

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 13-CV-13286

_____)
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.)
_____)

MEMORANDUM OF LAW IN SUPPORT OF
THE TOWN OF AQUINNAH'S MOTION TO INTERVENE

The Town of Aquinnah (the "Town") submits this memorandum of law in support of its Motion to Intervene.¹ The Town seeks to intervene to protect its unique legal interests that are directly implicated by the recent actions of the several related Defendants, including the Wampanoag Tribe of Gay Head (Aquinnah) (hereinafter, the "Aquinnah Tribe"), and by the Commonwealth's December 2, 2013, complaint. For the reasons set forth below, allowing the Town to intervene is necessary to fully protect its interests, and will not prejudice any other party. Accordingly,

¹ The Town's proposed Pleading is attached hereto as Exhibit A and incorporated by reference.

the town's motion to intervene as a matter of right or, in the alternative, permission, should be allowed.

INTRODUCTION

A. The Settlement Agreement and the Legislation.

In 1974, the Wampanoag Tribal Council of Gay Head, Inc. (now the Wampanoag Tribe of Gay Head/Aquinnah, hereinafter the "Aquinnah Tribe"), at the time a Massachusetts non-profit corporation without federally-recognized tribal status, commenced an action in this Court against the Town of Gay Head (now Aquinnah) claiming that certain historical transfers of land in Gay Head violated the Indian Non-Intercourse Act, 25 U.S.C. § 177. See Wampanoag Tribal Council of Gay Head, Inc., et al. v. Town of Gay Head, et al., No. 74-5826-G (D. Mass.); see also Building Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1 (2004) ("Shellfish Hatchery Corp.") (describing history of tribe and litigation) and Kitras v. Town of Aquinnah, 64 Mass. App. Ct. 285, 296-298 (2005) ("Kitras").

Subsequently, in 1983, the Aquinnah Tribe, the Town, the Commonwealth, and the Aquinnah/Gay Head Community Association, Inc. ("AGHCA") entered into a "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims" (hereinafter "Settlement Agreement"). The Settlement Agreement provides:

"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 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."

Shellfish Hatchery Corp., 443 Mass. at 2 (emphasis added).

In 1985, the Commonwealth enacted legislation to implement the Settlement Agreement (see St. 1985, c. 277) (the "State Act"), and, on February 10, 1987, the United States Department of Interior granted the Aquinnah Tribe federal recognition. See 52 Fed. Reg. 4193 (1987). In 1988, Congress enacted 25 U.S.C. §§ 1771-1771i, which served to implement the Settlement Agreement ("Federal Act").² The Federal Act confirmed the Aquinnah Tribe's existence as an Indian tribe, and also confirmed that, consistent with the terms of the Settlement Agreement, the Aquinnah Tribe is "subject to" the jurisdiction of the Commonwealth and the Town. The final provision of the Federal Act states:

"Except as otherwise expressly provided in this subchapter or in the State Implementing Act, the settlement lands and any other land that may now or hereinafter be owned by or

² Together, with the State Act, the "Implementing Legislation".

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 (including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance).

25. U.S.C. § 1771g (emphasis added).

Commercial gaming is not allowed under the Town's Zoning By-Laws. In Shellfish Hatchery Corp., 443 Mass. at 1, the Town took steps, as it has on other occasions, to enforce its Zoning By-Laws and the terms of the Settlement Agreement and the Implementing Legislation. There, the Supreme Judicial Court ("SJC") ruled, id. at 15-16, that the Aquinnah Tribe had waived its rights to sovereign immunity and is subject to Town zoning, similar to any other Massachusetts corporation. See id. at 15 ("Contrary to the Tribe's contention, paragraph three of the settlement agreement . . . refers specifically to the manner in which the Tribe pledged to conduct its activities on the subject land, waiving its right to proceed otherwise. The contractual mandate that the Tribe 'shall hold' its lands "in the manner" of a corporation conveys to the Tribe itself the rights and perils of ordinary corporate status."). The Aquinnah Tribe did not seek review of the SJC's decision in the United States Supreme Court.

