

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2022-P-0346

Matthew Haney Trustee of The Gooseberry Island Trust

Plaintiff-Appellant,

v.

Mashpee Wampanoag Indian Tribal Council, Inc., and Mashpee
Wampanoag Tribe

Defendants-Appellees.

ON APPEAL FROM

BARNSTABLE SUPERIOR COURT DOCKET NO. 2172CV00076

BRIEF OF THE DEFENDANTS-APPELLEES

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TABLE OF CONTENTS

I. STATEMENT OF THE ISSUES	5
II. STATEMENT OF THE CASE	5
III. STATEMENT OF FACTS	6
IV. SUMMARY OF ARGUMENT	7
V. ARGUMENT	9
A. The Mashpees Enjoy Sovereign Immunity with Respect to All Claims in Plaintiff's First Amended Complaint	9
B. The Mashpees Have Not Waived its Sovereign Immunity with Respect to Any of the Claims in Plaintiff's First Amended Complaint	13
1. The Shellfish Propagation License	14
2. Other Litigation	18
C. The Immovable Property Exception to Sovereign Immunity Does Not Apply to the Mashpees, a Federally Recognized Indian Tribe	21
D. The Mashpees Sovereign Immunity Extends to Conservation Related Laws insofar as it Relates to the Claims in the Plaintiff's Amended Complaint.	27
VI. CONCLUSION	28
CERTIFICATE OF COMPLIANCE.....	29
CERTIFICATE OF SERVICE.....	29
ADDENDUM.....	30

TABLE OF AUTHORITIES

Cases

<u>Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp.</u> , 443 Mass. 1 (2004)	8, 11, 12, 13, 15, 17, 26
<u>Buzulis v. Mohegan Sun Casino</u> , 69 Mass. App. Ct. 708 (2007)	23, 26
<u>Caddo Nation of Oklahoma v. Wichita & Affiliated Tribes</u> , 786 F. App'x 837 (10th Cir. 2019)	17
<u>California v. Cabazon Band of Mission Indians</u> , 480 U.S. 202 (1987)	13
<u>Cayuga Indian Nation of New York v. Seneca City, New York</u> , 260 F. Supp. 3d 290 (W.D.N.Y. 2017)	18, 19, 21, 23, 26
<u>Cherokee Nation v. State of Ga.</u> , 30 U.S. 1 (1831)	11
<u>Commonwealth v. Maxim</u> , 429 Mass. 287 (1999)	20
<u>Cook v. AVI Casino Enterprises, Inc.</u> , 548 F.3d 718 (9th Cir. 2008)	8
<u>Dixon v. Picopa Const. Co.</u> , 160 Ariz. 251 (1989)	8
<u>Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla.</u> , 166 F.3d 1126 (11th Cir. 1999)	27
<u>Florida v. Seminole Tribe of Florida</u> , 181 F. 3d 1237 (11 th Cir. 1999)	16
<u>Furry v. Miccosukee Tribe of Indians of Florida</u> , 685 F. 3d 1224 (11 th Cir. 2012)	15, 16, 27
<u>Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.</u> , 523 U.S. 751 (1998)	10, 11, 12, 16, 23, 27, 28
<u>Littlefield v. United States Dep't of the Interior</u> , 318 F.R.D. 558 (D. Mass. 2016)	11
<u>Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.</u> , 585 F.3d 917 (6th Cir. 2009)	8
<u>Meyers v. Oneida Tribe of Indians of Wisconsin</u> , 836 F.3d 818 (7th Cir. 2016)	12
<u>Michigan v. Bay Mills Indian Cmty.</u> , 572 U.S. 782 (2014)	10, 11, 12, 23

<u>Oklahoma v. Castro-Huerta</u> , 142 S. Ct. 2486 (2022).....	22
<u>Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma</u> , 498 U.S. 505 (1991).....	10, 11, 13, 20
<u>Oneida Indian Nation v. Phillips</u> , 981 F.3d 157 (2d Cir. 2020).....	23, 24, 26
<u>Ransom v. St. Regis Mohawk Educ. & Cmty. Fund, Inc.</u> , 658 N.E.2d 989 (N.Y. 1995).....	8
<u>Rosebud Sioux Tribe v. A.P. Steel, Inc.</u> , 874 F. 2d. 550 (8 th Cir. 1989).....	19
<u>Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.</u> , 896 F.3d 1322 (Fed. Cir. 2018).....	17
<u>Santa Clara Pueblo v. Martinez</u> , 436 U.S. 49 (1978).....	10, 26
<u>Self v. Cher-Ae Heights Indian Cmty. of Trinidad Rancheria</u> , 60 Cal. App. 5th 209 (2021).....	24, 25
<u>Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.</u> , 476 U.S. 877 (1986).....	10, 11
<u>TransAmerica Assurance Corp. v. United States</u> , 423 F. Supp. 2d 691 (W.D. Ky. 2006).....	21
<u>Turner v. United States</u> , 248 U.S. 354 (1919).....	11
<u>United States v. United States Fidelity & Guar. Co.</u> , 309 U.S. 506 (1940).....	11
<u>United States v. Testan</u> , 424 U.S. 392 (1976).....	13, 14
<u>United States v. King</u> , 395 U.S. 1 (1969).....	13, 15
<u>Upper Skagit Indian Tribe v. Lundgren</u> , 138 S. Ct. 1649 (2018).....	22
<u>Wright v. Colville Tribal Enter. Corp.</u> , 159 Wash. 2d 108 (2006).....	8
<u>Zych v. Wrecked Vessel Believed to Be the Lady Elgin</u> , 960 F.2d 665 (7th Cir. 1992).....	21

I. STATEMENT OF THE ISSUES

1. Whether the Trial Court properly granted the Defendants' Motion to Dismiss where the Mashpee Wampanoag Tribe, a federally recognized Indian tribe, enjoys sovereign immunity with respect to all of the claims brought in Plaintiff's Amended Complaint?
2. Whether the Trial Court properly found that the Mashpee Wampanoag Tribe has not waived sovereign immunity as there is nothing in the record setting forth a clear and express waiver of the immunity?
3. Whether the Trial Court correctly ruled that the so-called "immovable property doctrine" exception does not apply in this case where the Plaintiff does not seek a determination as to what entity has a right or interest in real property but instead seeks relief regarding use of property within a licensed area?
4. Whether the Trial Court correctly ruled that the Plaintiff did not possess a private right of action to enforce natural resources laws?

II. STATEMENT OF THE CASE

The procedural history of this Action is fairly straight forward.

This Action was commenced by Plaintiff Matthew Haney, as trustee of the Gooseberry Island Trust ("Gooseberry" or

"Plaintiff"), when he filed suit in Barnstable Superior Court against the Mashpee Wampanoag Indian Tribal Council, Inc. (the "Charitable Corporation") and Mashpee Wampanoag Tribe (the "Mashpees", collectively with the Charitable Corporation, the "Defendants" or the "Mashpees") alleging counts against the Mashpees for trespass, public nuisance, private nuisance and seeking a declaratory judgment regarding the use of the Mashpees shellfish propagation license. (A-11-17)¹ The Defendants moved to dismiss the Plaintiff's Amended Complaint on July 12, 2021. (A-5) After a hearing on August 12, 2021, the Trial Court issued an Order dismissing the Plaintiff's Amended Complaint, with prejudice, on the grounds that sovereign immunity did bar all of the Plaintiff's claims. (A-5) This appeal followed. There was no error.

III. STATEMENT OF FACTS

The Mashpees are a federally recognized Indian Tribe within the meaning of Federal law. (A-8)

The Mashpees have a shellfish aquaculture operation, a portion of which is located near Gooseberry Island. (A-10)

In addition to their aboriginal fishing rights the Mashpees hold a license issued by the Town of Mashpee to engage shellfish

¹Citations to the Record Appendix filed in this matter are in the form "A-[Page]."

aquaculture operation in the waters around Gooseberry Island since 1977. (A-8)

The Mashpees are the current holder of the shellfish aquaculture license issued by the Town of Mashpee (the "License"). (A-82)

The License has been held by the Mashpees since at least 2012.² (A-74)

Plaintiff acquired title to Gooseberry Island in 2011. (A-8)

IV. SUMMARY OF ARGUMENT

The Mashpee Wampanoag Tribe is a sovereign authority protected by sovereign immunity from unconsented lawsuits such as this one. There was no congressional abrogation or waiver of sovereign immunity as to any of the claims raised in the Amended Complaint. The Plaintiff's claims could not proceed and can not proceed now as a matter of law (6-10).³

² While the Charitable Corporation was the original holder of the License, the License has been in the Mashpees' name since 2012.

³ It does not appear that the Plaintiff has made any arguments in his brief directed towards the dismissal of the claims against the Charitable Corporation. In any event the Charitable Corporation is similarly protected by tribal sovereign immunity. See Cook v. AVI

Indian tribes hold a unique position, different from that of states or foreign nations as such "tribal sovereign immunity is governed by its own distinctive law." "Absent a clear waiver by the tribe or congressional abrogation," suits against tribes are barred by tribal sovereign immunity. Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1, 12 (2004). Abrogation must be "unequivocally expressed" and waiver must be "clear." Id. There was no such clear and unequivocal waiver in this case. (10-19)

The so-called immovable property exception does not exist. The Courts have made clear that such an exception, were it to exist, must be created by Congress and not the Courts. In any

Casino Enterprises, Inc., 548 F.3d 718, 725 (9th Cir. 2008); Ransom v. St. Regis Mohawk Educ. & Cmty. Fund, Inc., 658 N.E.2d 989, 994-995 (N.Y. 1995) (holding that nonprofit corporation formed by consortium of Indian tribes under state law had sovereign immunity); see also Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc., 585 F.3d 917, 921 (6th Cir. 2009); Wright v. Colville Tribal Enter. Corp., 159 Wash. 2d 108, 113 (2006) ("tribal sovereign immunity also protects certain tribal business enterprises because 'an action against a tribal enterprise is, in essence, an action against the tribe itself.'"); Dixon v. Picopa Const. Co., 160 Ariz. 251, 256 (1989).

event, even if the exception did exist the facts in this case do not support its application. (19-25)

Even if the Mashpees must be in compliance with any specific state or municipality licensing or regulatory scheme, there is no corresponding authorization for a private person, such as the Plaintiff, to file a civil action to enforce compliance. (25-26)

V. ARGUMENT

A. The Mashpees Enjoy Sovereign Immunity with Respect to All Claims in Plaintiff's First Amended Complaint

There is no dispute that the Mashpees are a federally recognized Indian tribe.⁴ As such they enjoy sovereign immunity with respect to all claims raised in the Amended Complaint. The law is clear: the doctrine of tribal sovereign immunity prohibits

⁴ This is admitted by the Plaintiff in his Amended Complaint. (A-8); see also 72 Fed. Reg. 8007 (Feb. 22, 2007) (determining that the Mashpee Wampanoag Indian Tribal Council, Inc. is an Indian tribe within the meaning of Federal law); 86 Fed. Reg. 7554 (Jan. 29, 2021) (the Tribe, previously the Mashpee Wampanoag Indian Tribal Council, Inc., is "acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes.").

unconsented suits against the Tribe. "Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509 (1991).

As separate sovereigns pre-existing the Constitution, Indian tribes possess the common-law immunity from suit enjoyed by sovereign powers, subject only to the control of Congress. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978); Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 787-88 (2014) (reaffirming that the tribes possess immunity from suit - subject only to congressional action - and that this immunity prevented Michigan from suing to enjoin the operation of a casino *outside the tribe's reservation*); see also Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 754, 756 (1998) ("an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity"); Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C., 476 U.S. 877, 890 (1986); Wolpe v. Haney, 2016 WL 4586045, at *1 (Mass. Land Ct. Aug. 31, 2016) ("The Mashpee Wampanoag Tribe has sovereign immunity from suit."). From the very beginning of the U.S. Supreme Court's consideration of the doctrine of tribal sovereign immunity such immunity has been viewed as supported by federal law and policy and waivable only by Congress or by the tribes themselves. See

United States v. United States Fidelity & Guar. Co., 309 U.S. 506, 512 (1940); Turner v. United States, 248 U.S. 354, 358 (1919).

Tribal sovereign immunity is "a necessary corollary to Indian sovereignty and self-governance." Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C., 476 U.S. 877, 890 (1986). "Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509 (1991); see also Littlefield v. United States Dep't of the Interior, 318 F.R.D. 558, 560 (D. Mass. 2016) (recognizing the Mashpee Wampanoag Tribe's "decision not to waive their sovereign immunity" earlier in that litigation).

