record and all background information compiled by the Commission for at least three years for Primary Management Official or Key Employee Applicants, and at least one year for all other Applicants from the date of termination of employment.

3.5 Fingerprint Cards Required.

All Applicants for a License are required to submit fingerprints. The Commission is hereby identified as the enforcement agency to take fingerprints. Pursuant to 25 C.F.R. § 522.2(h), the Commission shall forward an Applicant's fingerprints to the NIGC to be processed by the Federal Bureau of Investigation National Criminal Information Center for a criminal history check, which shall include a check of criminal history records information maintained by the Federal Bureau of Investigation. The Commission may submit an Applicant's fingerprints to any additional Tribal, local or state criminal history check system or center as the Commission deems necessary. Reports obtained from such fingerprint processing shall be incorporated into the Applicant's License file.

3.6 Employment Eligibility Determination

The Commission shall conduct an investigation sufficient to make an employment eligibility determination.

(a) To make a finding concerning the eligibility of a Key employee or Primary management official for granting of a License, the Commission shall review a person's:

- (1) Prior activities;
- (2) Criminal record, if any; and
- (3) Reputation, habits and associations.

(b) If the Commission, in applying the standards adopted in this Ordinance, determines that the licensing of a person poses a threat to the public interest or to the effective regulation of Gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of Gaming, the Commission shall not license that person in a Key Employee or Primary Management Official position.

3.7 Continuing Duty to Provide Information.

Applicants and Licensees shall have a continuing duty to provide any materials, assistance or other information required by the Commission, and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided on the Application changes or becomes inaccurate in any way, the Applicant or Licensee shall promptly notify the Commission of such changes or inaccuracies.

3.8 Facility License.

Each Gaming Facility must obtain a Facility License from the Tribal Council as required by IGRA and its implementing regulations ensuring that the construction and maintenance of the Gaming Facility and the operation of Gaming, shall be conducted in a manner which adequately protects the environment and the public health and safety and for that purpose shall comply with the requirements of all applicable health, safety and environmental standards enacted by the Tribe and any applicable federal and state laws.

3.9 Temporary Licenses and Tribal Work Permits.

Pending the satisfactory completion of all background investigations and other applicable requirements of this Ordinance, IGRA, and any other applicable laws or regulations, , the Commission may issue:

(a) Temporary Licenses to employees who work in any part of a Gaming Facility where Gaming is conducted; and

(b) Tribal work permits to employees who: (1) do not come within the definition of Key Employee or Primary Management Official under this Ordinance; and (2) work only in non-Gaming related activities in facilities connected to a Gaming Facility, including but not limited to a hotel or restaurant.

(c) In no event shall a temporary Gaming License or temporary Tribal work permit be valid for greater than ninety (90) calendar days.

3.10 Temporary Employment Pending Issuance of Gaming License or Tribal Work Permit.

As provided for in this Section, all individuals, including Primary Management Officials and Key Employees, may be employed in Gaming Operations or non-Gaming operations prior to the issuance of a License or Tribal work permit. During the period that the Licensee possesses only a temporary License or Tribal work permit, his or her employment shall be provisional only and subject to the requirements of this section.

A temporary License or Tribal work permit may be issued only if the Commission has made a preliminary finding of eligibility for employment in Gaming or related non-Gaming operational areas, including a preliminary determination that the individual in question is not a person whose prior activities, criminal record or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto.

Temporary or provisional employment shall be terminated upon the occurrence of any of the following:

- (a) Denial of a relevant License or Tribal work permit by the Commission;
- (b) Unsatisfactory completion of a background investigation or NIGC review, as applicable, resulting in nullification of a temporary License, as described in Section IV; or
- (c) To the extent required by federal regulations and/or, at the end of thirty (30) calendar days after the starting date of temporary or provisional employment, if no License or Tribal work permit has been issued, or a License or Tribal work permit issued remains effective only on a temporary basis, as provided in Section 3.9. However, temporary employees terminated for the reason described in this subsection shall be qualified for reemployment upon the satisfactory completion of background investigations and NIGC reviews, as applicable.

3.11 Assignment or Transfer.

No License or Tribal work permit issued under this Ordinance may be assigned or transferred.