The Massachusetts Appeals Court reached the same conclusion in Kitras v. Town of Aquinnah, 64 Mass. App. Ct. 285, in which

the Court considered whether sovereign immunity barred joining the Tribe as a party in litigation seeking to establish easement rights over various Aquinnah lots, including the tribal lands involved in this action. In concluding that the Tribe could be joined directly as a party, the Appeals Court ruled:

"Although Shellfish Hatchery Corp. dealt with the Cook Lands and involved a zoning dispute (rather than the easement rights here at issue) we see little reason to suppose the court's rationale would not control the present proceedings. The central Settlement Lands here at issue are subject to the same settlement agreement and implementing State and Federal legislation as the Cook Lands. Section 3 of the settlement agreement, also cited in Shellfish Hatchery Corp., specifies that the Tribe 'shall hold the Settlement Lands . . . in the same manner and subject to the same laws, as any other Massachusetts corporation. . . Under no circumstances . . . shall the civil . . . jurisdiction of the Commonwealth . . . or any of its political subdivisions, over the settlement lands, or any land owned by the Tribe in the Town . . . be impaired or otherwise altered.'" At p. 297.

The Settlement Agreement and the Implementing Legislation establish that, consistent with the SJC's decision and analysis in Shellfish Hatchery Corp., and the Appeals Court decision in Kitras, the Aquinnah Tribe waived any sovereign right it may have had to engage in gaming in Aquinnah under the subsequently-enacted Indian Gaming Regulatory Act ("IGRA"), and to challenge that the 1983, 1985, and 1987 agreements and enactments "specifically provide for exclusive state control over gambling." Narragansett Indian Tribe v. National Indian Gaming Comm'n, 158 F.3d 1335, 1341 (D.C. Cir. 1998) (construing § 1771

in litigation involving a Rhode Island tribe's similar claim); see also Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 702 (1st Cir. 1994) (distinguishing the Tribe's federal implementing legislation from similar legislation relating to Indian settlement lands in Rhode Island, and noting that §§ 1771e and 1771g "contain corresponding limits on Indian jurisdiction" that we believe save the implementing legislation from implied repeal by IGRA).

Notwithstanding the express terms of the Settlement Agreement - in which the Tribe received exclusive use of hundreds of acres of public and private land in exchange for relinquishing its aboriginal title and claims - the Tribe has stated its intention to engage in gaming-related activity on the lands it obtained in the Settlement Agreement (the "Settlement Lands"). This led the Commonwealth to initiate this action for a declaratory judgment to confirm the plain meaning of the Settlement Agreement. Complaint, December 2, 2013, at 3 ("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.").

The Tribe's eligibility to game on the Settlement Lands - an issue squarely implicating the Settlement Agreement - is the

central issue in this action. As a party to the Settlement Agreement, and as the only entity which issues land use permits, the Town satisfies the standard for intervention as a matter of right, and should be permitted to intervene to defend its unique interests in the Settlement Agreement's proper interpretation, application, and enforcement. In the alternative, the Town should be granted permissive intervention to defend the terms of the Settlement Agreement.

B. The 2007 Land Use Agreement and Related Local Permits.

In 2007, the Town and the Aquinnah Tribe entered into a Land Use Agreement, which agreement also provided that the Tribe would be subject to Town zoning. That Agreement has since been terminated by the Aquinnah Tribe. However, prior to its termination, and pursuant to the 2007 Agreement, the Aquinnah Tribe obtained permits from the Town and the Martha's Vineyard Commission to construct a community center, which remains an unfinished building and which the Aquinnah Tribe claims that it wants to use as a commercial gaming facility. The permits issued for the community center authorized only a community use - not a commercial gaming operation. These permits are local permits, and are not trumped by IGRA.

C. The Town Should be Allowed to Intervene.

The Town respectfully requests that it should also be afforded an opportunity to advance its position, consistent with

the decisions of the SJC and the Massachusetts Appeals Court, that the plain language of the Settlement Agreement, and the terms of the permits issued under the 2007 Agreement, bar commercial gaming in Aquinnah. Even if the AGHCA is also permitted to intervene, that entity is private and has no authority to issue the permits which will be required for the Aquinnah Tribe to exercise any gaming rights in Aquinnah. The Town represents that the interests of all taxpayers and residents.