"[T]he relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else." Cherokee Nation v. State of Ga., 30 U.S. 1, 2 (1831). "Tribal sovereign immunity is to be distinguished from State sovereign immunity ... and the sovereign immunity of foreign nations." Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1, 12 (2004); Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 756 (1998) ("the immunity possessed by Indian tribes is not coextensive with that of the States"); see also Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 797-98 (2014). Case law makes clear that tribal sovereign

immunity is more extensive than immunity afforded to other sovereigns. For example, tribes enjoy immunity for commercial activities. See Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 758 (1998); Meyers v. Oneida Tribe of Indians of Wisconsin, 836 F.3d 818, 823 (7th Cir. 2016). This contrasts with Congress' treatment of other sovereigns. Where Congress has waived the immunity for commercial activities conducted by other foreign sovereigns, Congress has not waived immunity for Indian tribes in this circumstance. 28 U.S. Code § 1605(a)(2).⁵ Additionally, immunity for tribal activities that take place off of reservations have been upheld by the U.S. Supreme Court. See Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 790 (2014) (holding Michigan could not enjoin a tribe from operating casino outside its reservation).

The Massachusetts Supreme Judicial Court has recognized and upheld these principals of law. In the case of Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1, 11-12 (2004), the Commonwealth's highest court affirmed that tribes hold a unique position, different from that of states or foreign nations, and that "tribal

⁵ The Foreign Sovereign Immunities Act of 1976 deals with foreign countries but does not apply to Indian tribes. See e.g. Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 759 (1998).

sovereign immunity is governed by its own distinctive law." "Absent a clear waiver by the tribe or congressional abrogation," suits against tribes are barred by tribal sovereign immunity. Id. at 12. Abrogation must be "unequivocally expressed" and waiver must be "clear." Id.

As he must, the Plaintiff concedes the fact that the Mashpees are entitled to sovereign immunity. (Brief, p. 13)

B. The Mashpees Have Not Waived its Sovereign Immunity with Respect to Any of the Claims in Plaintiff's First Amended Complaint

The Judiciary's interpretation of Federal policy has long been that tribal sovereign immunity is an important part of Congress' "goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 510 (1991) (quoting California v. Cabazon Band of Mission Indians, 480 U.S. 202, 216 (1987)). Congress has in some limited situations waived the sovereign immunity of tribes, but it has not done so here.

The Tribe itself similarly has not waived immunity. Any waiver by the Tribe itself must be clear and unequivocal. See United States v. Testan, 424 U.S. 392, 399 (1976) (citing United States v. King, 395 U.S. 1, 4 (1969)) ("[A] waiver of the traditional sovereign immunity 'cannot be implied but must be unequivocally

expressed.'"). Indeed, tribal law expressly affirms the sovereign immunity of the Defendants. See Mashpee Wampanoag Const., Art. VI, § 2(N)(A-35)(providing the Tribal Council the power to "assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe"); Tribal Judiciary Ordinance, 2018-ORD-007, Ch. 1, § 5 (A-50)("Nothing in this Ordinance [establishing the Tribe Court] shall be construed to waive, alter, or amend the Tribe's sovereign immunity or the sovereign immunity of any of the Tribe's . . . officers appointees"); MWT RCP 5(b)(A-58) ("Nothing in [the Court's Rules] is intended to limit the jurisdiction or waive the sovereign immunity of the Mashpee Wampanoag Tribe."). There has been no waiver of tribal sovereign immunity in relation to this Action.

1. The Shellfish Propagation License

The Plaintiff's argument on appeal hinges on the proposition that the Mashpees waived their sovereign immunity as to the claims in the Amended Complaint because they applied for and then subsequently acquired the License. (Brief, p. 13) Nothing in the record supports this proposition because, in fact, the Mashpees did not clearly or unequivocally waive their rights.

The US Supreme Court has made it clear that any waiver of tribal sovereign immunity must be clear and unequivocal. See United States v. Testan, 424 U.S. 392, 399 (1976) (citing United States

v. King, 395 U.S. 1, 4 (1969)) ("[A] waiver of the traditional sovereign immunity 'cannot be implied but must be unequivocally expressed.'"). The Massachusetts Supreme Judicial Court has similarly recognized and upheld these principals of law. See Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1, 11-12 (2004). Abrogation must be "unequivocally expressed" and waiver must be "clear." Id. There has been no waiver in this case much less a clear and unequivocal one. The Mashpees never waived their sovereign immunity rights nor did the Mashpees do anything that could have been considered either "clear" or "unequivocal waiver" of those rights. Id.

Therefore, the argument that Plaintiff attempts to make on appeal is inapposite. Plaintiff's argument that by merely accepting the shellfish propagation license constitutes a waiver of sovereign immunity is incorrect. Furry v. Miccosukee Tribe of Indians of Florida, 685 F. 3d 1224, 1234 (11th Cir. 2012) (holding the tribe did not waive its sovereign immunity from private tort actions by merely applying for a state liquor license). As noted in the Trial Court's Decision, Plaintiff's argument is without merit as a matter of law. (A-86)

Tribal immunity is settled law and tribes are "subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.,

523 U.S. 751, 754 (1998). This is true whether the disputed action occurs on or off of a tribal reservation. Id. at 754-55. The Supreme Court has made it clear that waivers of tribal sovereign immunity cannot be implied on the basis of a tribe's actions, and instead must be unequivocally expressed. Florida v. Seminole Tribe of Florida, 181 F. 3d 1237, 1243 (11th Cir. 1999). Applying for and acquiring the License simply does not constitute a waiver in the manner that waiver must be expressed consistent with the law. Id.

In fact, the Tribe's application for the License only means that the Tribe has acquiesced to the authority of *state* regulators to inspect and search the premises. Furry v. Miccosukee Tribe of Indians of Florida, 685 F. 3d 1224, 1235 (11th Cir. 2012) (emphasis in original). (A-86) While a licensed premises, such as the geographical location at issue here, is subject to inspection and may be inspected by *state* actors, the mere existence of the License does not provide waiver of immunity from private tort actions, as is brought by Plaintiff. Furry, 685 F. 3d at 1235. As the Trial Court correctly noted, the Mashpees acquiescence to regulatory monitoring pursuant to the license application did not constitute a waiver of tribal sovereign immunity. (A-87-88) Nothing in the record suggests otherwise and Plaintiff has failed to show how the Mashpees clearly and unequivocally waived their sovereign immunity rights. (A-87-88).

The Plaintiff's reliance upon Caddo Nation of Oklahoma v. Wichita & Affiliated Tribes, 786 F. App'x 837 (10th Cir. 2019) and Saint Regis Mohawk Tribe v. Mylan Pharms. Inc., 896 F.3d 1322, 1325 (Fed. Cir. 2018), is misplaced.

In Caddo Nation, 786 F. App'x 837 (10th Cir. 2019), the "Wichita Tribe affirmatively waived its sovereign immunity." Id. at 841. This was because the language in the underlying Environmental Assessment ("EA"), stated that the tribe "consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows [Wichita Tribe] to use program funds." Id. at 840 n. 4. Contrary to what the Plaintiff implies, the ruling in Caddo Nation of Oklahoma cleaves to the bedrock legal principle that a waiver of tribal sovereign immunity must be clear and express. See e.g. Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1, 11-12 (2004). There has been no such waiver in the current Action.

Saint Regis Mohawk Tribe v. Mylan Pharms. Inc., 896 F.3d 1322, 1325 (Fed. Cir. 2018), examined sovereign immunity in the context of a petition for inter partes review ("IPR") in a patent dispute.

"IPR is neither clearly a judicial proceeding instituted by a private party nor clearly an enforcement action brought by the federal government. It is a 'hybrid proceeding' with 'adjudicatory characteristics' similar to court proceedings, but in other respects it 'is less like a judicial proceeding and more like a specialized agency proceeding.'" Id. at 1326. The Court concluded that because an IPR is more like an agency enforcement action than a civil suit tribal sovereign immunity was not implicated. Id. at 1327. This ruling is narrow and is inapplicable to the current Action in which a private party has filed a traditional civil suit against a Tribe based on the Tribe's alleged actions. Id.

Case law makes clear that a waiver must be clear, regardless of whether the Tribe holds a license from a state or municipal agency. The Plaintiff cannot support his position with any applicable case law.

2. Other Litigation

The Plaintiff attempts to argue that because the Mashpees have participated in other litigation involving the License, they have waived sovereign immunity. (Brief, p. 16-17) This argument is also without merit. Id.

The cases that the Plaintiff cites to on appeal miss the mark to support the proposition that the Mashpees waived their tribal sovereign immunity by participating in other lawsuits. Cayuga

Indian Nation of New York v. Seneca City, New York, 260 F. Supp. 3d 290, 299 (W.D.N.Y. 2017) ("Cayuga") and Rosebud Sioux Tribe v. A.P. Steel, Inc., 874 F. 2d. 550, 552 (8th Cir. 1989) ("Rosebud"). (A-88-89) Cayuga is cited by the Plaintiff for the proposition that when an Indian tribe seeks a declaration that a particular fact is true, "it necessarily waives its sovereign immunity as to a counterclaim seeking the exact opposite declaration" and that by doing so, the Indian tribe has agreed to be bound by the court's determination of the question that the tribe presented." (Brief, p. 16-17) In the same vein, The Plaintiff cites to Rosebud for the proposition that by "initiating a lawsuit, the Tribe 'waives immunity as to claims of the defendant ... arising out of the same transaction and occurrence which is the subject matter of ... [the] suit.'" (Brief, p. 17-18) While that may be the case, nothing in those propositions is applicable to the current Action. The Plaintiff is attempting to litigate wholly novel issues; he is not seeking an opposite declaration on issues raised by the Mashpees. (Brief, p. 16-18) The Plaintiff suggests that because the Tribe brought a limited certiorari action into which the Plaintiff intervened but was denied the right to assert a counterclaim, (Mashpee Wampanoag Tribe et. al. v. Dale McKay et. al., Barnstable Superior Court, Docket No. 1772CV340), the Mashpees have somehow waived their tribal sovereign immunity with regards to the separate claims now raised by the Plaintiff in this Action. If the United

States Supreme Court has held that tribal sovereign immunity is not waived even with regards to compulsory counterclaims, see e.g. Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509-10 (1991), the Plaintiff has no basis to imply a waiver as to his entirely separate claims in an entirely separate action.

Further, as found by the Trial Court, the other litigation referenced by the Plaintiff does not apply to any of the claims raised by the Plaintiff in his Amended Complaint, specifically his counts for trespass and alleged misuse of the License. (Decision, A-88-89) Neither Superior Court case the Plaintiff cites for this proposition arises out the same transaction and occurrence as the issues raised in the Amended Complaint. (Brief, p. 16; A-88-89)⁶

⁶ In fn. 2 of his brief, the Plaintiff grossly overstates the Commonwealth's argument in Commonwealth v. One Check in the Amount of \$480.00, Falmouth Dist. Ct. No. 1989CV218. The Commonwealth in fact acknowledged that "if the Court were to reach the question of the scope of the Claimants' respective aboriginal rights, summary judgment is inappropriate because there are contested factual issues on which the Claimants each bear the burden of proof." The Commonwealth's position is consistent with the holding in Commonwealth v. Maxim, 429 Mass. 287, 290 (1999)(holding "whether aboriginal rights exist is a factual matter").

In light of this the Plaintiff has no basis to imply a waiver as to his entirely separate claims in an entirely separate action.

C. The Immovable Property Exception to Sovereign Immunity Does Not Apply to the Mashpees, a Federally Recognized Indian Tribe

Simply put, even if it exists, the so-called 'immovable property exception' does not apply to the issues Plaintiff raises in this litigation. Zych v. Wrecked Vessel Believed to Be the Lady Elgin, 960 F.2d 665, 669 (7th Cir. 1992); TransAmerica Assurance Corp. v. United States, 423 F. Supp. 2d 691, 696 (W.D. Ky. 2006). Plaintiff does not seek to establish what party enjoys a right or interest in the real property at issue. (A-11-12, 15-17) Rather, the issue Plaintiff attempts to raise in his Amended Complaint is as to the use of the disputed area, not as to the ownership interest in the disputed area. Id.; (A-90)

The immovable property exception does not exist. See, e.g., Cayuga Indian Nation of New York v. Seneca Cty., N.Y., 761 F.3d 218, 221 (2d Cir. 2014) ("we decline to draw the novel distinctions—such as a distinction between in rem and in personam proceedings..."); Zych v. Wrecked Vessel Believed to Be the Lady Elgin, 960 F.2d 665, 669 (7th Cir. 1992) ("there is no general in rem exception to principles of sovereign immunity" (citation omitted)); TransAmerica Assurance Corp. v. United States, 423 F. Supp. 2d 691, 696 (W.D. Ky. 2006) ("[T]here is no general 'in rem' exception to the doctrine of sovereign immunity. Rather, the

Supreme Court has excepted only two very specific types of in rem proceedings from sovereign immunity analysis: bankruptcy proceedings ... and admiralty cases."'). The United States Supreme Court has never applied such an exception to a tribe and declined to decide the question as recently as in Upper Skagit Indian Tribe v. Lundgren, 138 S. Ct. 1649, 1653-54 (2018) ("Upper Skagit").