3.12 Identification Badges.

All employees working in a Gaming Facility shall wear an employee identification badge that satisfies certain minimum requirements as established by the Commission, including an employee's name and License or Tribal work permit number as approved by the Commission. All employees must carry on their person and/or be prepared to present a valid identification badge upon demand to a Commissioner or duly authorized employee or agent of the Commission. The identification badge shall be a legible tag evidencing the employee's name and photograph and the seal of the Tribe.

SECTION 4. BACKGROUND INVESTIGATIONS AND LICENSE DECISIONS

4.1 Required Background Investigations.

Background investigations shall be conducted by the Commission, or other agent retained by the Commission, under the supervision and direction of the Commission, on all persons specified in Section 3.1 of this Ordinance.

4.2 Standards for Background Investigations.

(a) All Gaming employees shall be required to obtain a License from the Commission established pursuant to this Ordinance. The Commission shall conduct background investigations of all Gaming employees and shall deny or revoke such Licenses for any employee whose prior activities, criminal records, if any, and reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.

(b) When a Key Employee or a Primary Management Official begins work at a Gaming Operation, the Commission shall forward to the NIGC a complete application file containing the information listed under Section 3.4(b).

(c) Before issuing a license to a Primary Management Official or to a Key Employee, the Commission shall:

(1) Create and maintain an investigative report on each background investigation. An investigative report shall include all of the following:

- (i) Steps taken in conducting a background investigation;
- (ii) Results obtained;
- (iii) Conclusions reached; and
- (iv) The bases for those conclusions.

(2) Submit a copy of the Applicant's background investigative report and copy of the eligibility determination made pursuant to Section 3.6 to the NIGC no later than sixty (60) days after the applicant begins work.

(d) Upon completion of a background investigation for a Key Employee or Primary Management Official, the Commission shall make a specific determination of eligibility for employment in a Gaming Operation pursuant to Section 3.6.

(e) If, within the 30-day period of receiving the report, NIGC provides the Commission with objections to the issuance of a License to a Key Employee or to a Primary Management Official, the Commission shall reconsider the Application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a license to such applicant.

(f) If the Commission does not license an Applicant:

(1) The Commission shall notify the NIGC; and

(2) Shall forward copies of its eligibility determination and investigative report to the NIGC for inclusion in the Indian Gaming Individuals Record System.

(g) For Primary Management Officials and Key Employees, the Commission shall retain Applications for employment and reports of background investigations for inspection by the NIGC or its designee for no less than three (3) years from the date of termination of employment.

4.3 Term of License; License Fees; Parameters of License.

(a) Any License issued by the Commission, except a temporary License (as described in Section 3.9), shall be effective until revoked or suspended by the Commission. The License of any Gaming Operation employee whose employment has been terminated either voluntarily or for cause shall be suspended and/or revoked only if there is cause for such License suspension and/or revocation as provided in this Ordinance.

(b) Annual License fees shall be imposed:

(1) On any persons required to obtain a License, in accordance with a fee schedule to be established by the Commission; and

(2) In addition to the License fees imposed pursuant to Subsection (b)(1) of this Section, the Commission may impose such fees on Licensees as are reasonably related to costs of enforcement, including investigations and proceedings before the Commission, and which will, in the aggregate, be sufficient to enable the Tribe and the Commission to recover its reasonable costs of enforcing this Ordinance. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular Licensee or Applicant.

- (c) Violations of any provision of this Ordinance, the Regulations or relevant License provisions by a Licensee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Tribe and its members, and shall be deemed grounds for denial of a License, or suspension or revocation of a License.
- (d) Acceptance of a License by a Licensee constitutes an agreement on the part of the Licensee to be bound by the provisions of this Ordinance and the Regulations as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Commission. It is the responsibility of the Licensee to remain informed of the contents of this Ordinance, the Regulations and all other applicable laws regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations.
- (e) A License issued hereunder is a privilege license and no rights, property or otherwise, shall attach thereto.