For the reasons discussed below, the Town satisfies the standard for intervention as a matter of right. In the alternative, the Court should exercise its discretion to grant the Town permission to intervene to defend the terms of the Settlement Agreement.

ARGUMENT

I. The Town Qualifies For Intervention As A Matter Of Right Because The Aquinnah Tribe's Arguments, If Successful, Would Limit The Settlement Agreement To Which The Town Is A Party and Has An Obligation to Enforce.

Rule 24(a)(2) allows any party who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest" to intervene in pending litigation, as

a matter of right. Fed. R. Civ. P. 24(a)(2). The First Circuit has identified four factors to consider in determining whether a moving party is entitled to intervene as a matter of right: (1) the timeliness of the motion to intervene; (2) the party's interest relating to the property or transaction that forms the basis of the ongoing action; (3) whether the disposition of the action threatens to impair the moving party's ability to protect that interest; and (4) whether existing parties cannot adequately represent the moving party's interest in the proceedings. See Conservation Law Foundation v. Mosbacher, 966 F.2d 39, 41 (1st Cir. 1992); Travelers Indem. Co. v. Dingwelu, 884 F.2d 629, 637 (1st Cir. 1989). Since the Town satisfies each of those four considerations, its motion to intervene should be granted.

A. The Town's Motion to Intervene is Timely.

The Town has moved to intervene promptly after this Court declined to remand the matter to State Court, and well prior to the next scheduled event on August 6, 2014. The timeliness of the Town's motion is particularly apparent in light of the First Circuit's mandate that intervention motions should be evaluated "in keeping with a commonsense view of the overall litigation." Public Service of New Hampshire v. Patch, 136 F.3d 197, 204 (1st Cir. 1998). The Town should similarly be allowed to demonstrate

to this Court that the Settlement Agreement is valid, enforceable, and survives the enactment of IGRA.

B. The Town Has a Significant Stake in the Outcome of this Litigation.

The Town is the only party authorized to issue local permits and is the only party empowered to enforce local zoning, functions which will be implicated by the Tribe's efforts to open its lands to commercial gaming in Aquinnah. An entity seeking to defend and to protect its authority and the validity of a contract has a significant stake in the interpretation of that agreement for purposes of Rule 24. See B. Fernandez & HNOS., Inc. v. Kellogg USA, Inc., 440 F.3d 541, 545 (1st Cir. 2006) ("litigation [which] could result . . . in an order directly affecting [a party's] contractual rights. . . . is more than sufficient to satisfy the 'practical impediment' requirement.").

Likewise, the Court's interpretation of the Implementing Legislation and the Settlement Agreement in this case could affect limit the Town's rights in the future. See Daggett v. Comm'n on Governmental Ethics & Election Practices, 172 F.3d 104, 110-111 (1st Cir. 1999) (while proposed intervenor may not have been bound by determination "in a strict res judicata sense," the fact that the court's interpretation of a statute

would operate to bar proposed intervenor from benefitting from statute "easily satisfie[s]" intervention test).

C. The Existing Parties Cannot Adequately Represent the Town's Interests.

For similar reasons, neither the Commonwealth nor the AGHCA will adequately represent the Town's interest in asserting that the Settlement Agreement, in light of the State and Federal Acts, bars the Tribe from obtaining any permits under zoning for a casino. Given that the Town will have the responsibility of acting on land use permit applications - or seeking enforcement if necessary - and given that a casino will have a measurably different impact on the Town and its residents than any of the other parties - intervention is warranted.

Even though the Commonwealth has, to date, taken the position that the Tribe has relinquished any right to conduct gaming on its property on Martha's Vineyard, the Commonwealth is burdened by competing priorities. While the Commonwealth has an interest in the full enforcement of the Settlement Agreement, to which it is a party, it also has an express interest in the promulgation of state-licensed gaming in the Commonwealth - evidenced most directly in the Massachusetts Expanded Gaming Act, St. 2011, c. 194, which includes provisions specific to tribal gaming. Although the Commonwealth has to date tendered arguments consistent with the Town's interpretation of the

Settlement Agreement, the Commonwealth's approach could change. See Mosbacher, 966 F.2d at 44-45. Furthermore, this is not a case in which because the Commonwealth is seeking to enforce or defend the terms of a state statute it can be presumed to be representing the interests of all constituents in that endeavor: while state statutes are pertinent to this case, it is the terms of the Settlement Agreement that are of central importance, and it is the Town's interests in the proper interpretation and scope of those terms that the Town will pursue in this case should it be permitted to intervene.

