

1983

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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: Walter R. Spadina 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 L. Kelly Date: 11/22/83 Witness: [Signature]

True Copy of Affect.

-17-
Wenona T. Silva, Town Clerk