SECTION 5. ENFORCEMENT AND RULES OF PROCEDURE FOR HEARINGS

5.1 Notice of Violation.

- (a) The Commission may issue a notice of violation to any person or entity for a violation of any provision of the Ordinance, Regulations, Compact, IGRA or other applicable Tribal or federal law or implementing regulations.
- (b) A notice of violation shall contain:
 - (1) A citation to the Tribal or federal requirement that has been or is being violated;
 - (2) A description of the circumstances surrounding the violation, set forth in common and concise language;
 - (3) Measures required to correct the violation;
 - (4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and
 - (5) Notice of rights of appeal.

5.2 Order of Temporary Closure.

- (a) Simultaneously with, or subsequent to, the issuance of a notice of violation, the Commission may issue an order of temporary closure of all or part of a Gaming Operation for substantial violations of Tribal and/or federal law.
- (b) The operator shall close the Gaming Operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) Informal expedited review. Within one (1) calendar day after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Commission.

(1) The Commission shall complete the expedited review provided for by this paragraph as soon as is practical and no later than one (1) calendar day after receipt of a timely request.

(2) The Commission shall, as soon as is practicable and no later than one (1) calendar day after the expedited review provided for by this paragraph, decide whether to continue an order of temporary closure and provide the respondent with an explanation of, and the factual basis for, that decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Commission serves an order of temporary closure, the respondent may appeal the order to the full Commission under Section 5.4. Otherwise, the order shall remain in effect unless rescinded by the Commission for good cause.

5.3 Civil Fine Assessments.

(a) The Commission shall review each notice of violation and order of temporary closure to determine whether a civil fine will be assessed, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.

(b) Within fifteen (15) calendar days after service of a notice of violation, or such longer period as the Commission may grant for good cause, the respondent may submit written information about the violation to the Commission. The Commission shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine.

(c) The Commission shall serve a copy of the proposed assessment on the respondent within thirty (30) calendar days after the notice of violation was issued, when practicable.

(d) The Commission may review and reassess any civil fine, if necessary, to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

(e) If the respondent fails to request a hearing as provided in Section 5.4, the proposed civil fine assessment shall become a final order of the Commission. Civil fines assessed under this Section shall be paid by the person assessed and shall not be treated as an Operating Expense of the Gaming Operation.

5.4 Appeals Before the Commission.

(a) A respondent may request a hearing to contest a notice of violation, order of temporary closure, civil fine assessment or order of exclusion by submitting a notice of appeal to the Commission within thirty (30) calendar days after service of:

- (1) A notice of violation;
- (2) A proposed civil fine assessment or reassessment;
- (3) An order of temporary closure; or
- (4) An order of exclusion under Section 7.2 from one or more Gaming Operations.

(b) A notice of appeal shall reference the notice or order from which the appeal is taken.

(c) Within ten (10) calendar days after filing a notice of appeal, a hearing shall be scheduled, with notice of the time, date and place of the hearing provided to the respondent.

(d) At the hearing, the respondent is entitled to call witnesses and present evidence.

(e) Within ten (10) calendar days after the respondent receives notice of the hearing, the respondent shall file with the Commission a supplemental statement that states with particularity (1) the relief desired and (2) the grounds therefor. The supplemental statement should include, when available, supporting evidence in the form of affidavits. If the respondent wishes to present oral testimony or witnesses at the hearing, the respondent shall include notice of this in the supplemental statement. The notice shall specify the names and job titles of proposed witnesses, and state whether a closed hearing is requested and, if so, why. The respondent may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

(f) The full Commission shall issue a decision by majority vote within thirty (30) calendar days after the date on which the hearing was held. The decision of the Commission shall be based upon the whole record and shall include findings of fact and conclusions of law upon each material issue of fact or law presented on the record. In deciding such appeals, the Commission shall apply a preponderance of the evidence standard. The Commission shall provide a written decision, notice and order to all parties, which includes the reasons for its decision. The decision of the Commission on the appeal shall be final and not subject to judicial review.

5.5 License and Tribal Work Permit Hearings.

(a) If, after the issuance of a License or Tribal work permit, the Commission receives reliable information indicating that an employee is not eligible for a License or Tribal work permit under this Ordinance, the Commission shall suspend such License or Tribal work permit and shall notify the holder of the suspended License or Tribal work permit in writing about the suspension and the proposed revocation.