The Town satisfies all the criteria for intervention as a matter of right. Its motion should be allowed.

II. In The Alternative, the Town Should Be Allowed To Intervene By Permission

Should the Court rule that the Town is not entitled to intervene as a matter of right, the Court should then, alternatively, exercise its discretion to permit the Town to intervene under Rule 24(b). Permissive intervention is appropriate where "an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b). District courts have "broad discretion" in deciding whether or not to grant permissive intervention under Rule 24(b)(2). Travelers Indem. Co. v. Dingwell, 884 F. 2d 629, 641 (1st Cir. 1989).

The First Circuit has articulated three factors to be considered in determining whether permissive intervention is warranted, including whether: "(i) the applicant's claim or defense and the main action have a question of law or fact in common; (ii) the applicant's interests are not adequately represented by an existing party; and (iii) intervention would not result in undue delay or prejudice to the original parties." In Re Thompson, 965 F. 2d 1136, 1142 n. 10 (1st Cir. 1992).

As discussed in connection with Rule 24(a)(2), the Town easily satisfies the first two considerations for permissive intervention because its: a.) contractual rights and governmental obligations are directly implicated; and b.) interests are not adequately represented by the existing parties. Permitting the Town to intervene, at this juncture, will not prejudice the existing parties.

Further, allowing the Town to intervene would not delay the proceedings. Therefore, the Town should be allowed to intervene by permission. See Daggett, 172 F.3d at 113 ("[T]he district court can consider almost any factor rationally relevant but enjoys very broad discretion in granting or denying" a motion for permissive intervention).

CONCLUSION

For the foregoing reasons, the Town respectfully requests that it be permitted to intervene in this litigation, either as a matter of right, or, alternatively, in the Court's discretion.

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By its attorneys,

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Dated: July 10, 2014

CERTIFICATE OF SERVICE

In accordance with Local Rule 5.2(b), I hereby certify that this document filed through the ECF system on July 10, 2014 will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Michael A. Goldsmith
Michael A. Goldsmith

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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_____)
THE COMMONWEALTH OF)
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THE WAMPANOAG TRIBE OF GAY)
HEAD (AQUINNAH), THE)
WAMPANOAG TRIBAL COUNCIL OF)
GAY HEAD, INC., and THE)
AQUINNAH WAMPANOAG GAMING)
CORPORATION,)
)
Defendants.)
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DECLARATORY JUDGMENT ACTION BY
THE TOWN OF AQUINNAH

The Town of Aquinnah (the "Town") seeks declaratory relief against the Wampanoag Tribe of Gay Head (Aquinnah) (hereinafter, the "Tribe"), and its affiliates - the Wampanoag Tribal Council of Gay Head, Inc. (predecessor-in-interest to the Tribe), and the Aquinnah Wampanoag Gaming Corporation.

Nature of the Action

1. This action was initiated by the Commonwealth of Massachusetts when it filed a complaint in the Supreme Judicial Court for Suffolk County on December 2, 2013, alleging a breach of contract, and seeking a declaratory judgment.

2. The Town hereby incorporates the factual recitations in the Commonwealth's December 2, 2013, complaint (¶¶ 1-14 and 20-61).

3. The Town seeks a declaration as to whether the Tribe and its affiliates may only engage in gaming activity (i.e., gambling activity) after properly complying with all pertinent regulatory, permitting, and licensing requirements - including all Town zoning ordinances.

Parties

4. The Commonwealth of Massachusetts, the party that initiated this action, is a sovereign state, one of the several United States of America.