The Plaintiff relies on Upper Skagit for the proposition that "common law has recognized an exception to sovereign immunity for actions to determine rights in immovable property." Upper Skagit, 138 S. Ct. at 1649. (Brief, p. 18-20)⁷ In fact, however, the clear majority in Upper Skagit declined to extend the alleged exception to tribes. Id. Plaintiff relies on Justice Thomas' dissent in Upper Skagit, misplacing the dissenting opinion for his proposition. Id. at 1655. The majority acknowledged the danger of extending the doctrine and also highlighted that the "immunity doctrines lifted

⁷To compare this point in his brief, Plaintiff in his brief cites to a recent Supreme Court decision for the apparent proposition that when operating on non-tribal land, the tribe does not enjoy sovereign immunity. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486 (2022). This case is wholly irrelevant to the issues raised on appeal, misplaced in the brief to support any points and at best, only deals with criminal prosecution of non-tribal members for crimes committed on tribal land. Id.

from other contexts do not always neatly apply to Indian tribes.” Id. at 1654; citing Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc., 523 U.S. 751, 756 (1998). Simply because the federal government has carved out an exception for foreign sovereigns does not necessarily mean those same notions should be extended or applied to tribes.

Other jurisdictions similarly have declined to extend the purported immovable property exemption. See Oneida Indian Nation v. Phillips, 981 F.3d 157, 169 (2d Cir. 2020); Cayuga Indian Nation of New York v. Seneca Cty., New York, 978 F.3d 829, 837 (2d Cir. 2020), cert. denied sub nom. Seneca Cty., NY v. Cayuga Indian Nation of NY, 2021 WL 2301979 (U.S. June 7, 2021).

Further, the U.S. Supreme Court has consistently held that it is not for courts to carve out exceptions to tribal sovereign immunity, rather the question of exceptions is left to the sole discretion of Congress. See Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 790 (2014). Massachusetts courts have favorably cited this principle of law. See Buzulis v. Mohegan Sun Casino, 69 Mass. App. Ct. 708, 710 (2007) (“[T]ribal immunity is a matter of federal law and is not subject to diminution by the States.”). Notably, Congress has explicitly codified the immovable property exception as it applies to foreign sovereigns. 28 U.S.C. 1605(a)(4). Congress is the only authority with the ability to codify the immovable property exception as applicable to tribes; if Congress wanted to

extend the immovable property exception to apply to tribes, certainly it could. Oneida Indian Nation v. Phillips, 981 F.3d 157, 169 (2d Cir. 2020) citing Cayuga Indian Nation of N.Y. v. Seneca Cnty., N.Y., 761 F.3d 218, 220 (2d Cir. 2014). However, as pointed out by the Trial Court Congress has not extended the immovable property exception to apply to tribes and as such, Plaintiff argument as to this point miss the mark on appeal. (A-90)

The recent case of Self v. Cher-Ae Heights Indian Cmty. of Trinidad Rancheria, 60 Cal. App. 5th 209 (2021), review denied (Apr. 28, 2021), contains an analysis of this topic. In that decision, the court expressed doubt as to whether any common law immovable property exception exists. Id. at 218. The Court tracked the history of the alleged immovable property exception and pointed out that prior to the passage of the Foreign Sovereign Immunities Act in 1976, foreign sovereigns were immune from suit as "a matter of comity, rather than a constitutional restriction, and courts deferred to the executive branch (specifically, the State Department) when deciding whether to assert jurisdiction over a foreign sovereign." Id. Problems with this system resulted in Congress passing the Foreign Sovereign Immunities Act in 1976. Id. "In short, the common law does not seem to have driven foreign sovereign immunity. Rather, the courts deferred to the political

branches—first the executive branch and then Congress after the Foreign Sovereign Immunities Act.” Id.

The Court in Cher-Ae Heights Indian Cmty. of Trinidad Rancheria goes on to point out – at length – that even if some common law immovable property exception did exist there is no support for the proposition that it should be applied to tribes. Id. at 218-221. Tribes are consistently treated differently from other foreign sovereigns, courts defer to Congress’ power in this area, and Congress has not acted (all points which have been explored in this Memorandum). Id. The Court concluded by declining to extend the dubious immovable property exception to tribes, noting that Congress must act if such an exception were ever to be applicable. Id. at 219-22.

In reviewing whether an immovable property exception might abrogate tribal sovereign immunity, other recent decisions agree with the baseline proposition that no exception should apply where Congress has not acted:

It is well settled that ‘courts must dismiss[] any suit against a tribe absent congressional authorization (or waiver) ... and the Supreme Court (like this Court) has thought it improper suddenly to start carving out exceptions to that immunity, opting instead to defer to the plenary power of Congress to define and otherwise abrogate tribal sovereign immunity from suit.’

Oneida Indian Nation v. Phillips, 981 F.3d 157, 169 (2d Cir. 2020) citing Cayuga Indian Nation of N.Y. v. Seneca Cnty., N.Y., 761 F.3d 218, 220 (2d Cir. 2014). Where Congress has not acted, no alleged immovable property exception exists for tribal sovereign immunity.

The Massachusetts Supreme Judicial Court has similarly upheld the principal that “[t]o abrogate tribal immunity, Congress must ‘unequivocally’ express that purpose.” Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp., 443 Mass. 1, 12 (2004); see also Buzulis v. Mohegan Sun Casino, 69 Mass. App. Ct. 708, 710 (2007). Where Congress has not acted to abrogate tribal immunity, there is no basis to assert any exception to tribal sovereign immunity that would permit this Action by the Plaintiff against the Defendants. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978) (“[W]ithout congressional authorization, the Indian Nations are exempt from suit.”) (quotations omitted).

As no congressional action has created an immovable property exception to tribal sovereign immunity such an exception does not exist.

D. The Mashpees Sovereign Immunity Extends to Conservation Related Laws insofar as it Relates to the Claims in the Plaintiff's Amended Complaint.

The Plaintiff's argument that the Mashpees are subject to state regulation via so-called conservation laws that may apply to the subject land is misplaced. (Brief, p. 21-22) While a state or governmental entity may, in certain circumstances, have the ability or authority to regulate an Indian tribe, the Plaintiff, a private actor, does not enjoy the same ability or authority. See Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 755 (1998) ("There is a difference between the right to demand compliance with state laws and the means available to enforce them."); Furry v. Miccosukee Tribe of Indians of Fla., 685 F.3d 1224, 1231 (11th Cir. 2012). For example, it has been held that the substantive provisions of the Americans with Disabilities Act apply to tribes, but that tribes are nonetheless immune from private enforcement actions otherwise permitted under the statute. Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla., 166 F.3d 1126, 1128-35 (11th Cir. 1999).

Even if a tribe must be in compliance with any specific state or municipality licensing or regulatory scheme, there is no corresponding authorization for a private person, such as the Plaintiff, to file a civil action to enforce such a tribe's compliance. See Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 755 (1998).

As a private party, the Plaintiff cannot enforce the so-called conservation laws, nor can he rely on the same to prevent alleged trespass and damage to the island. Kiowa, 523 U.S. at 755. Further, insofar as the conservation laws are applicable to the issue, sovereign immunity is still extended to the Mashpees.

VI. CONCLUSION

Wherefore the Defendants respectfully request that this Court issue an Order affirming the decision of the Barnstable Superior Court granting their Motion to Dismiss.

Respectfully submitted,
The Defendants,
By their attorneys,

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Dated: September 6, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that the BRIEF OF THE DEFENDANTS-APPELLEES complies with the rules of court that pertain to the filing of briefs including but not limited to Mass. R. A. at 16(a)(6), Mass. R. A. at 16(e), Mass. R. A. at 16(f), Mass. R. A. at 16(i), Mass. R. A. at 18, and Mass. R. A. at 20.

I further hereby certify that the foregoing BRIEF OF THE DEFENDANT-APPELLEES has been prepared in Microsoft Word using ten (10) characters per inch, twelve (12) point monospaced typeface (Courier New).

EXCLUSIVE of the case caption; signature; the certificates of compliance and service; and the addendum, this BRIEF OF THE DEFENDANTS-APPELLEES contains 5171 words, as determined by the Microsoft Word "word count" feature, and does not exceed 60 pages in length.

/s/ Jeffrey B. Loeb
Jeffrey B. Loeb, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2022 I filed the included documents (Defendants-Appellees Brief and Addendum) through the Electronic Filing Service Provider (eFileMA) and, with his consent, made electronic service on Paul Revere, III, revererii@aol.com

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ADDENDUM

TABLE OF CONTENTS

The Memorandum of Decision on Motion to Dismiss.....	31
Constitution of the Mashpee Wampanoag Tribe.....	40
28 U.S. Code § 1605.....	57
72 Fed. Reg. 8007.....	62
86 Fed. Reg. 7554.....	65
MGL c. 249, § 5.....	70
MGL c. 260, § 2A.....	71
Mashpee Wampanoag Tribal Judiciary Ordinance 2018-ORD-007 (excerpt from).....	72
Mashpee Wampanoag Tribe, Rules of Civil Procedure (excerpt from).....	80
<u>Wolpe v. Haney</u> , 2016 WL 4586045 (Mass. Land Ct. Aug. 31, 2016).....	85
<u>Commonwealth v. One Check in the Amount of \$480.00</u> - Memorandum in Opposition to Claimant’s Motion for Summary Judgment.....	88

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 2172CV00534**

**MATTHEW HANEY, as Trustee of the Gooseberry Island Trust
Plaintiff**

vs.

**MASHPEE WAMPANOAG INDIAN TRIBAL COUNCIL, INC., and MASHPEE
WAMPANOAG TRIBE,
Defendants**

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS’
MOTION TO DISMISS THE PLAINTIFF’S AMENDED COMPLAINT WITH
PREJUDICE**

The Plaintiff, Matthew Haney, as Trustee of the Gooseberry Island Trust (“Gooseberry”), owns an island within Popponesset Bay. Gooseberry brings this action against the defendants, Mashpee Wampanoag Indian Tribal Council, Inc. (the “Corporation”) and the Mashpee Wampanoag Tribe (the “Tribe”) (collectively, the “defendants”). The Tribe is a federally recognized Indian Tribe and the Corporation is a Massachusetts charitable corporation. The Amended Complaint asserts claims for Trespass (Court I), Private Nuisance (Count III), Public Nuisance (Count IV) and seeks a Declaratory Judgment precluding the defendants from engaging in action that impedes upon Gooseberry’s property rights (Count II).

The defendants now move to dismiss all counts of the Amended Complaint, arguing their tribal sovereign immunity bars the plaintiff from bringing this lawsuit. For the following

reasons, the defendants' Motion to Dismiss the Plaintiff's Amended Complaint with Prejudice is **ALLOWED**.

BACKGROUND

The following facts, and all reasonable inferences, are taken as true by the court and are derived from the plaintiff's Amended Complaint.

On July 13, 1977, the Corporation received a shellfish propagation license pursuant to G. L.c. 130, § 57 for a parcel of land in Popponesset Bay.¹ This license did not authorize the use of racks, cages, floats, or rafts. This same license has been renewed multiple times without substantive changes in its terms. The island owned by Gooseberry in Popponesset Bay is in the vicinity of the defendants' licensed shellfish parcel.

The defendants and their agents use racks and cages as part of their operations in the area of the licensed shellfish propagation parcel. These racks and cages are regularly located on the private tidelands of the island owned by Gooseberry. Additionally, the defendants regularly leave piles of shells, trash, and other debris on Gooseberry's island and private tidelands. Through such actions, the defendants regularly trespass on Gooseberry's property as part of their aquaculture activities on the licensed area.

DISCUSSION

A motion to dismiss for failure to state a claim upon which relief may be granted, pursuant to Mass. R. Civ. P. 12(b)(6), permits "prompt resolution of a case where the allegations in the complaint clearly demonstrate that the plaintiff's claim is legally insufficient." *Harvard Crimson, Inc. v. President & Fellows of Harvard Coll.*, 445 Mass.

¹ The Amended Complaint makes multiple references to the terms of G. L. c. 130 and the authority it confers to a license holder. However, a court "do[es] not accept legal conclusions cast in the form of factual allegations." *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000).

745, 748 (2006). To survive a motion to dismiss, a complaint must set forth the basis for the plaintiff's entitlement to relief with "more than labels and conclusions." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). At the pleading stage, Mass. R. Civ. P. 12(b)(6) requires the complaint to set forth "factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief...." *Id.*, quoting *Bell Atl. Corp.*, 550 U.S. at 557. At the pleading stage, Mass. R. Civ. P. 12(b)(6) requires the complaint to set forth "factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief...." *Id.*, quoting *Bell Atl. Corp.*, 550 U.S. at 557. Factual allegations must be enough to raise a right to relief above the speculative level. *Iannacchino*, 451 Mass. at 636 (citations omitted). Assertions supported only by allegations do not alone suggest a plausible claim for relief. *Galiastro v. Mortgage Elec. Registration Sys, Inc.*, 467 Mass. 160, 174 (2014).