(b) The holder of the suspended License or Tribal work permit shall receive from the Commission notice of any hearing to consider revocation of the License or Tribal work permit no later than (10) days before any such hearing. The notice shall contain the date, time and location of the hearing, a detailed statement of the allegations that are the basis for the suspension and proposed revocation, and shall identify any evidence that the Commission intends to consider during the revocation hearing, including the identity of all witnesses who will testify before the Commission concerning the proposed revocation.

(c) No later than three (3) days before any revocation hearing, the holder of the suspended License or Tribal work permit shall submit to the Commission a detailed response to the Commission's statement of allegations and identify any evidence that shall be used by the holder of the suspended License or Tribal work permit at the revocation hearing, including the identity of all witnesses who will testify before the Commission concerning the proposed revocation.

(d) At the revocation hearing, the holder of the suspended License shall have an opportunity to present evidence and arguments concerning the proposed revocation and cross examine witnesses.

(e) Within ten (10) days after a revocation hearing, the Commission shall decide to revoke or to reinstate a License and issue notice to the holder of the suspended License or Tribal work permit. The Commission shall notify the NIGC of its decision.

(f) The decision of the Commission shall be final and not subject to judicial review.

SECTION 6. AUDITS.

6.1 Audits.

The Tribe shall conduct annual independent audits of its Gaming Operations annually to be submitted to the NIGC. All gaming-related contracts that result in purchases of supplies, services or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of any such audit.

SECTION 7. EXCLUSION OR EJECTION OF INDIVIDUALS

7.1 Prohibition Against Certain Individuals.

It shall be a violation of this Ordinance for any Licensee to knowingly fail to exclude or eject from the gaming area of a Gaming Facility any individual who:

- (a) Is visibly under the influence of liquor, a drug or other intoxicating substance;
- (b) Is under the age of 18 years;
- (c) Is displaying disorderly conduct;

- (d) Is a person known to have committed a gaming-related felony;
- (e) Is known to have a reputation for cheating or manipulation of games; or
- (f) Has been personally excluded, or is a member of any group or type of persons which has been excluded, for cause from Gaming Facilities by a resolution of the Commission.

7.2 Right to Exclude or Remove.

If the Commission deems it in the best interest of the Tribe, the Commission may exclude or remove any Persons from the premises of any Gaming Facility or Operation. Any person so excluded may be entitled to a hearing as provided for by Section 5. The manager of any Gaming Facility or Operation shall also have the authority to exclude or remove any person from the Gaming Facility or Operation, and all such actions shall be recorded contemporaneously with the incident for review by the Commission if requested.

SECTION 8. PROHIBITED ACTS

8.1 Enumeration.

In addition to other civil and criminal acts that may be regulated or prohibited by this Ordinance, other Tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this Ordinance and may subject any perpetrator to Commission action, including but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and license suspension or revocation:

- (a) Altering or misrepresenting the outcome of Gaming or other event on which wagers have been made after the outcome of such Gaming or event has been determined, but before such outcome is revealed to the players;
- (b) Placing or increasing a bet or wager after acquiring knowledge of the outcome of the Gaming or event which is the subject of the bet or wager, including past posting and pressing bets;
- (c) Aiding anyone in acquiring such knowledge referred to in Subsection (b) of this section for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;
- (d) Claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud, or claiming, collecting or taking an amount greater than the amount actually won in such game;
- (e) Knowingly enticing or inducing another to go to any place where gaming is conducted or operated in violation of the provisions of this Ordinance, with the intent that the other person play or participate in such Gaming activities;