5. The Town is a municipal government organized under the laws of the Commonwealth of Massachusetts.

6. The Town has previously either initiated or been involved in litigation involving the proper interpretation and application of the contract in issue - the below-detailed agreement between the Tribe, the Commonwealth, and the Aquinnah/Gay Head Community Association, Inc. (the "AGHCA") - including in this Court. See, e.g., Building Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1 (2004).

7. The Wampanoag Tribe of Gay Head (Aquinnah) (the "Tribe") "exists as an Indian tribe within the meaning of Federal law." 52 Fed. Reg. 4193 (February 10, 1987).

8. The Wampanoag Tribal Council of Gay Head, Inc. is the predecessor-in-interest to the Tribe, and was formerly a non-profit corporation organized under the laws of the Commonwealth of Massachusetts.

9. The Aquinnah Wampanoag Gaming Corporation is a wholly-owned entity established by the Tribe, with certain authority explicitly delegated to it by the Tribe, and is thus a related entity to the Tribe.

Jurisdiction and Venue

10. This action was removed from the Supreme Judicial Court for Suffolk County to this Court by the Tribe.

11. This Court has subject matter jurisdiction over this action in accordance with 28 U.S.C. § 1331.

12. This court has personal jurisdiction over all parties to this action.

13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1), and 1391(b)(2).

Background

14. In 1974, the Wampanoag Tribal Council of Gay Head, Inc. - then a Massachusetts non-profit corporation without federally-recognized tribal status - commenced an action in this

Court against the Town of Gay Head (now the Town of Aquinnah, hereinafter the "Town"), on the Island of Martha's Vineyard, claiming that certain historical transfers of land in Gay Head violated the Indian Non-Intercourse Act, 25 U.S.C. § 177. See Comm. Compl. ¶ 24; Wampanoag Tribal Council of Gay Head, Inc. v. Town of Gay Head, No. 74-5826 (D. Mass.); see also Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass 1 (describing the history of the litigation).

15. The Aquinnah/Gay Head Community Association, Inc. ("the AGHCA") - as the Taxpayer's Association of Gay Head - intervened in this land-transfer litigation.

16. In 1983 the Tribe, the Town, the Commonwealth, and the AGHCA entered into a "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims" (hereinafter, "the Settlement Agreement"); the Settlement Agreement resolved the ongoing land-transfer litigation and its various inter-related claims. Comm. Compl. ¶ 25.

17. The Settlement Agreement represented a carefully struck bargain, through which several sophisticated parties - each represented by legal counsel - resolved their respective differences in a manner that both conferred benefits and placed obligations on all involved. Comm. Compl. ¶¶ 26-27.

18. In the Settlement Agreement the Tribe received exclusive use of hundreds of acres of public and private land in exchange for relinquishing its aboriginal title and claims. Comm. Compl. ¶¶ 28-29.

19. In the context of this litigation, the Settlement Agreement most pertinently provides in part that:

"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 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."

Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. At 4

(emphasis added).

20. In 1985, the Commonwealth enacted legislation to implement the settlement, Comm. Compl. ¶ 33; St. 1985, c. 277, and on February 10, 1987, the Tribe was granted federal recognition, see 52 Fed. Reg. 4193-4194 (February 10, 1987).

21. After the Tribe gained federal recognition, Congress enacted federal legislation implementing the Settlement Agreement in the Massachusetts Indian Land Claims Settlement Act. 25 U.S.C. §§ 1771-1771i. Comm. Compl. ¶ 35.

21. In this legislation, Congress ratified and confirmed the Tribe's existence as an Indian tribe, and also confirmed that, consistent with the terms of the Settlement Agreement, the Tribe is subject to the jurisdiction of the Commonwealth and the Town. See Comm. Compl. ¶ 36. In particular, the federal implementing Act states:

"Except as otherwise expressly provided in this subchapter or in the State Implementing Act, the settlement lands and any other land that may now or hereinafter be owned by 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 (emphasis added).

22. As detailed more fully in the Commonwealth's December 2, 2013 complaint (¶¶ 48-61), notwithstanding the express terms of the Settlement Agreement, the Tribe and its affiliates have recently engaged in gaming-related activity, including the adoption of a "Gaming Ordinance," with the expressed intention of conducting gaming on the lands conferred in the Settlement Agreement "as soon as possible."