A. Waiver of Tribal Sovereign Immunity

The defendants argue that, as a federally recognized Indian Tribe, they enjoy tribal sovereign immunity and the claims against them must therefore be dismissed as a matter of law. In support of this argument, they state "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." The Massachusetts Supreme Judicial Court has similarly recognized limited exceptions to such immunity, stating "[t]o abrogate tribal immunity, Congress must 'unequivocally' express that purpose" and "[a] waiver of tribal immunity must be 'clear.'" *Building Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corp.*, 443 Mass. 1, 12 (2004). The plaintiff seeking to assert a claim against a tribe

“has the burden of proving sovereign immunity has been waived.” *Mahon v. United States*, 742 F.3d 11, 14 (1st. Cir. 2014).

The plaintiff apparently agrees that the defendants enjoy tribal sovereign immunity, but argues that such immunity has been waived, that the immovable property exception to the immunity applies, and that the defendants are violating “natural resource laws” by improperly using their licensed area and thus should not be protected by such immunity. The court will address each of these issues in turn.²

1. Acquiring Shellfish Propagation License

The plaintiff argues the defendants waived their tribal sovereign immunity “[b]y applying for the shellfish propagation license and accepting the grant of rights to use commonwealth lands and waters.” This argument is without merit. “The Supreme Court has made it plain that waivers of tribal sovereign immunity cannot be implied on the basis of a tribe’s actions, but must be unequivocally expressed.” *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1243 (11th Cir. 1999) (tribe engaging in “gaming” subject to government regulations did not constitute an express and unequivocal waiver of sovereign immunity). Applying for a shellfish propagation license “means that the tribe has acquiesced to the authority of *state* regulators by allowing law enforcement to inspect and search its premises.” *Furry v. Miccosukee Tribe of Indians of Florida*, 685 F.3d 1224, 1235 (11th Cir. 2012) (emphasis in original). “[T]here is an insurmountable gap between an affidavit agreeing that a licensed premises is subject to inspection by *state* authorities and an unequivocally expressed

² The parties’ submissions also address which entity held the shellfish propagation license, whether the Corporation was properly named as a defendant, and whether the claims against the Corporation are barred by a statute of limitations. The court need not address these issues, however, because the plaintiff concedes that dismissal of the Amended Complaint as it relates to the Tribe similarly would result in dismissal of the claims against the Corporation, as plaintiff’s counsel agreed with the court during the hearing that “if one goes the other goes with it.”

waiver of immunity from all *private* tort actions.” *Id.* (emphasis in original). Thus, the defendants’ acquiescence to regulatory monitoring pursuant to the license application does not constitute a waiver of tribal sovereign immunity.

The defendants’ acquisition of the shellfish propagation license is also distinguishable from cases in which a tribe entered into a particular contractual agreement with the government to obtain some benefit, and such agreement addressed terms of litigation against the tribe. See *Cado Nation of Oklahoma v. Wichita and Affiliated Tribes*, 786 Fed.Appx. 837, 840 n.4 (2019) (waiver found where tribe entered into agreement to receive grant funding from the United States Department of Housing and Urban Development (“HUD”), and in the agreement the tribe “certifie[d] to HUD that Terri Parton, in her capacity as President consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied”). In *Building Inspector & Zoning Officer of Aquinnah*, the Supreme Judicial Court held that “the facts clearly establish[ed] a waiver of sovereign immunity” where a tribe entered into a settlement agreement with municipalities that provided in part:

“Under no circumstances . . . 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 any other Indian land in Gay Head . . . be impaired or otherwise altered.”

443 Mass. at 3-4.

Here, the plaintiff has not alleged or shown that the defendants entered into any formal agreements or contractual requirements when they applied for and obtained their shellfish propagation license. The plaintiff has therefore failed to meet his burden to prove that the

defendants waived their tribal sovereign immunity by obtaining a shellfish propagation license.

2. Litigation in Other Matters

The plaintiff argues the defendants waived their tribal sovereign immunity by participating in other lawsuits. This argument is without merit. As to this issue, the plaintiff argues that “it is important to note that the Tribe has asserted claims against Gooseberry in the Superior Courts and the Massachusetts Department of Environmental Protection claiming that its shellfish propagation license provides it with standing to challenge permits and other regulatory requests of Gooseberry relating to the island.”

In support of this claim, the plaintiff cites to two cases: *Cayuga Indian Nation of New York v. Seneca City, New York*, 260 F. Supp. 3d 290, 299 (W.D.N.Y. 2017) (“*Cayuga*”) and *Rosebud Sioux Tribe v. A.P. Steel, Inc.*, 874 F.2d 550, 552 (8th Cir. 1989) (“*Rosebud*”). *Cayuga* is cited for the proposition that “where an Indian tribe seeks a declaration that a particular fact is true, it necessarily waives its sovereign immunity as to a counterclaim seeking the exact opposite declaration.” As to *Rosebud*, the plaintiff cites this case for the proposition that a tribe waives its sovereign immunity by commencing a lawsuit “arising out of the same transaction or occurrence which is the subject matter of . . . [the] suit.”

The two other lawsuits involving the parties are unrelated to the specific issues raised in the Amended Complaint. In the first lawsuit, *Matthew Haney, as Trustee of the Gooseberry Island Trust, et. al. v. Department of Environmental Protection, et al.*, Barnstable Superior Court, Docket No. 1772CV00340, Gooseberry initiated a certiorari action seeking to vacate a Massachusetts Department of Environmental Protection (“DEP”) decision after the DEP denied Haney’s request to construct a bridge to Gooseberry’s island. Gooseberry named

the Tribe as a defendant to that action, stating that the Tribe was a party to the agency proceeding at issue. The second lawsuit, *Mashpee Wampanoag Tribe, et al. v. Mashpee Conservation Commission*, Barnstable Superior Court Docket No. 1872CV00539, the Tribe initiated a certiorari action seeking to vacate an order from the Mashpee Conservation Commission regarding an Order of Resource Area Delineation. Both lawsuits involved property in the general vicinity of Gooseberry's island and the area where the Tribe is licensed to shellfish.

These other Superior Court cases, while pertinent to the same geographic area, do not raise the same legal considerations asserted in or raised by the factual allegations contained in the Amended Complaint and the parties' submissions for this motion. These other cases do not implicate the defendants' purported trespass and misuse of their shellfish propagation license by permitting debris and items to damage the plaintiff's property. Thus, contrary to the defendants' references to *Cayuga* and *Rosebud*, they do not arise out of the same transaction or occurrence as the issues raised in the Amended Complaint and do not imply or result in a waiver of the defendants' tribal sovereign rights. The plaintiff has therefore failed to meet his burden to prove that the defendants waived their tribal sovereign immunity by participating in other lawsuits involving similar parties.

B. Immovable Property Doctrine

The plaintiff argues the immovable property doctrine is an exception to the defendants' tribal sovereign immunity, and that "a sovereign who owns property in the territory of another sovereign is not immune to *in rem* proceedings regarding that land." In this regard, he argues "the claims in the Amended Complaint are essentially *in rem*

proceedings regarding rights, ownership, and impact of the use of a piece of state property by the Defendants.”

The plaintiff’s attempt to characterize the claims in the Amended Complaint as “essentially” relating to *in rem* proceedings is off the mark. In applying the immovable property exception,

“[C]ourts and other authorities have generally understood the immovable-property exception as **permitting only those lawsuits against a sovereign that ‘contest[]’ its rights or interests in real property.** Restatement (Second) of Foreign Relations Law of the United States § 68 cmt. d (Am. Law Inst. 1965). Accordingly, the exception has not been thought to eliminate the immunity defense as to ‘disputes that arise out of [a foreign sovereign’s] rights in real estate but do not actually place [those rights] at issue.’ *Permanent Mission of India I*, 446 F.3d at 369. Nor has it been applied when the party who invokes the exception ‘makes no claim to any interest’ in a foreign sovereign’s real property and is ‘not seeking to establish any rights’ in that property. *MacArthur Area Citizens Ass’n v. Republic of Peru*, 809 F.2d 918, 921 (D.C. Cir. 1987). **Instead, the immovable-property exception has reached only those disputes that require the court to resolve competing claims to a right or interest in real property.** See Restatement (Second) of Foreign Relations Law § 68 cmt. d (describing the exception as covering ‘actions for the determination of possession of, or an interest in, immovable or real property located in the territory of a state exercising jurisdiction’).

Cayuga Indian Nation of New York v. Seneca County, New York, 978 F.3d 829, 836–837 (2020).

The plaintiff’s Amended Complaint does not seek relief establishing what entity enjoys a right or interest in real property. The parties do not dispute who owns the various properties at issue in the Amended Complaint. Instead, the plaintiff seeks relief regarding the defendants’ use of the property within in licensed area. This distinction is materially significant. The issues raised in the Amended Complaint do not fall within the scope of the immovable property exception to the defendants’ tribal sovereign immunity. The plaintiff has therefore failed to meet his burden to prove that the immovable property exception precludes the defendants’ tribal sovereign immunity.

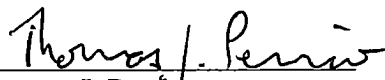
C. Natural Resource Laws

The plaintiff generically argues that, as a condition of the shellfish propagation license, the defendants were required to ensure that their actions “did not impair the property rights of others while operating their shellfish propagation licensed area.” Regarding this issue, the plaintiff argues the defendants’ trespass and damage to the island is inconsistent with such requirement and therefore the defendants cannot assert tribal sovereign immunity. The plaintiff has failed, however, to provide any legal authority establishing that a private party can enforce regulatory considerations in determining whether a license is being used consistent with its terms. Any enforcement or review regarding how the defendants use their shellfish propagation license would be reserved for the commission or office that issued such license. The plaintiff has therefore failed to meet his burden to prove that natural resource laws and regulations preclude the defendants’ tribal sovereign immunity.

ORDER

For the above stated reasons, it is hereby **ORDERED** that the Defendants’ Motion to Dismiss the Plaintiff’s Amended Complaint with Prejudice be **ALLOWED**.

So ordered,


 Thomas J. Perrino
 Justice of the Superior Court

DATED: February 1, 2022



CONSTITUTION
OF THE
MASHPEE WAMPANOAG TRIBE
BY-LAWS OF THE
MASHPEE WAMPANOAG TRIBAL COUNCIL, INC.

CERTIFICATION OF CONSTITUTION AND BY-LAWS

TABLE OF CONTENTS

I. CONSTITUTION OF THE MASHPEE WAMPANOAG TRIBE		ARTICLE VIII	
<i>PREAMBLE</i>	2	Vacancies and Removal of Tribal Officials	6
ARTICLE I		Section 1. Recall	6
Name	2	Section 2. Expulsion and Suspension of Tribal Council Members	7
Definitions	2	Section 3. Automatic Vacancies	8
ARTICLE II		Section 4. The Filling of Vacancies In Office	8
Jurisdiction	2	Section 5. Tribal Judiciary Excluded	8
ARTICLE III		Section 6. Succession to Chairperson and Vice-Chairperson	8
Tribal Member	2	ARTICLE IX	
Section 1. Requirements	2	Procedures of the Tribal Council	8
Section 2. Ineligibility For Tribal Membership	2	Section 1. Meetings of the Tribal Council	8
Section 3. Enrollment Committee	2	Section 2. Ordinances, Resolutions, and Motions	9
Section 4. Appeal From Denial of Tribal Membership Application	3	Section 3. Posting Procedure	9
Section 5. Automatic Forfeiture of Tribal Membership	3	Section 4. General Tribal Membership Meeting	10
Section 6. Removal From Tribal Membership Roll by Tribal Council	3	ARTICLE X	
Section 7. Relinquishment of Enrollment	3	Tribal Judiciary	10
Section 8. Enforcement	3	Section 1. Structure	10
ARTICLE IV		Section 2. Appointment and Term of Office	10
Elections	3	Section 3. Compensation	10
Section 1. Voter Requirements	3	Section 4. Qualifications and Disqualifications	10
Section 2. Voting	3	Section 5. Removal from Office by Tribal Council and Automatic Vacancies	10
Section 3. Regular and Special Elections	3	Section 6. Rules of Tribal Courts	11
Section 4. Election Committee	3	Section 7. Records and Court Clerk	11
Section 5. Election Ordinance	4	Section 8. Appropriations	11
Section 6. First Election	4	Section 9. Enforcement	11
ARTICLE V		ARTICLE XI	
Tribal Government Powers	4	Civil and Aboriginal Rights	11
Section 1. Separation of Power	4	Section 1. Civil Rights	11
Section 2. Tribal Council s Powers	5	Section 2. Aboriginal Rights	11
Section 3. Tribal Judiciary s Powers	5	Section 3. Rights Retained by the People	11
Section 4. Ethics in Tribal Government	5	ARTICLE XII	
ARTICLE VI		Initiative and Referendum	12
Tribal Council	5	Section 1. General Authority	12
Section 1. Composition, Qualifications, Terms of Office, Officers and Committees	5	Section 2. Results of Election	12
Section 2. Enumerated Powers of the Tribal Council	5	ARTICLE XIII	
ARTICLE VII		Amendments	12
Duties of Officers	6	ARTICLE XIV	
Section 1. Duties of the Chairperson	6	Certificate of Results of Election and Savings	12
Section 2. Duties of the Vice-Chairperson	6		
Section 3. Duties of the Secretary	6	II. By-Laws of the MASHPEE WAMPANOAG TRIBAL COUNCIL, INC.	13-14
Section 4. Duties of the Treasurer	6		
Section 5. Duties of Committees or Appointive Officers	6	III. CERTIFICATION OF CONSTITUTION AND BYLAWS VOTES	15

I. CONSTITUTION OF THE MASHPEE WAMPANOAG TRIBE

PREAMBLE

This Constitution is created under the divine guidance of our Creator and the wisdom of our ancestors to establish and proclaim to the World that we, the People of the First Light, are a sovereign nation.