- (f) Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- (g) Manipulating, with intent to cheat or defraud, any component or part of a game in a manner contrary to the designed and normal operational purpose for such component or part, with knowledge that such manipulation will affect the outcome of the game, or with knowledge of any event that affects the outcome of the game;
- (h) Defrauding the Tribe, any Licensee or any participant in any Gaming activities;
- (i) Participating in any Gaming activities not authorized under this Ordinance;
- (j) Knowingly providing false information, or making any false statement, with respect to an application for employment or for any License, certification or determination provided for in this Ordinance;
- (k) Knowingly providing false or misleading information, or making any false or misleading statement, to the Tribe or the Commission in connection with any contract for services or property related to Gaming;
- (l) Knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;
- (m) Offering or attempting to offer anything of value, to a Licensee in an attempt to induce the Licensee to act or refrain from acting in a manner contrary to the official duties of the Licensee under this Ordinance, the Regulations, Tribal and applicable federal law or IGRA;
- (n) Acceptance by a Licensee of anything of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the Licensee to act or refrain from acting in a manner contrary to the official duties of the Licensee under this Ordinance, the Regulations, Tribal and applicable federal law or IGRA and its implementing regulations;
- (o) Falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a Gaming Operation in ways other than is provided in approved internal control procedures; and
- (p) Taking any action which interferes with or prevents the Commission or the Tribal Council from fulfilling its duties and responsibilities under this Ordinance, the Regulations, IGRA, or other Tribal or applicable federal law.

8.2 Prohibition Against Cheating Devices.

Except as specifically permitted by the Commission, no person shall possess, with the intent to use in connection with Gaming, either individually, or in concert with others, any Cheating Device.

SECTION 9. GENERAL REQUIREMENTS

9.1 Fees.

Notwithstanding any provision in this Ordinance or the Regulations, the Commission is hereby directed to comply with all fees assessed by the NIGC. Such fees shall be payable solely from funds of Gaming Operation revenues as an Operating Expense.

9.2 Regulation of the Commission.

Notwithstanding any provision in this Ordinance or the Regulations, the Commission is subject to, and directed to comply with, all applicable federal laws and regulations, including but not limited to IGRA and its implementing regulations.

9.3 Sovereign Immunity.

Nothing in this Ordinance shall be deemed to constitute a waiver of immunity on the part of the Tribe, Tribal government, corporation, or any entity created by either as to any assets or property of any nature whatsoever, or the adjudication of any federal rights or immunities. The sovereign immunity of the Tribe is hereby extended to, and shall protect, the Commission, Commissioners, and Commission employees from civil liability of any nature for any act, omission or statement taken or made in the lawful performance of their duties under this Ordinance or any Regulations adopted pursuant thereto; provided that such immunity shall not protect any person from procedures and sanctions expressly authorized and imposed under this Ordinance.

9.4 Privilege.

Any written or oral statement made in the course of any official investigation, proceeding or process by any Commissioner and any Commission employee shall be absolutely privileged and shall not constitute a basis for civil liability of any Commissioner or Commission employee for defamation or otherwise. Moreover, the listing of any person on a list of persons excluded from eligibility for a License or Tribal work permit shall also be absolutely privileged and shall not constitute a basis for civil liability of any Commission or Commission employee for defamation or otherwise.

9.5 Compliance with Federal Law.

The Gaming Operation will comply with all applicable federal laws, including the Bank Secrecy Act, 31 U.S.C. § 5311 et seq.

9.6 Amendments.

All provisions of this Ordinance are subject to amendment by a majority vote of the Tribal Council, which must be reviewed and approved by the NIGC in accordance with IGRA. All Regulations promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission. All amendments to this Ordinance shall be effective upon

review and approval by the NIGC. The Tribal Council shall amend this Ordinance, as needed, upon any amendment to IGRA and its implementing regulations.

9.7 Severability.

If any provision of this Ordinance, or any portion of any provision to this Ordinance, is found to be invalid by any court of competent jurisdiction, the full remainder of such provisions shall not be affected.

9.8 Words and terms.

In interpreting the provisions of this Ordinance, save when otherwise plainly declared or clearly apparent from the context:

- (a) Words in the present tense shall include the future tense;
- (b) Words in masculine, feminine and neuter genders shall include all genders; and
- (c) Words in the singular shall include the plural, and words in the plural shall include the singular.

9.9 Repeal.

Wampanoag Tribe of Gay Head (Aquinnah) Gaming Ordinance No. 95-01 is repealed. To the extent that any other Tribal laws, ordinances or regulations are inconsistent with this Ordinance, such laws, ordinances, and regulations are hereby repealed.

