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Martha's Vineyard **TIMES**

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SJC Will Hear Wampanoag Shed Lawsuit *February 26, 2004*

By [Nelson Sigelman](#)

The state Supreme Judicial Court Monday announced that it will take up a case of a small shed built by the Wampanoag Tribe of Gay Head (Aquinnah) without a town building permit. The significant legal issues in this matter are rooted in the 1983 settlement agreement that has governed relations between the tribe, the town of Aquinnah (formerly Gay Head), and the state for more than 20 years.

The Supreme Judicial Court (SJC) takes up a limited number of cases each session. Unlike the overburdened appeals court, where a decision can take years, the SJC could hear arguments within the next few months and render a decision by the end of the summer.

The decision by the state's highest court to take up the case demonstrates the significance the court attaches to the issues involved, said one attorney familiar with the process.

Setting the stage for a legal battle with important implications for all parties, the state appeals court earlier this month granted a request by the office of Massachusetts Attorney General Thomas Reilly to intervene as a party in the lawsuit on the side of the Aquinnah/Gay Head Community Association Inc., formerly named the Gay Head Taxpayers Association, party to the original Settlement Agreement. The tribe opposed the intervention request.

The taxpayers' association, along with representatives of the Benton Family Trust, abutters to the property in question, intervened to support the town and defend the settlement agreement only to be left to fend for themselves when the Aquinnah selectmen voted not to appeal a June 11, 2003 ruling by Justice Richard F. Connon that the town has no legal means to enforce town zoning regulations on the Cook Lands by virtue of the Wampanoag Tribe's sovereign immunity from suit.

The appeals court has also accepted a friend of the court, or amicus curiae, filing by the towns of West Tisbury, Chilmark and the Martha's Vineyard Commission. Participation as a friend of the court is allowed a person or other legal entity that is not a party to a lawsuit but offers to provide information to the court on the legal issues filed.

Reached for comment yesterday, Beverly Wright, Wampanoag tribe chairman, said she was not aware of the SJC decision and would need to speak with the tribe's attorney, Douglas Luckerman



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of Lexington, before making any comment.

Larry Hohlt, president of the Aquinnah/Gay Head Community Association (AGHCA) Inc., said, "We are very pleased that the appeal of this case will be heard directly by the Supreme Judicial Court. The issues involved have very significant potential impact not only on the Town of Aquinnah but also on the other Island towns and governmental entities like the Martha's Vineyard Commission, and indeed throughout the Commonwealth."

Mr. Hohlt, a retired attorney and seasonal Aquinnah resident, said his group was pleased that the court granted the Attorney General's motion to intervene. "It is in everyone's interests that these issues be considered as promptly as possible at the appropriate judicial level," he said.

Throughout the legal debate, it has been clear that the central issue is not the construction by the tribe of a small wooden shed and pier on tribal lands on the shore of Menemsha Pond without town permits in the winter of 2001 but the terms of the settlement agreement.

The agreement, signed between tribe members, non-resident property owners, the town, and the state on Sept. 8, 1983, included provisions that made the tribe subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, since renamed Aquinnah.