This Constitution is established for the self-governance of the Mashpee Wampanoag Tribe, as is our inherent right to do.

This Tribe declares this Constitution to be the free act and will of its people. The Constitution is created without fear of, nor wanting from, any man, woman, child, or government. The Tribe extends peace and respect for our neighbors, with whom we share Mother Earth.

Accordingly, we, the Tribal members being a sovereign native people, in order to organize for the common good, to protect our self-government and our right to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland, to conserve and develop its natural resources, to promote the social, economic, and spiritual well-being of our people, do establish and adopt this Constitution to govern, protect, and advance the common good of the Tribe and for its future generations.

ARTICLE I

Name

The name of this Tribe shall be the Mashpee Wampanoag Tribe.

Definitions

"Malfeasance" shall mean a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has no right, or has contracted not, to do.

"Nonfeasance" shall mean nonperformance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty.

"Tribe" shall mean the Mashpee Wampanoag Tribe.

"Tribal Council" shall mean the governing body of the Tribe.

"Tribal Member" shall mean an enrolled member of the Tribe.

"Voter" shall mean an enrolled member of the Tribe over the age of 18 and who has registered to vote in the Tribe.

ARTICLE II

Jurisdiction

To the full extent that Federal law allows, and unless restricted by Tribal law, the Tribe's jurisdiction shall extend over all territory of the Tribe which constitutes Indian Country or its equivalent under federal law, and to any person, property, subject, and activity within this territory. The Tribe's jurisdiction shall also extend to any person, property, subject and activity allowed under federal law outside the Tribe's Indian Country territory or its equivalent under federal law.

ARTICLE III

Tribal Member

Section 1. Requirements

A Tribal member shall be of those persons who:

(a) trace direct lineal descent (1) to a Mashpee Indian identified in the Report to the Governor and Council, concerning the Indians of the Commonwealth, Under the Act of April 16, 1859 written by John Milton and published in 1861 by William White, Printer to the State, in Boston, Massachusetts (also known as the 1859 Milton Earle Report), or (2) to the union of Georgina Palmer and Charles Peters or Leander Peters and Lydia DeGrasse; and

(b) demonstrate tribal community involvement as set forth by ordinance; and

(c) (1) have not publicly denounced Mashpee tribal existence, and (2) have not publicly denounced their affiliation to the Tribe; and

(d) have lived in or near Mashpee, Massachusetts, or have had family members actively involved in tribal community affairs who have lived in or near Mashpee, Massachusetts for at least the preceding 20 years.

Section 2. Ineligibility For Tribal Membership

No person shall be eligible to be a Tribal member if that person is enrolled in another Indian tribe.

Section 3. Enrollment Committee

(a) Within 60 days of the effective date of this Constitution an Enrollment Committee composed of five tribal members shall be appointed for staggered terms of three years by a majority vote of the members of the Tribal Council present at a meeting called for the purpose of making such appointments. The initial term of each Committee member first appointed shall be randomly assigned with three Committee members serving three years and two Committee members serving two years. Committee members may be removed from office by majority vote of the members of the Tribal Council present

at the meeting prior to the expiration of their term only for cause. Any person who holds any elective or appointive Tribal office or is a candidate for such office shall be ineligible to serve on the Enrollment Committee; however, one member of the Tribal Council may be allowed to serve on the Enrollment Committee. Any member of the Enrollment Committee who becomes a candidate or is elected or appointed to Tribal office shall automatically forfeit the remainder of their term of office on the Enrollment Committee if one member of the Tribal Council is currently serving on the Enrollment Committee.

(b) The Enrollment Committee shall be responsible for enforcing Tribal enrollment laws. The duties of the Enrollment Committee shall include, but not be limited to, the following:

(1) maintaining the Tribal membership roll; and

(2) reviewing and approving or rejecting all applications for enrollment into the Tribe; provided that, a rejected applicant may appeal such decision under Section 4 of this Article.

(c) The Enrollment Committee shall perform such other duties as may be delegated to the Committee by Ordinance.

(d) The Enrollment Committee may issue such regulations as may be necessary to carry out Tribal enrollment law.

Section 4. Appeal From Denial of Membership Application

Any person whose application for membership in the Tribe is rejected by the Enrollment Committee shall have the right to appeal such adverse decision to the Tribal Judiciary, but only after exhausting all remedies available within the Tribal Council. That person may appeal the Tribal Council's decision to the Tribal Judiciary according to court rules. The judgment by the Tribal Judiciary shall be final.

Section 5. Automatic Forfeiture of Membership

A member shall be deemed to have automatically forfeited membership in the Tribe along with all rights and benefits to which members are entitled by virtue of their membership (1) upon enrollment in another tribe, or (2) upon a final finding that membership in the Tribe was obtained by fraud.

Section 6. Removal From Membership Roll by Tribal Council

If, upon the report and recommendations of the Enrollment Committee, the Tribal Council determines that an enrolled Tribal member lacks a required membership requirement, the Tribal Council may remove that person from the Tribal membership roll; provided that, that person may appeal the Tribal Council's decision to the Tribal Judiciary according to Tribal court rules. Only if a final judgment by the Tribal Judiciary is rendered upholding the removal

shall that person's name be removed from the membership roll.

Section 7. Relinquishment of Enrollment

Tribal members of the Tribe may relinquish membership in the Tribe in accordance with procedures established by the Enrollment Committee. Such Tribal member shall be ineligible to reapply for Tribal membership for a period of five years from the date of such relinquishment. Any minor whose Tribal membership is relinquished by a parent or legal guardian shall have the right to petition the Enrollment Committee for automatic reinstatement of Tribal membership upon reaching the age of 18; provided that, such person petitions within 90 days from the day that person reaches the age of 18. If such person fails to petition for automatic reinstatement, such person may apply for Tribal membership under Section 1 of this Article.

Section 8. Enforcement

The Tribal Council shall enforce this Article by ordinance; provided that, the Tribal Council shall have no power to establish substantive requirements for Tribal membership or removal from the membership roll in addition to those established in Sections 1 or 6 of this Article, nor to waive any of those requirements.

ARTICLE IV

Elections

Section 1. Voter Requirements

Any enrolled member of the Tribe who is registered to vote shall be entitled to vote in Tribal elections, except if such member is judicially declared mentally incompetent.

Section 2. Voting

Except as may be otherwise specified in this Constitution, voting in Tribal elections shall be by secret ballot cast at polls established by the Election Committee at such sites designated by the Election Committee. Write-in voting shall be permitted in accordance with such procedures as shall be established by the Election Committee. Write-in candidates must meet all eligibility requirements, constitutional or otherwise. No proxy or absentee voting shall be allowed in Tribal elections.

Section 3. Regular and Special Elections

The Tribal Council shall provide by ordinance for the holding of regular elections, including establishing dates, times and places for holding such elections. The Tribal Council shall also provide by ordinance for the holding of special elections by establishing the procedure by which such elections may be called and held with adequate notice provided to registered Tribal voters.

Section 4. Election Committee

(a) Within 60 days of the effective date of this Constitution an Election Committee composed of five Tribal members,

who are registered voters of the Tribe, shall be appointed for staggered terms of three years by a majority vote of the members of the Tribal Council present at a meeting called for the purpose of making such appointments. The initial term of each Committee member first appointed shall be randomly assigned with three Committee members serving three years and two Committee members serving two years. Committee members may be removed from office by a majority vote of the members of the Tribal Council present at the meeting prior to the expiration of their term only for cause. Any person who holds any elective or appointive Tribal office or is a candidate for such office shall be ineligible to serve on the Election Committee; however, one member of the Tribal Council may be allowed to serve on the Election Committee. Any member of the Election Committee who becomes a candidate or is elected or appointed to Tribal office shall automatically forfeit the remainder of their term of office on the Election Committee if one member of the Tribal Council is currently serving on the Election Committee.

(b) The Election Committee shall be responsible for enforcing Tribal election laws. The duties of the Election Committee shall include, but shall not be limited to, the following:

- (1) establishing and maintaining a system of voter registration, and
- (2) maintaining a current list of registered voters of the Tribe, and
- (3) certifying eligibility of candidates for Tribal offices (both elective and appointive) according to eligibility requirements specified in Article VI or by Tribal ordinance, and
- (4) conducting Tribal elections, and
- (5) certifying the results of Tribal elections.

(c) The Election Committee shall perform such other duties as may be delegated to the Committee by ordinance.

(d) The Election Committee may issue such regulations as may be necessary to carry out Tribal election ordinances.

Section 5. Election Ordinance

The Tribal Council shall enact an election ordinance that shall include, but shall not be limited to, voter registration requirements, a provision for the appointment of a five-member Election Committee, and a provision to judicially resolve disputed elections.

Section 6. First Election

(a) The first election under this Constitution shall be held on the date of the next regular election that was scheduled under the Constitution and Bylaws and shall be supervised and conducted pursuant to an election ordinance enacted by the Tribal Council then in office, pursuant to Section 5 of this Article. The office of Tribal Council Chairperson, Vice-Chairperson, Secretary and Treasurer and one of the five vacancies on the

Tribal Council which would have occurred for that election, shall be filled for four years. The remaining four member vacancies, which include the office of Historian, are abolished and shall not be filled in accordance with Article VI, Section 1

(a) The terms of the remaining four member incumbents shall be two years from the date of the first election, at which time their successors shall be duly elected and installed. Thereafter, there shall be an election every two years so as to continue the system of staggered terms of office.

(b) All members of the Board of Directors at the time this Constitution becomes effective shall continue to serve and shall be entitled to exercise all powers granted by this Constitution to the Tribal Council until such time as their successors are elected and installed in accordance with this Constitution.

(c) All members who are elected to the Tribal Council shall also serve as members of the Board of Directors of the Mashpee Wampanoag Indian Tribal Council, Inc., as well as members of the Board of Directors of the Old Indian Meetinghouse Authority, Inc. The Elected Chairperson of the Tribal Council shall serve as President of both the Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc., the elected Vice Chairperson shall serve as Vice President of the Mashpee Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc., the Secretary shall serve as Clerk of the Mashpee Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc., and the Treasurer shall serve as Treasurer of the Mashpee Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc.

ARTICLE V

Tribal Government Powers

Section 1. Separation of Power

The Tribal Council and the Tribal Judiciary shall be separate and equal branches of the Tribal Government. Each branch shall exercise only the powers vested in it and shall have no authority over the other branch except as may be granted by this Constitution. Article V, Section 3 and Article X which separate Tribal government powers shall become effective upon the appointment of the three Judges of the Tribal Supreme Court under Article X of this Constitution. Until that time, the Tribal Council will continue to exercise all Tribal government powers and any reference in this Constitution in provisions other than Article V, Section 3, and Article X to Tribal Judiciary shall mean the Tribal Council. If the government of the United States of America, by final administrative decision and after all appeals have been exhausted, fails to federally recognize the Tribe, Article V, Section 3 and Article X shall be ineffective and unenforceable.

Section 2. Tribal Council's Powers

The Tribal Council, as established in Article VI of this Constitution, shall be vested with all executive and legislative powers of the Tribe including the power to make and to enforce laws, and including such powers as may in the future be restored or granted to the Tribe by any law of the United States of America, or other authority. This Constitution, and ordinances of the Tribal Council adopted under this Constitution, shall be the supreme law of the Tribe. The Tribal Council shall exercise its powers consistent with the letter and spirit of this Constitution.

Section 3. Tribal Judiciary's Powers

The Tribal Judiciary, as established in Article X of this Constitution, shall be vested with all the Tribe's judicial powers.

Section 4. Ethics in Tribal Government

Within 180 days after the adoption of this Constitution, the Tribal Council shall, by ordinance, establish a code of ethics in Tribal government for Tribal public officials or others, as it deems appropriate to meet the needs of the Tribe.

ARTICLE VI**Tribal Council***Section 1. Composition, Qualifications, Terms of Office, Officers and Committees*

(a) Except as set forth in Article IV, Section 6, the Tribal Council shall be composed of 13 members of the Tribe who are registered to vote, 11 of whom, including a Chairperson, Vice-Chairperson, Secretary and Treasurer, shall be elected by majority vote of all registered tribal voters, and two of whom, the Tribal Medicine Man and Tribal Chief, shall be selected by the general Tribal membership according to Tribal custom and tradition and acknowledged by resolution as such by all the elected Tribal Council members prior to taking their respective seat on the Tribal Council.