9.10 Unclaimed Winnings.

(a) Any winnings, whether property or cash, which are due and payable to a participant in any Gaming activity, and which remain unclaimed at the end of a Gaming session, shall be held in safekeeping for the benefit of such participant. A Gaming Operation shall make a good faith attempt to notify a participant of unclaimed winnings. Such winnings shall be held for 90 days. At the end of the safekeeping period, such winnings shall revert to the ownership of the relevant Gaming Operation.

(b) In the event the identity of a participant entitled to unclaimed winnings is unknown, after 90 days from the time the winnings were payable, such unclaimed winnings shall revert to the ownership of the relevant Gaming Operation.

9.11 Patron Disputes.

Any Patron who has any dispute, disagreement or other grievance with a Gaming Operation, may seek resolution of such dispute from the following persons and in the following order:

- (a) a member of the staff in the area of the relevant Gaming Operation in which the dispute arose;
- (b) the supervisor in the area of the relevant Gaming Operation in which the dispute arose;
- (c) the manager of the relevant Gaming Operation; and
- (d) the Commission, except that the Commission shall not be involved in the resolution of any dispute that does not involve currency, tokens, coins, or any other thing of value.

9.12 Patron Rights Regarding Disputes.

(a) Whenever a Patron brings a dispute forward for resolution, that individual shall have the right to explain the nature of the dispute, raise all relevant factual allegations, and present witnesses in connection with any such factual allegations.

(1) At each level, if the dispute remains unresolved, the Patron shall be informed of the right to take the dispute to the next highest level as described in Section 9.11.

(2) Resolution of any dispute by the personnel of a Gaming Operation shall always involve two or more Gaming Operation employees.

(3) All disputes, whether resolved or not, shall be reported in detail by the employees involved to their supervisor.

(b) Any Patron who has any dispute, disagreement or other grievance with a Gaming Operation that does not involve currency, tokens, coins, or any other thing of value, may seek resolution of such dispute with the manager of the Gaming Operation. The decision of the manager of the Gaming Operation is final.

9.13 Gaming Commission Action on Patron disputes.

(a) If a Patron's dispute with a Gaming Operation that involves currency, tokens, coins, or any other thing of value remains unresolved after consideration by the manager of the relevant Gaming Operation, then the Patron may submit the dispute to the Commission. The Patron must submit the matter to the Commission in writing within seventy-two (72) hours after the incident that is the basis for the dispute or a decision by facility management (whichever is later). The Patron's written submission must contain:

(1) a factual description of the dispute;

(2) a statement as to the relief sought by the Patron;

(3) an explanation of the Patron's efforts to resolve the matter with facility staff and management; and

(4) the Patron's contact information.

The submission also shall contain any other written evidence or information that the Patron believes should be considered by the Commission. The Gaming Operation involved in the dispute shall make available to the Patron a form for submitting disputes to the Commission.

(b) Upon receipt, the Commission shall forward a copy of the Patron's submission to the Gaming Operation for a response. The Gaming Operation shall submit its response to the Commission within five (5) business days of receiving the Patron's submission from the Commission. All disputes which are submitted to the Commission shall be decided by the Commission based on information furnished by the Patron and the Gaming Operation as requested directly by the Commission. Such information may include witness statements and/or testimony at the Commission's sole discretion. In making a decision on the dispute, the Commission shall evaluate the evidence using a preponderance of the evidence standard.

(c) The decision of the Commission shall be in writing, shall be issued within fourteen (14) calendar days of the matter being heard by the Commission, and shall be furnished to the manager of the relevant Gaming Operation and to the Patron in question. The decision shall contain a recitation of the facts on which it is based.

(d) Liability of the Gaming Operation in any dispute under this dispute resolution procedure shall be limited to the amount of the alleged winnings. A Patron shall not be entitled to an award of special or punitive damages for any alleged injury.

(e) The decision of the Commission in resolving a Patron dispute is final and not subject to judicial review.

9.14 Agent for Service of Process.

The Tribe's Chairperson shall be the designated agent for service of process for the Wampanoag Tribe of Gay Head (Aquinnah) and the Tribal Gaming Commission.

