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Tribe Approves Land Use Pact

Memorandum of Understanding Between the Two Governments Now Needs Voter Approval at Special Town Meeting

By IAN FEIN

After five months of internal deliberations, the Wampanoag Tribe of Gay Head (Aquinnah) this week approved a revised land use agreement with the town of Aquinnah.

The document still must be endorsed by the town, but the tribal vote represents a significant step toward the resolution of a longstanding jurisdictional dispute between the two governments. The tribal council approved the agreement by a 10-0 vote, with one abstention, at its meeting on Saturday. Town selectmen have scheduled a special town meeting to consider the land use agreement on Feb. 15.

Tribal council chairman Donald Widdiss said he was pleased that the document passed this week without opposition. The full tribal membership in November authorized the council, its elected governing body, to negotiate and sign the agreement with the town, and the version approved this week includes only minor amendments to the earlier 12-page document, which was tabled at an August town meeting at the request of tribal members.

"With our process, we went through a pretty thorough examination with the attorney and with the tribal members as to what the document means," Mr. Widdiss said. "Now it's up to the town to finish their process and come to an agreement. Once that happens, then we have a working document that can be put to the test. It's not intended to solve all the problems, but it gives us a foundation for future governmental agreements and for future cooperation."

Board chairman Michael Hebert took a similarly optimistic tone.

"This is a step we've been waiting for a long time," he said. "I realize the tribal process is a little more intense than ours, and that's why it took so long. But in the end, the tribe realized that working with the town is to everyone's benefit, rather than battling it out in court."

At issue is compliance by the federally recognized tribe with local zoning laws for development projects on its roughly 500 acres of tribal lands. Over the last five years, the two governments have spent hundreds of thousands of dollars arguing the dispute in court.

The Massachusetts Supreme Judicial Court in December 2004 ruled that a 1983 land claims settlement, where the tribe consented to abide by state and local zoning laws, trumped the federal doctrine of sovereign immunity, at least on the subject of land use. The outcome of the case required the tribe to secure town permits for a small shed and pier it built five years ago near its shellfish hatchery on Menemsha Pond.

Hoping to prevent future litigation over such projects, town and tribal officials last winter and spring negotiated a parallel permitting process that respected the rights of both governments and laid out a lengthy path of mediation to resolve potential disputes. But when the proposed land use agreement came up for a vote at a town meeting in August, some tribal members said they needed

more time to consider its consequences, and Aquinnah voters - split largely, though not entirely, along tribal and nontribal lines - decided to table the issue.

The revised agreement will now return to town meeting, where its approval is expected but not guaranteed. Town officials have characterized the changes to the document as relatively minor.

Most of the amendments can be described as language changes, such as the official name of the tribe - which was referred to as the Wampanoag Indian Tribe in earlier versions. Specific mention of the Martha's Vineyard Commission was removed from a section regarding development of regional impact (DRI) referrals, but the text was rewritten to protect the jurisdiction of the regional planning agency and other relevant state agencies.

Some time deadlines were also changed in the document. Under the revised agreement, town officials would be required to give the tribe 24 hours notice before conducting any site inspections on tribal lands, and either government would be allowed to terminate the agreement after two years, instead of the original five.

A sentence has also been added that reserves the tribe's right to disagree with the town's interpretation of the 2004 Supreme Judicial Court decision.

At the same time, the tribe recently affirmed its commitment to apply for town permits for its 6,500-square-foot community center building, if and when the land use agreement has been signed by both parties. Selectmen have agreed to delay any enforcement action on the building, which is under construction on tribal lands without town permits, until the document has either been signed or discarded.

"We have their word and a handshake that they will apply for the necessary town permits once the agreement has been signed," Mr. Hebert said of the community center building. "It will sort of be the test case to make sure the process in the agreement works."

Mr. Widdiss said the agreement would force the town and tribe to work together on such land use issues, instead of heading directly to court.

"The disputes in the past were mostly not about whether the action was appropriate, but whether there was trust between the town and the tribe," he said. "This document memorializes an instant where we say we do trust each other to do what's appropriate. Now it's up to the parties, in their actions, to see whether or not this is a positive step. I think it gives us a much clearer picture of the issues that we need to deal with."

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