(b) For a person, other than the Tribal Medicine Man and Tribal Chief, to be eligible for election or appointment to the Tribal Council that person shall:

- (1) be a member of the Tribe; and
- (2) be at least 25 years of age; and
- (3) be free of any felony conviction for the preceding five years from the date of consideration of eligibility; and
- (4) be nominated by at least 25 Tribal members who are registered to vote in tribal elections; and
- (5) be able to demonstrate attendance at a minimum of six Tribal Council or General Tribal Membership meetings, or a

combination of those meetings, within the 12 months preceding the Tribal general election; and

(6) not be related as an immediate family member to more than one person serving on the Tribal Council (i.e. mother, father, brother, sister, spouse, son or daughter).

(c) The elected members of the Tribal Council shall serve four-year terms of office and remain in office until their successors are elected and installed. The Tribal Medicine Man and Tribal Chief shall serve without limit, unless removed by a majority vote of the Tribal membership present at a meeting duly called for the purpose of removing the Tribal Medicine Man or Tribal Chief.

(d) The Tribal Council may appoint or employ officers, other than the Chairperson, Vice-Chairperson, Secretary or Treasurer, from within the membership of the Tribal Council, and committees, as may be necessary. If appointed or employed from without the Tribal Council, those officers shall be Tribal members and shall neither be counted for a quorum nor may they vote at Tribal Council meetings.

Section 2. Enumerated Powers of the Tribal Council

The Tribal Council shall be authorized to exercise the following powers, subject to any limitations imposed by Federal Law or this Constitution.

A. To promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.

B. To establish a basic departmental structure for the executive branch of the Tribal government with a delegation of appropriate powers to such subdivisions and agencies.

C. To establish procedures and ordinances for the conduct of all tribal government business operations, except where elsewhere precluded in this constitution.

D. To negotiate and enter into contracts and agreements with tribal, foreign, federal, state and local governments, private persons and corporate entities.

E. To prevent the sale, loss or transfer of tribal land, and to manage the disposition, lease or encumbrance of tribal lands or interest in land inherited, acquired with tribal funds or other tribal assets.

F. To establish criteria to make assignments of Tribal lands to members of the Tribe, Tribal agencies and to corporations wholly owned by the Tribe, and regulate the use of disposition of all such assignments.

G. To purchase, take by gift or bequest, or otherwise own, hold, manage and operate land and other assets of the Tribe.

H. To approve or disapprove operating budgets of the Tribal agencies, subdivisions and departments.

I. To prepare and present an annual balanced budget of Tribal operations to the Tribal body and in the event the budget is approved by a majority of the registered voters present and voting at the annual meeting of the Tribe, to allocate the funds called for by said budget.

J. To approve or disapprove allocations or disbursements of Tribal funds (or grant or contract funds under the administrative control of the Tribe) not specifically appropriated or authorized in the budget approved by the Tribe.

K. To create or to provide by ordinance for the creation of organizations including public and private corporation and/or charters for any lawful purpose, which may be nonprofit or profit making, and to regulate the activities of such organizations by ordinance.

L. To establish and enforce all ordinances governing Tribal members.

M. To levy and collect taxes and raise revenue to meet the needs of the Tribe or to support Tribal government operations subject to Tribal vote.

N. To assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe.

O. To establish an adjustable distribution of Tribal assets among the members of the Tribe which shall be made out of the net profits of any gaming enterprise after all Tribal debts then due have been managed and considerations given to future expense.

ARTICLE VII

Duties of Officers

Section 1. Duties of the Chairperson

The Chairperson shall preside over all meetings of the Tribal Council and shall perform the usual duties of a Chairperson including, but not limited to, acting as the official spokesperson for the Tribe, engaging in public relations, serving as coordinator over all Tribal government activities, and exercising any authority delegated to the Chairperson by the Tribal Council.

Section 2. Duties of the Vice-Chairperson

The Vice-Chairperson shall assist the Chairperson when called upon to do so and in the absence of the Chairperson shall preside over the meeting. When so presiding, the Vice-Chairperson shall have the rights, privileges, duties, and responsibilities of the Chairperson.

Section 3. Duties of the Secretary

The Secretary shall be responsible for all correspondence issued by the Tribal Council, keep an accurate record of all matters transacted at meetings of the Tribal Council, and perform those other duties as required by the Tribal Council.

Section 4. Duties of the Treasurer

The Treasurer shall accept, receive, preserve, and safeguard all Tribal funds or special funds for which the Tribal Council is acting as trustee or custodian. The Treasurer shall deposit all funds in appropriate insured depositories as the Tribal Council shall direct, make or preserve a faithful record of those funds, and report on all receipts and expenditures and the amount and nature of all funds in the Tribal treasury accounts at each regular meeting of the Tribal Council, at each regular general Tribal membership meeting, or at such other times as directed by the Tribal Council. After the United States of America federally recognizes the Tribe, an audit of accounts shall be made once a year and at such other times as the Tribal Council may require. All checks drawn upon Tribal funds will be handled according to the accounting procedure manual approved by the Tribal Council. The Treasurer shall be required to give satisfactory bond to the Tribal Council and that bond shall be paid from Tribal funds.

Section 5. Duties of Committees, Department Heads or Appointive Officers

The duties of all committees, department heads created or officers appointed by the Tribal Council shall be clearly defined by resolution of the Tribal Council at the time of their creation or appointment. Those committees, department heads or officers shall report to the Tribal Council from time to time as it may require and the Tribal Council may review their activities and decisions.

ARTICLE VIII

Vacancies and Removal of Tribal Officials

Section 1. Recall

(a) The registered voters of the Tribe may recall any elected official of the Tribe from office in accordance with the procedure set forth in subsection (b) of this Section; provided that, recall shall not be a remedy against alleged action by a Tribal official which may constitute a major crime.

(b) The procedure by which an elected Tribal official may be recalled shall be as follows:

(1) Petitioners Committee.

Any 100 registered voters of the Tribe may commence recall proceedings by filing with the Election Committee

an affidavit (1) stating their names, addresses, and the names and addresses of three representatives of the Petitioners Committee to which all notices regarding the petition are to be sent, and (2) stating that they will constitute the Petitioners Committee and will be responsible for circulating the petition and filing it in proper form, and (3) naming the Tribal official sought to be recalled, and (4) stating in less than 250 words the specific reasons upon which it is alleged that the named Tribal official should be recalled. If more than one official is sought to be recalled, there shall be separate affidavits of charges filed for each such official. The Election Committee shall promptly thereafter serve in person or by registered mail a copy of the affidavit of the Petitioners Committee upon the named official. The named official shall have 15 days after receipt of service to file an affidavit in defense with the Election Committee answering, in less than 250 words, the charges made against him or her.

(2) Certificate of Sufficiency

(A) Certificate of Sufficiency.

Within 5 working days after a petition is filed, the Election Committee shall certify as to its sufficiency.

(B) If Certified Insufficient.

If the petition is certified insufficient, the Election Committee shall state in the certificate with particularity the reasons it is insufficient. A copy of the certificate of insufficiency shall be promptly sent to the Petitioners Committee by registered mail, or served personally upon, the Petitioners Committee. A petition certified insufficient for lack of required number of valid signatures may be supplemented once, and for this purpose an appropriate number of petition forms shall be mailed or given personally to the Petitioners Committee along with the certificate of insufficiency. Such supplemental petition shall comply with the requirements of this section. Petitioners Committee shall have 15 days after receipt of the certificate of insufficiency to file a supplemental petition with the Election Committee. Within 5 working days after the filing of the supplemental petition, the Election Committee shall certify as to the sufficiency of the petition as supplemented and promptly send a copy of such certificate to the Petitioners Committee by registered mail, or shall serve a copy personally upon the Petitioners Committee.

(C) If Certified Sufficient.

If an original petition or a petition a

supplemented in accordance with Section 1(b) (2) (B) of this Article is certified as sufficient by the Election Committee, it shall promptly send a copy of the certificate of sufficiency by registered mail to, or serve it personally upon, the Petitioners Committee, and the certificate of sufficiency shall promptly be presented to the Tribal Council. Immediately thereafter, the Tribal Council shall promptly send by mail to all registered tribal voters a copy of the certified petition.

(c) Recall Election

(1) The Election Committee shall hold a meeting of the general Tribal members giving each side equal time to present their arguments and to answer any questions posed by participants at a hearing. Immediately following the hearing, a recall election shall occur. The affirmative vote of 60 percent of those voting at the recall election shall effect a recall of the official from office; provided that, at least 40 percent of the total number of registered Tribal voters who voted in the next immediately preceding annual election of Officers vote in the recall election. The 40 percent requirement shall be certified based on the attendance log at the beginning of the hearing. If the 40 percent requirement is not met, then the hearing and recall election shall be immediately canceled. In the event the official is recalled, the office shall be deemed vacant and shall be filled in accordance with Section 4 of this Article.

(2) The ballot for the recall election shall, for each official sought to be recalled if more than one, state the grounds set forth in the recall petition for demanding such recall and the answer of the official sought to be recalled. The ballot shall set forth the following question: Shall (name of the official sought to be recalled) be recalled from the office (title of office). Following such question shall be two choices of words, "yes" or "no" on separate lines with the blank space to the right of each in which the voter shall indicate by marking a cross "x" for his or her vote for or against recall.

Section 2. Expulsion and Suspension of Members of the Tribal Council

(a) The Tribal Council shall expel a member of the Tribal Council from office on grounds of failure to attend three successive regular meetings of the Tribal Council in a given calendar year without good reason as determined by the Tribal Council, lack of a required qualification for holding office, or occurrence of a disqualification for office.

(b) The Tribal Council shall by affirmative vote of 7 members of the Tribal Council expel a member of the Tribal Council from office on grounds of malfeasance or nonfeasance. The

Tribal Council member sought to be expelled for malfeasance or nonfeasance shall be notified in person or by registered mail at least 10 days before the holding of any meeting at which the member's expulsion from office is to be considered. The notice shall set forth the alleged grounds for expulsion with specificity. The member in question shall be given full opportunity to be heard at such meeting and to confront any and all adverse witnesses. If the Tribal Council votes to expel the member in question, the grounds for removal shall be set forth with specificity in the minutes of the meeting, and the Tribal Council's decision shall be subject to prompt review by the Tribal Judiciary at the request of the expelled member.

(c) In the event the decision of the Tribal Council to expel the member of the Tribal Council in question is upheld by the Tribal Judiciary, the office shall be deemed vacant and shall be filled in accordance with Section 4 of this Article.

(d) Any vacancy in the Tribal Council whether by death, resignation, recall, suspension or removal shall also result in a vacancy on the Board of Directors of the Mashpee Wampanoag Tribal Council, Inc. and also on the Board of Directors of the Old Indian Meeting House Authority, Inc.

(e) A member of the Tribal Council may be suspended from office pending the appeal of the member's conviction of a major crime by the vote of five members of the Tribal Council.

Section 3. Automatic Vacancies

(a) The office of any elected Tribal official shall be deemed to be automatically vacant upon the official's death, resignation, or conviction of a major crime. Resignation of office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document. Major crime within the meaning of this subsection means any crime included in 18 U.S.C. § 1153, or any amendment thereto, and any equivalent crime defined under state or Tribal law.

(b) Any vacancy in office which occurs under this section shall be filled in accordance with Section 4 of this Article.

Section 4. The Filling of Vacancies In Office

(a) Except as provided in this Constitution, any vacancy in the office of an elected Tribal official shall be filled as follows:

(1) For a vacancy that occurs within the calendar year, the Tribal Council shall appoint within 30 days of such vacancy the candidate that received the highest number of votes next to the person who vacated the office that is intended to be filled under this Section.

(2) If any additional vacancies occur in the same calendar year, then the Tribal Council shall immediately issue a 10-day notice to the registered voters of the

Tribe informing them of the vacancy and that nominations shall be taken at the next monthly general Tribal membership meeting following the end of the notice period; and further providing, that at the monthly general Tribal membership meeting following the meeting where nominations were made, a vote will be taken on the nominations with the nominee receiving the highest number of votes filling the vacancy.

(3) Paragraphs (1) and (2) of this subsection (a) shall not apply to fill the vacancy in the office of Chairperson. Such vacancy shall be filled in accordance with Section 6 of this Article.

(b) Any Tribal official who, by operation of this Article, vacates his office shall not be eligible for succession to that office.

(c) Any Tribal member appointed to office under the provisions of this Section shall be deemed to be subject to all provisions of this Article, and other Articles of this Constitution, and to other Tribal ordinances generally applicable to elected Tribal officials; and that Tribal official's particular office.

Section 5. Tribal Judiciary Excluded

This Article shall not be applicable to the removal of Tribal Judges, nor to the filling of any vacancies in the office of Tribal Judge.