9.15 Consent to Jurisdiction.

Any Person who applies for a License under this Ordinance, applies for employment in any Gaming Facility, enters into any contract or agreement related to Gaming, or participates in any Gaming on the Tribe's Indian Lands, shall be deemed to consent to the civil jurisdiction of the Tribe, and the Commission. Nothing in this section shall limit the jurisdiction of the Tribe or the Commission under any circumstances not explicitly contemplated in the section.

9.16 Comity and Concurrent Jurisdiction.

The Commission is empowered to seek comity and enforcement of the orders of the Commission by the courts of any other jurisdiction whose assistance may be required to give effect to the orders of the Commission. The Commission is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts of foreign jurisdictions.

9.17 Enforcement Provisions.

(a) All matters and occurrences which indicate that a criminal act under this Ordinance, other applicable Tribal law, applicable federal law or state law may have occurred in or around any Gaming Facility shall be reported to the appropriate law enforcement agency and the Commission.

(b) All matters and occurrences contrary to this Ordinance and/or Regulations promulgated by the Commission, which are not covered under a criminal code, shall be deemed to be a civil violation. The Commission is hereby authorized to establish a civil violations list of penalties and fines which shall be imposed by the Commission for all such civil violations with the violator afforded the rights to a hearing as provided in Section 5 herein.

9.18 Effective date.

This Ordinance shall become effective upon the date of its approval by the NIGC pursuant to the IGRA and its implanting regulations, as amended from time to time.

EXHIBIT B



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

December 18, 2013

Scott Crowell, Esq.
Crowell Law Office – Tribal Advocacy Group
1487 W. State Route 89A, Suite 8
Sedona, Arizona 86336

Re: Commonwealth of Massachusetts v. The Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head, Inc., and The Aquinnah Wampanoag Gaming Corporation, No. SJ-2013-0479

Dear Attorney Crowell:

Enclosed herewith please find copies of the Complaint and the Exhibits in the above-referenced matter. As we have discussed, you have agreed to accept service on behalf of all three named defendants. Your agreement, and authorization, to accept service is conditioned on my consent to, and acceptance of, the following:

- 1) The Wampanoag Tribe of Gay Head (Aquinnah), referred to hereafter as “the Tribe,” maintains that sovereign immunity includes immunity from service of process. Accordingly, by accepting service in the above-referenced matter, the Tribe, including its political subdivision THE AQUINNAH WAMPANOAG GAMING CORPORATION, is not waiving its immunity from service of process or otherwise waiving its immunity or consenting to the jurisdiction of the court, in the above-referenced matter or in any future matter to which the Tribe and/or its political subdivision THE AQUINNAH WAMPANOAG GAMING CORPORATION is a party. The Tribe preserves and reserves all immunity defenses. Acceptance is being provided as a convenience to the Commonwealth to allow the case to proceed and bring the immunity defenses before the court; and
- 2) The Tribe, including its political subdivision THE AQUINNAH WAMPANOAG GAMING CORPORATION, does not accept the allegation that the Tribe is also THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. Accordingly, by accepting service, the Tribe is not representing in any way that the Tribe is THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. The Tribe preserves and reserves the argument that it is not THE WAMPANOAG TRIBAL COUNCIL




Scott Crowell, Esq.
December 18, 2013
Page 2

OF GAY HEAD, INC. Acceptance is being provided as a convenience to the Commonwealth to allow the case to proceed and to bring the issue of whether the Tribe is also THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. or whether THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC. even exists, before the Court (or a federal court if the Tribe chooses to remove the case).

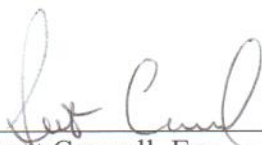
Please countersign this letter to reflect acceptance of service under these conditions and return the original to me.

Thank you again for your courtesy in this matter.

Yours truly,



Juliana deHaan Rice
Assistant Attorney General
(617) 727-2200, ext. 2583

 12/26/2013

Scott Crowell, Esq.

