

PROPOSED INTERGOVERNMENTAL
MEMORANDUM or UNDERSTANDING
BETWEEN
THE WAMPANOAG INDIAN TRIBE
AND
THE TOWN OF AQUINNAH

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

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

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

WHEREAS, the interests of the Town extends to lands that surround Wampanoag Aquinnah trust lands

and to activities within the boundaries of the trust lands that impact Town lands; and

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

WHEREAS, the Tribe and the Town agree that in order to address conflicts that may arise in the long-term the Tribe and the Town should adopt an administrative procedure that involves joint review and consultation regarding proposals for land use activities on Wampanoag Trust lands so that mutually agreeable decisions which acknowledge the broad Interests of the community, both Indian and non-Indian, may be reached; and

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

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

I. AQUINNAH PLANNING ADVISORY BOARD

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

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

3. The role of the Advisory Board is to: a.) make recommendations to each government’s land use planning Commission or Board regarding land use activities; b.) facilitate the resolution of disputes stemming from any land use or permitting issues; c.) monitor the progress of the cooperative planning processes; and d.) make recommendations to the Town Boards and the Tribe’s Land Use Commission. to improve the future effectiveness of these processes.

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

II. ADOPTION OF SUBSTANTIALLY EQUIVALENT REQUIREMENTS

1. The Tribe agrees to adopt and enforce the laws and regulations that are, at a minimum, substantially equivalent to the provisions of the Town zoning by-laws that were in place on the date of the Settlement Agreement, and any amendments to such laws subsequently approved by the process set out therein (the “1983 Zoning by-laws”).

III. JOINT PERMIT REVIEW PROCESS

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

2. The parties agree to provide the other government with information that is at least as detailed as the information required to be submitted by the other government’s by-laws or regulations.

3. The parties will use their best efforts to coordinate inspections to assess the progress of all projects for compliance with applicable approvals, regulations and agreements. The Tribe agrees to provide the Town with reasonable access to such projects, and the Town agrees to provide reasonable notice to the Tribe prior to conducting any such inspection.

4. Any permit application to: a.) a Tribal board that involves discretionary review (that is, requiring either a Public hearing or notice to adjacent landowners under either Tribal land use regulations or the 1983 zoning by-laws); or b.) a Town board that requires notice to the Tribe as an abutter under G.L.C. 40A, the 1983 zoning by-laws, or any other by-law or regulation, shall be forwarded by the board which receives the application (the “acting board”) to the appropriate board, commission or department of the other government (the “commenting board”) within five (5) business days from receipt of a complete application. The commenting board shall then have thirty (30) days from receipt of the complete application, or such lesser period as is provided by Massachusetts law, to provide written comments to the acting board. If the commenting board does not submit written comments within the thirty (30) days from the date it receives the application (or such lesser period as law requires), then the application will be presumed to be acceptable to the government of the commenting board.

5. The acting board will give full consideration to the other government’s concerns. If the comments do not require a joint hearing under Section IV, then the acting board may act on the permit application as outlined in this Agreement.

6. The Tribe agrees to amend its land use regulations, if necessary, so that any acting Tribal board shall: a.) cause to be made a detailed record of its

proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision in writing.

7. The Tribe recognizes that the Town board may be required to render a decision within a time-frame specified in the general laws, the zoning by-laws, or the general by-laws of the Town. In the event that a Town Board votes to act favorably on a land use application for land and the Tribal Land Use commission votes to act unfavorably, the Town agrees to use reasonable efforts to secure the assent of the applicant to a suspension of the final decision to allow the dispute resolution process outlined in Section V to proceed. The Tribe further recognizes, however, that the Town may not have the authority to suspend its final decision absent the applicant's assent, and, if the applicant does not assent to a suspension of the Town board's final decision, then the Tribe shall have the right to invoke the statutory rights of appeal under the applicable law.

8. If the Town board determines that any land use application under this agreement is a development of regional impact in accordance with the standards and criteria adopted by the Martha's Vineyard Commission ("MVC") pursuant to Section 12 of Chapter 831 of the Acts of 1977, as amended, then said board shall refer the application to the MVC. The parties agree that the time period for any board, commission, or official to act under this agreement is

tolled until the review of the referral to the MVC is complete and the application has been returned to the referring board.

IV. CONSULTATION

1. The parties will use their best efforts to coordinate their respective hearings and permitting processes in such a manner so that they will proceed at the same time and at the same place.

2. In the event that the written comments under Section III(4) do not constitute an approval of the application or request that the acting board convene a joint hearing, then the acting board and the commenting board shall attempt to facilitate a joint public hearing process on the application. All joint hearings under this Section shall be governed by the Open Meeting Law. The intent of this provision is to provide a procedural mechanism through which the respective permitting boards may voice concerns, identify problems, and explore solutions in a good faith manner during the early stages of the permitting process.

3. At the conclusion of the joint hearing, and/or upon the submission of such additional information as either board may request, both the acting board and the commenting board shall render a decision on the permit application.

4. In the event that a Tribal Land Use Commission votes to act favorably on a land use application for Tribal lands and the Town Board votes to act unfavorably, then final action on the application shall be suspended by both boards to allow a dispute resolution process to occur as described in Section V.

V. DISPUTE RESOLUTION

1. In the event of a dispute under Section IV(4), then each respective board shall forward copies of their files pertaining to the application to the Advisory Board within five (5) days of the failure to reach an agreement.

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

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

4. In the event that consensus is not reached, the project shall not move forward and the parties shall

refer the dispute to a mediator selected by the Advisory Board.

5. Any decision or recommendation of the mediator shall not be binding. Should the respective permitting boards reach a resolution through mediation, or by any other method outlined in Section V of this agreement, then the respective permitting boards shall, following a public hearing, issue their final decisions.

6. If the parties are unable to reach a resolution through mediation or by any other method outlined in Section V of this agreement, then the respective permitting boards shall, following a public hearing, issue their final decisions.

7. Either party, or any aggrieved person within the meaning of G. L. c. 40A, shall have the right to seek judicial review of the dispute in the Land Court or the Superior Court of Dukes County within twenty (20) days of the date on which the final decision is filed with the Town Clerk.

8. The Tribe agrees to waive the defense of sovereign immunity to any action seeking judicial review, and both parties recognize, and agree, that said limited waiver may not be used for any other purpose in any other action or proceeding.

VI. ANNUAL REVIEW

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

VII. AMENDMENTS

1. The provisions of the Memorandum of Understanding may be amended by parallel resolutions of the respective governing bodies.

VIII. JURISDICTION

1. Nothing in this Agreement shall limit or waive the regulatory authority or jurisdiction of either party. This Agreement is not intended to provide any remedy not already provided by law.

IX. AUTHORITY

1. Representatives signing this Agreement certify that they are fully authorized by the Party whom they represent to enter into the terms and conditions of this Agreement and legally to bind such Party thereto.

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

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

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

PASSED by the Aquinnah Selectmen
This _____ day of _____, 2005

PASSED by the Wampanoag Tribe of Gay Head
(Aquinnah)

This _____ day of _____, 2005

Tribal Chairperson