Section 6. Succession to Chairperson and Vice-Chairperson

In the event the office of the Chairperson becomes vacant, then the Vice-Chairperson shall become Chairperson and the office of Vice-Chairperson shall become vacant and filled in accordance with Section 4 of this Article. In the event the offices of the Chairperson and Vice-Chairperson become vacant on the same calendar day, then the officer of the Tribal Council which is highest on the following list and in accordance with the order listed in Article VII, and who is not under disability to discharge the power and duties of the office of Chairperson shall act as Chairperson, Secretary and Treasurer. In such event, the office of Vice-Chairperson and the office vacated to assume the office of Chairperson shall be filled in accordance with Section 4 of this Article.

ARTICLE IX

Procedures of the Tribal Council

Section 1. Meetings of the Tribal Council

(a) The Tribal Council shall meet in official session at least once a month every calendar year at such time and place as shall be established by ordinance. The order of business for any such meeting shall be posted in accordance with Section 3 of this Article. Other business, however, may also be transacted at such meeting if the Tribal Council votes to consider such other business. The quorum for a regular meeting of the Tribal Council shall be nine members of the Tribal Council.

(b) Special Meetings

(1) Calling and Notice

Special meetings of the Tribal Council shall be called by the Chairperson of the Tribal Council at that person's discretion or upon the written request of any three members of the Tribal Council; provided that, at least 72 hours written notice of such meetings shall be given to each Tribal Council member, by personal service or by registered mail sent to that person's usual place of residence, or by electronic means that documents receipt of the notice. Notice, however, shall be considered waived by attendance at the meeting. Notice to Tribal members shall be posted as provided in Section 3 of this Article promptly after such meeting is called. The quorum for a special meeting of the Tribal Council shall be nine members of the Tribal Council.

(2) Business

No business shall be conducted at any special meeting of the Tribal Council unless the business has been stated in the notice of that meeting. Any business, however, which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the entire Tribal Council are present and consent is given in writing.

(3) Emergency Meetings

An emergency meeting of the Tribal Council may be called by the Chairperson of the Tribal Council at that person's discretion or upon the request of any three members of the Tribal Council upon less than 72 hours written notice if that meeting is necessary for the preservation or protection of the immediate health, peace, safety, or property of the Tribe. The Tribal Council shall make every effort to give maximum practical notice to each member of the Tribal Council for that meeting, and the notice shall be posted as provided in Section 3 of this Article promptly after that meeting is called. No business other than that stated in the notice shall be conducted. The quorum for an emergency meeting of the Tribal Council shall be seven members of the Tribal Council.

(c) Open Meetings and Executive Sessions

All meetings of the Tribal Council called under this Article shall be open to Tribal members who shall have a reasonable opportunity to be heard under such rules as the Tribal Council may prescribe; provided that, the Tribal Council may meet in executive session for such purposes as shall be set forth in the rules of the Tribal Council; further provided that, no vote by the Tribal Council shall be taken while convened in executive session.

The Tribal Council may determine not to keep a record of all or any part of the discussion in executive session. The general reason for that

determination shall be recorded and a record shall be kept of any action taken in executive session. The record may be withheld from inspection by Tribal members pending final disposition of the matter concerned.

(d) Organization and Rules of the Tribal Council. The Tribal Council shall adopt by motion standing written rules governing its own organization and procedure, subject to the approval of the general Tribal membership at a meeting called for such specific purpose. Those rules shall be open and available to review by Tribal members. Any amendments to those rules shall be subject to the approval of the general Tribal membership at a meeting called for such specific purpose.

(e) Voting by the Tribal Council

(1) Ordinances

Except for emergency ordinances, every ordinance shall be adopted at a regular meeting of the Tribal Council by the affirmative vote of at least seven members of the Tribal Council; provided that, the quorum for those meetings shall be seven members of the Tribal Council.

(2) Resolutions and Motions

Every resolution and motion shall be adopted by the affirmative vote of at least a majority of the members of the Tribal Council present at a regular or special meeting of the Tribal Council; provided that, the quorum for those meetings shall be nine members of the Tribal Council.

Section 2. Ordinances, Resolutions, and Motions

Promptly after the effective date of this Constitution, the Tribal Council shall enact an ordinance establishing procedures for adopting, amending, or rescinding ordinances, resolutions and motions, and handling of Tribal records.

Section 3. Posting Procedure

The following shall be the procedure of the Tribal Council in posting any notice, ordinance, or other document as required by this Constitution or by Tribal ordinance.

(1) The Tribal Council shall designate by ordinance no fewer than two public places where that posting shall be made. If any posting place is to be changed, the Tribal Council shall make such change by ordinance.

(2) Posting of the notice, ordinance or other document shall take place as soon as practicable.

Section 4. General Tribal Membership Meeting

(a) There shall be a General Tribal Membership meeting called at least once a month by the Tribal Council and open to all tribal members. The purpose of the meeting shall be to discuss problems and issues concerning Tribal affairs; to review the policies, goals, and priorities of the Tribal Council; to review the functioning of Tribal programs and to make recommendations to the Tribal Council for change.

(b) The Tribal Council shall set the meeting for the second Sunday of each month at such appropriate time and place and shall provide reasonable notice to Tribal members of that meeting by posting such notice in accordance with Section 3 of this Article.

(c) Special General Tribal Membership Meeting.

(i) The Tribal Council may call a special General Tribal Membership meeting when it deems appropriate.

(ii) Tribal members may require the Tribal Council to call a General Tribal Membership meeting for a specified purpose or purposes by presenting to the Tribal Council a petition with 100 signatures of Tribal members over the age of 18, which petition shall specify the purpose or purposes for calling the meeting. The meeting called under that petition shall be convened no later than 20 days following the submission of a valid petition which shall be certified as valid within 72 hours of submission.

(d) Annual Tribal Membership Meeting

(e) The Tribal Council shall set a date and a time to present a balanced budget and discuss other Tribal business.

**ARTICLE X
Tribal Judiciary**

Section 1. Structure

(a) The Tribal Judiciary shall be composed of one Supreme Court and of such lower courts as are designated to be established in this Article, and as may be established by ordinance by the Tribal Council as it deems appropriate to meet the needs of the Tribe.

(b) The Supreme Court of the Tribe shall have jurisdiction over appeals from all final decisions of the lower courts of the Tribe. The Supreme Court shall be composed of three Judges. Supreme Court Judges may, if necessary and if so instructed by the Tribal Council also serve as Judges of the lower courts. In such a situation, however, the Supreme Court Judge shall be disqualified from participating in a review of any decision entered by that judge while sitting as a lower court judge.

(c) The Tribal Council shall determine and establish the number of lower trial courts

necessary to serve the judicial needs of the Tribe. Such trial courts shall have general and original jurisdiction over all cases of a civil or criminal nature. Each trial court shall be presided over by one Judge.

(d) If the Tribal Council establishes special kinds of lower courts with original jurisdiction over specified subject areas, the Tribal Council shall specify whether such jurisdiction is exclusive or concurrent with the jurisdiction of the trial courts established in subsection (c) of this Section.

(e) If the Tribal Council establishes an intermediate level of courts to hear appeals from all final decisions of the lower courts, the Supreme Court shall hear appeals only from decisions of the intermediate courts of appeals. In addition, the Tribal Council may authorize the Supreme Court to exercise its discretion in all or designated kinds of cases in deciding whether to hear an appeal in any particular case.

Section 2. Appointment and Term of Office

(a) The Tribal Council shall by ordinance establish a procedure for selection of Tribal Judges.

(b) Tribal Judges shall be appointed by six or more votes of the Tribal Council.

(c) Lower Court Judges shall be appointed to a term of five years.

(d) Supreme Court Judges shall be appointed to staggered terms of eight years. The initial term of each of the first three Supreme Court Judges appointed shall be randomly assigned and one judge shall serve four years, one judge shall serve six years and one judge shall serve eight years.

Section 3. Compensation

Tribal Judges shall receive for their services a reasonable compensation, as fixed from time to time by the Tribal Council. The Tribal Council shall not diminish the compensation of a Tribal Judge during that Judge's term of office.

Section 4. Qualifications and Disqualifications

(a) To hold the office of Tribal Judge, a person shall be a member of an American Indian tribe that is recognized by the Tribe, be at least 25 years of age, have a minimum education of a high school graduate or an equivalent and meet such other requirements as shall be set forth by ordinance.

(b) No person shall be eligible to be appointed to the office of Tribal Judge who has been convicted of a felony or a crime of moral turpitude.

Section 5. Removal from Office by Tribal Council and Automatic Vacancies

(a) Tribal Judges may be removed from office by the Tribal Council by the affirmative vote of at least seven members of the entire Tribal Council, but only upon grounds of inability to carry out the duties of the office, failure to carry out the duties

of the office, or lack of a requisite qualification for serving as a Tribal Judge. The Tribal Council shall notify the Tribal Judge in question and the Supreme Court, in writing, not less than 20 days prior to the meeting at which the Judge's removal is to be considered and voted upon. The notice shall specify the charge or charges and shall state the facts in support thereof. The Tribal Judge in question shall have full opportunity at the meeting at which that Judge's removal is to be considered and decided upon to examine all adverse witnesses and to present witnesses. The decision of the Tribal Council shall be final and not appealable to the Tribal Judiciary. The Supreme Court may, upon receipt of notice of the removal charges, suspend the Tribal Judge in question from office pending final action of the Tribal Council at the meeting.

(b) The office of any Tribal Judge who is convicted of a felony or a crime of moral turpitude, who dies, who resigns, or who is removed shall be deemed to be automatically vacant. Resignation from office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document.

Section 6. Rules of Tribal Courts

The Supreme Court shall by order establish written rules of procedure and ethics for all Tribal Courts. Such rules may from time to time be amended as deemed necessary or appropriate by the Supreme Court. The Supreme Court shall consult with the Judges of the lower courts in establishing rules of procedure for the lower courts.

Section 7. Records and Court Clerk

The Supreme Court shall implement the system of keeping records of proceedings of the Tribal Judiciary. The Supreme Court shall appoint a court clerk who shall be responsible for keeping the records of the Judiciary and generally for administering the daily business of the Judiciary.

Section 8. Appropriations

The Tribal Council shall give priority for appropriations of such funds as may be necessary to enable the Tribal Judiciary to carry out the provisions of this Article.

Section 9. Enforcement

The Tribal Council shall implement this Article by ordinance.

ARTICLE XI

Civil and Aboriginal Rights

Section 1. Civil Rights

The Tribe, in exercising its power of self-government over persons subject to tribal jurisdiction, shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for a public use without just compensation;

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law; or

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Section 2. Aboriginal Rights

The members of the Tribe retain their aboriginal rights subject only to Tribal laws. Any other person shall have no such rights.

Section 3. Rights Retained by the People

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE XII**Initiative and Referendum****Section 1. General Authority**

(a) Initiative. Registered voters of the Tribe may propose any ordinance to the Tribal Council for consideration, in accordance with procedures set forth by ordinance, except ordinances concerning the budget of the Tribal government, appropriations of funds, levy of taxes, salaries of Tribal officials, employees or appointees, emergency ordinances, distribution of funds as per capita payments or ordinances establishing Tribal businesses. If the Tribal Council votes not to enact the proposed ordinance, or if the Tribal Council votes to enact the proposed ordinance with substantive amendments, then the proposed ordinance, in the original form and in the amended form if any, shall be submitted to the registered voters of the Tribe at a Tribal election for their approval or rejection.

(b) Referendum

(1) By action of registered voters. Registered voters of the Tribe may require the Tribal Council to consider the repeal of any ordinance, in accordance with procedures set forth by ordinance, except ordinances concerning the budget of the Tribal government, appropriations of funds, levy of taxes, salaries of Tribal officials, employees or appointees, emergency ordinances, distribution of funds as per capita payments or ordinances establishing Tribal businesses. If the Tribal Council fails to repeal such ordinance, the ordinance shall be submitted to the registered voters of the Tribe at a Tribal election for their approval or repeal in accordance with Section 2 of this Article.

(2) By action of the Tribal Council. The Tribal Council, on its own motion, may submit at a Tribal election any proposed ordinance or other proposed action of the Tribal Council to a vote of the registered voters of the Tribe for their approval or rejection.

(c) The Tribal Council shall implement this Article by ordinance.

Section 2. Results of Election**(a) Initiative**

If a majority of the registered voters of the Tribe voting on a proposed initiated ordinance vote in its favor, then it shall be considered effective upon certification of the election results. If conflicting ordinances are approved at the same election, then the one receiving the greater number of affirmative votes shall prevail.

(b) Referendum

If a majority of the registered voters of the Tribe voting on a referred ordinance vote for repeal, then it shall be considered repealed upon certification of the election results. If a majority

of the registered voters of the Tribe voting on a referred ordinance vote to approve such ordinance, then it shall be considered approved upon certification of the election results.

(c) Voting Percentage Requirements

No initiative or referendum election shall be effective unless at least 15 percent of the total number of registered voters of the Tribe vote in that election.