EXHIBIT C

**20 BLACK BROOK ROAD
AQUINNAH, MA 02535-1546**



**OFFICE (508) 645-9265
FAX (508) 645-3790**

**WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
Resolution No. 2013-43**

**Resolution Authorizing the Removal of Commonwealth of Massachusetts v. The
Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head,
Inc., and The Aquinnah Wampanoag Gaming Corporation, No. SJ 2013-0479**

WHEREAS the Tribal Council of the Wampanoag Tribe of Gay Head (Aquinnah) ("Tribe") is a sovereign nation and is the governing body of the Wampanoag Tribe of Gay Head (Aquinnah) under the Constitution adopted on November 18, 1990, as amended through November 16, 2008; and

WHEREAS, the Tribe has adopted a Constitution in order to sustain and perfect its historic form of Tribal government, and;

WHEREAS, the Tribal Council is the elected governing body of the Tribe, acknowledged on April 10, 1987, which exists as an Indian Tribe within the meaning of Federal Law, Public Law 638, and is empowered by Article IV of the Constitution ; and

WHEREAS, under Article IV, Section 1 of the Tribes Constitution, governing power of the Tribe is vested in the Tribal Council, and;

WHEREAS, the Constitution Article XV Section 1 explicitly preserves the sovereign immunity of the Tribe and requires an explicit written waiver approved by at least eight (8) members of the Tribal Council before the Tribe's sovereign immunity can be waived, and;

WHEREAS, the Commonwealth of Massachusetts has filed a lawsuit in the Supreme Judicial Court for Suffolk County against the Tribe and the Tribal Gaming Board, and;

WHEREAS, the Tribe strongly believes the State has no jurisdiction over tribal gaming matters, and;

NOW BE IT RESOLVED, that the legal team is directed to use all available avenues to remove this litigation to federal court:

NOW BE IT FURTHER RESOLVED, this resolution is not a waiver of the Tribe's sovereign immunity, and:

A FEDERALLY ACKNOWLEDGED TRIBE

Page Two- WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)

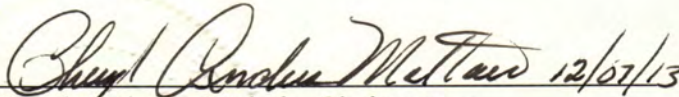
Resolution No. 2013-43

Resolution Authorizing the Removal of Commonwealth of Massachusetts v. The Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head, Inc., and The Aquinnah Wampanoag Gaming Corporation, No. SJ 2013-0479

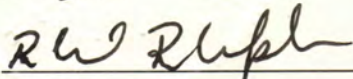
NOW BE IT FURTHER RESOLVED, the Tribal Council of the Wampanoag Tribe of Gay Head (Aquinnah) explicitly preserves its sovereign immunity in the Commonwealth of Mass. V. the Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head, Inc., and the Aquinnah Wampanoag Gaming Corporation.

ADOPTED by the Tribal Council of the Wampanoag Tribe of Gay Head (Aquinnah) at a regular meeting assembled on the 7th of December, 2013, with a quorum present, by a vote of 11 in favor and 0 against and 0 abstentions.

Wampanoag Tribe of Gay Head (Aquinnah)


Cheryl Andrews-Maltais, Chairwoman

ATTEST:

 12-7-13

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

THE COMMONWEALTH OF MASSACHUSETTS

(b) County of Residence of First Listed Plaintiff MASS. (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Juliana deHaan Rice, Carrie Benedon, Bryan F. Bertram, Attorney General Martha Coakley, One Ashburton Place, Boston, MA 02108, 617-727-2200

DEFENDANTS

THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH), THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.

County of Residence of First Listed Defendant AQUINNAH (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Bruce Singal, Elizabeth J. McEvoy, DONOGHUE, BARRETT & SINGAL, One Beacon Street, Suite 1320, Boston, MA 02108-3106,

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 25 U.S.C. § 2701 et. seq., 25 U.S.C. § 1771 et. seq.

Brief description of cause: Declaratory Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/30/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Bruce A. Singal

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) THE COMMONWEALTH OF MASSACHUSETTS v. THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH) et. al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Bruce A. Singal

ADDRESS Donoghue, Barrett & Singal, One Beacon Street, Suite 1320, Boston, MA 02108-3106

TELEPHONE NO. 617-720-5090