23. Since the filing of the Commonwealth's December 2, 2013, complaint, the Tribe has maintained the validity of the existing "Gaming Ordinance," and reiterated its intention of conducting gaming.

24. The clear import of the Settlement Agreement and the Massachusetts and federal implementing legislation is that the Tribe cannot continue to pursue gaming activities on its Settlement lands. In the Settlement Agreement, the Tribe waived any sovereign right it may have had to engage in gaming under the subsequently-enacted Indian Gaming Regulatory Act ("IGRA"), and the 1983, 1985, and 1987 agreements and enactments "specifically provide for exclusive state control over gambling." See Narragansett Indian Tribe v. National Indian Gaming Comm'n, 158 F.3d 1335, 1341 (D.C. Cir. 1998) (construing § 1771 in litigation involving a Rhode Island tribe's similar claim); see also Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 702 (1st Cir. 1994) (distinguishing the Tribe's federal implementing legislation from similar legislation relating to Indian settlement lands in Rhode Island, and noting that §§ 1771e and 1771g "contain corresponding limits on Indian jurisdiction" that save the implementing legislation from implied repeal by IGRA).

25. The Tribe has been issued land use permits from the Town and the Martha's Vineyard Commission to construct a community center, pursuant to a 2007 Land Use Agreement between the Town and the Tribe (the Aquinnah Tribe subsequently terminated the Agreement). The Tribe is proposing to utilize the Community Center for gaming operations, which is not allowed

under either Town zoning or the terms of the land use permits and by the Town and the Martha's Vineyard Commission.

Allegations

Count I: Breach of Contract

26. The facts and allegations set forth in paragraphs 1 through 25 above are incorporated by reference, as if set forth herein in full.

27. The Settlement Agreement is a valid and enforceable contract that created enduring legal obligations on the part of all parties to the agreement, including the Tribe.

28. Under the Settlement Agreement, the Tribe is prohibited from engaging in any gaming on the lands conferred in the Settlement Agreement, and subjected itself to the laws, regulations and ordinances of the Town. Commercial gaming is not allowed in Aquinnah under zoning and other applicable laws.

29. The Tribe's actions, as detailed above and in the Commonwealth's December 2, 2013, complaint go to the very essence of the several parties' contractual bargain in the Settlement Agreement.

Count II: Declaratory Judgment

30. The facts and allegations set forth in paragraphs 1 through 29 above are incorporated by reference, just as if set forth herein in full.

31. Pursuant to 28 U.S.C. § 2201, this Court is authorized to declare the rights and other legal relations of any interested party seeking such declaration, where an actual controversy exists, as it does here.

32. As a party to the Settlement Agreement, the Town may seek to enforce the terms of the Settlement Agreement.

33. In the light of the Tribe's actions, as well as the Commonwealth's December 2, 2013, complaint, an actual controversy has arisen between the Tribe, the Commonwealth, and the Town concerning the Tribe's anticipatory breaches of the Settlement Agreement.

34. Not only is there no other adequate remedy for the above-detailed injuries, but a declaratory judgment from this Court is otherwise appropriate in this case because such a judgment would remove any uncertainty as to the Tribe's obligations under the Settlement Agreement, allowing all parties to the Settlement Agreement to arrange their affairs with certainty, and thus terminate the present controversy.

Prayer for Relief

WHEREFORE, the Town respectfully requests this Court to enter judgment:

I. Declaring that the Settlement Agreement is valid and enforceable; that in the Settlement Agreement the Tribe waived any right it may have had to engage in gaming, including under

the subsequently-enacted Indian Gaming Regulatory Act ("IGRA").

II. Declaring that the Settlement Agreement is valid and enforceable, that the Settlement Agreement was not repealed by IGRA; and that, pursuant to the Settlement Agreement, the Tribe may only engage in gaming activity after properly complying with all pertinent regulatory, permitting, and licensing requirements - including all local zoning ordinances and the term of its locally issued land use permits.

TOWN OF AQUINNAH
By its attorneys,

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Dated: July 10, 2014

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/s/ Michael A. Goldsmith
Michael A. Goldsmith