ARTICLE XIII**Amendments**

This Constitution may be amended by a majority vote of the registered voters of the Tribe voting at an election called for that purpose by the Tribal Council provided at least 30 percent of those registered to vote shall vote in such election. The election shall be conducted in accordance with this Constitution.

ARTICLE XIV**Certificate of Results of Election and Savings**

This Constitution, when adopted by a majority vote of the voters of the Tribe voting in an election called for that purpose by the Board of Directors of the Mashpee Wampanoag Indian Tribal Council, Inc. shall be effective from the date the Tribal Council certifies by resolution the election results. All tribal laws, resolutions, and policy of whatever nature adopted before the effective date of this Constitution shall continue in effect to the extent they are consistent with this Constitution.

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II. BY-LAWS OF THE MASHPEE WAMPANOAG TRIBAL COUNCIL, INC.

ARTICLE I

NAME AND LOCATION

The name of the organization shall be the Mashpee Wampanoag Indian Tribal Council Inc. with headquarters in the Town of Mashpee, County of Barnstable, Commonwealth of Massachusetts.

PURPOSE

Section 1.

The purpose of the Council is to raise the socio-economic and spiritual level of the Mashpee Wampanoag to the level where they may compete with present day society.

The Tribal Council shall assist in the quest for self Determination in such a way that will retain the Wampanoag History and culture and preservation of tribal land.

Section 2.

The Mashpee Wampanoag Indian Tribal Council will develop educational, employment and vocational training programs.

Section 3.

The Mashpee Wampanoag Indian Tribal Council will acquire Common lands for eligibility in acquiring Federal Recognition and Indian Grants or funds that may be available, as well as for means of revenue sharing on a local level.

Section 4.

The Mashpee Wampanoag Indian Tribal Council, Inc. in conjunction with the Tribe will establish rules and regulations that pertain to all business of the Tribal Council.

Section 5.

The Mashpee Wampanoag Indian Tribal Council will be a Non-Profit Organization.

ARTICLE II

COUNCIL MEMBERSHIP

Section 1. Tribal Members

Tribal members of the corporation shall consist of those persons who have qualified for membership in accordance with the provisions of Article III of the Constitution of the Mashpee Wampanoag Indian Tribe.

ARTICLE III

MEETINGS OF MEMBER CORPORATION)

Section 1.

Meetings shall be held on the second Sunday of each month, at 2 o'clock P.M., unless otherwise advertised. They shall start at 2:00 p.m. and end at 4:00 p.m.

Section 2. Annual Meetings

The annual meeting of the members of the Corporation shall be held on the second Sunday in February. The date and time to be determined by the Nomination Committee for the purpose of electing officers and/or directors and for the transaction of such business as may properly come before them.

Officers and/or Directors shall be elected by a plurality vote of the members present, by secret ballot.

Section 3.

All business relative to the Corporation shall be presented at the monthly meeting.

Section 4.

The President shall moderate Corporate meetings and appoint any committee he/she deems necessary and shall be ex-officio members of all committees, except the Nominating and Membership Committees.

Section 5.

The Vice President shall preside in the absence of the President. In the event that both officers are absent it will be the duty of a Board Member to chair the meeting.

Section 6.

The meetings will be held with a quorum of fifteen (15) members present, but lesser number may adjourn a meeting.

Section 7.

Special meetings may be called by the President, as directed by the Board of Directors, or written requires of and (10) ten members of the Council.

ARTICLE IV

BOARD OF DIRECTORS

Section 1.

The Management of the Council shall be vested in the Board of Directors and it shall conduct the business of the Corporation.

The Board of Directors shall have the authority to delegate specific duties and responsibilities to the Board and other Officers provided that such administrative policy does not conflict with action taken by the membership at duly noticed and convened meetings.

The Board of Directors shall conduct, manage, and control the affairs of the Council and make such rules consistent with these bylaws as they deem necessary or proper for the guidance of the officers, employees and for the conduct of the Council.

Section 2. Size of Board

The number of elected Directors which

shall constitute the Board of Directors shall be thirteen (13). The Directors shall be elected by the members of the corporation every year. Each Director must be a member of the corporation. In addition to the Directors elected by the members of the Corporation, the Board of Directors shall also include the officers of the Corporation. A total of eleven (11) Directors are to be elected.

The Medicine Man and Tribal Council are automatically members of the Board of Directors, with full voting privileges.

Section 3.

Each member of the Board of Directors shall be elected by ballot of the members of the Council and shall hold office for a term of four years from the date of his/her election and until his successor is elected. The Directors shall be eligible for re-nomination and election as many times as the members of the Corporation may desire.

Section 4. Vacancy

Vacancies in office shall be filled in accordance with the provisions of Section 4 of Article VIII of the Constitution.

Section 5. Meeting Place

The Board of Directors may hold meetings at a designated place, at such times as they deem necessary and desirable.

Section 6. Quorum

A quorum for the transaction of business at any meeting of the Board of Directors shall be seven (7) members of the Board.

Section 7. Special Meetings

Special meetings may be called by the President acting alone or by at least three (3) Directors.

Section 8. Attendance

Board members shall attend all regularly called meetings of the Board, or send due notice of non-attendance. Members absent from three (3) consecutive Board of Director meetings without due cause shall be subject to expulsion from the Board of Directors on grounds of failure to attend such three (3) successive regular meetings of the Board in a given calendar year without good reason as determined by the Board of Directors, lack of a required qualification for holding office, or occurrence of a disqualification for office.

ARTICLE V DUTIES OF OFFICERS

Section 1. Officers

The officers of this corporation shall consist of a President, Vice President, Secretary, and Treasurer.

Section 2. The President

He/she shall preside at all meetings of the

Corporation and the Board of Directors. He/she may appoint the chairman of all committees which may be created and he/she shall have the general powers and duties which are usually vested in the office of President of the Corporation. As the need arises, the President shall appoint special committees who shall report to the Board meetings upon completion of their work.

Section 3. The Vice President

He/she shall perform the duties of the President in case of absence, resignation or inability of the latter to act. The Vice President shall perform such duties and have such powers as the Board of Directors may from time to time prescribe. In the event that both officers are absent it will be the duty of a Board Officer to chair the meeting, by descending order.

Section 4. The Treasurer

The Treasurer shall receive all monies of the Corporation and have custody thereof. He/she shall cause to be kept a full account of all monies received and paid out and shall make such reports thereof to the Board of Directors and Council as they may require.

Section 5. The Secretary

The Secretary shall keep the minutes of all meetings of the Board of Directors and shall perform the duties and functions customarily performed by the Secretary.

Section 6.

All officers shall at the termination of their tenure turn over forthwith to their successors all papers, materials and documents of their office in the Wampanoag Indian Tribal Council, Inc.

ARTICLE VI ELECTIONS

Section 1.

Elections of members of the Board of Directors are governed by Article IV of the Constitution.

ARTICLE VII AMENDMENTS

These By-laws may be amended by a majority of those members present and voting at a regularly or specially noticed meeting of the Corporation provided that:

A. That the proposed amendment or revision be presented at the meeting prior to the one in which it will be voted upon.

B. A two thirds majority of the members present and voting shall be required for the vote on amendment or revision on by-laws.

Bylaws adopted 1974

Bylaws revised 1978

Accepted April 1979

Edited February 1995

Bylaws revised June 2004

III. CERTIFICATION OF CONSTITUTION AND BYLAWS VOTES

CERTIFICATION OF CONSTITUTION AND BYLAWS VOTES

We, the undersigned members of the Tribal council and Board of Directors do hereby certify that a meeting duly noticed and held on Saturday, June 26, 2004 at which a quorum was present it was voted by a two-thirds majority of those Tribal Members present and voting to adopt a new constitution of the Mashpee Wampanoag Indian Tribe and it was further voted to amend the Bylaws of the Mashpee Wampanoag Indian Tribal Council, Inc. the amended bylaws and the newly adopted Constitution are hereby determined to be in full force and effect as of this date.

Signed this 28th day of June, 2004.

Glenn Marshall
Don W. Marshall
Nellie Ramos
Diana Hendricks
Richard Oakley
Charles R. Foster III
Richard Oakley

David P. Poirer
Norman Poirer
Cedric Cornwell
Cheryl A. Frye
Yvonne L. Brown
Gail A. Hendricks



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§ 1605. General exceptions to the jurisdictional immunity of a..., 28 USCA § 1605

United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1605

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

Effective: December 16, 2016

[Currentness](#)

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to--

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

§ 1605. General exceptions to the jurisdictional immunity of a..., 28 USCA § 1605

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or [section 1607](#), or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided, That--*

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in [section 1608](#) of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in [section 31301 of title 46](#). Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[(e), (f) Repealed. [Pub.L. 110-181](#), Div. A, [Title X](#), § [1083\(b\)\(1\)\(B\)](#), Jan. 28, 2008, 122 Stat. 341.]

(g) **Limitation on discovery.--**

§ 1605. General exceptions to the jurisdictional immunity of a..., 28 USCA § 1605

(1) In general.--(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by [section 1604](#), but for [section 1605A](#) or [section 1605B](#), the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) Sunset.--(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) Evaluation of evidence.--The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) Bar on motions to dismiss.--A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under [rules 12\(b\)\(6\)](#) and [56 of the Federal Rules of Civil Procedure](#).

(5) Construction.--Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(h) Jurisdictional immunity for certain art exhibition activities.--

(1) In general.--If--

(A) a work is imported into the United States from any foreign state pursuant to an agreement that provides for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or one or more cultural or educational institutions within the United States;

(B) the President, or the President's designee, has determined, in accordance with subsection (a) of [Public Law 89-259 \(22 U.S.C. 2459\(a\)\)](#), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and

(C) the notice thereof has been published in accordance with subsection (a) of [Public Law 89-259 \(22 U.S.C. 2459\(a\)\)](#),

any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

(2) Exceptions.--

(A) Nazi-era claims.--Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and--

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;

(iii) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in [section 1603\(d\)](#); and

(iv) a determination under clause (iii) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(B) Other culturally significant works.--In addition to cases exempted under subparagraph (A), paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and--

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a foreign government as part of a systematic campaign of coercive confiscation or misappropriation of works from members of a targeted and vulnerable group;

§ 1605. General exceptions to the jurisdictional immunity of a..., 28 USCA § 1605

(iii) the taking occurred after 1900;

(iv) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in [section 1603\(d\)](#); and

(v) a determination under clause (iv) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(3) Definitions.--For purposes of this subsection--

(A) the term “work” means a work of art or other object of cultural significance;

(B) the term “covered government” means--

(i) the Government of Germany during the covered period;

(ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period;

(iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and

(iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

(C) the term “covered period” means the period beginning on January 30, 1933, and ending on May 8, 1945.

CREDIT(S)

(Added [Pub.L. 94-583](#), § 4(a), Oct. 21, 1976, 90 Stat. 2892; amended [Pub.L. 100-640](#), § 1, Nov. 9, 1988, 102 Stat. 3333; [Pub.L. 100-669](#), § 2, Nov. 16, 1988, 102 Stat. 3969; [Pub.L. 101-650, Title III, § 325\(b\)\(8\)](#), Dec. 1, 1990, 104 Stat. 5121; [Pub.L. 104-132, Title II, § 221\(a\)](#), Apr. 24, 1996, 110 Stat. 1241; [Pub.L. 105-11](#), Apr. 25, 1997, 111 Stat. 22; [Pub.L. 107-77, Title VI, § 626\(c\)](#), Nov. 28, 2001, 115 Stat. 803; [Pub.L. 107-117](#), Div. B, § 208, Jan. 10, 2002, 115 Stat. 2299; [Pub.L. 109-304](#), § 17(f)(2), Oct. 6, 2006, 120 Stat. 1708; [Pub.L. 110-181, Title X, § 1083\(b\)\(1\)](#), Jan. 28, 2008, 122 Stat. 341; [Pub.L. 114-222](#), § 3(b)(2), Sept. 28, 2016, 130 Stat. 853; [Pub.L. 114-319](#), § 2(a), Dec. 16, 2016, 130 Stat. 1618.)

28 U.S.C.A. § 1605, 28 USCA § 1605

Current through PL 117-15 with the exception of PL 116-283, Div. A, Title XVIII.

conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Charles P. Kupfer, Millbury, MA, PRT-143853.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: January 19, 2007.

Monica Farris,

Senior Permit Biologist, Branch of Permits,
Division of Management Authority.

[FR Doc. E7-2939 Filed 2-21-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Mashpee Wampanoag Indian Tribal Council, Inc. of Massachusetts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(l)(2), notice is hereby given that the Department of the Interior (Department) has determined that the Mashpee Wampanoag Indian Tribal Council, Inc., P.O. Box 1048, Mashpee, Massachusetts, 02649, is an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner satisfies all seven mandatory criteria set forth in 25 CFR 83.7, and thus meets the requirements for a government-to-government relationship with the United States.

DATES: This determination is final and will become effective 90 days from publication of this notice in the **Federal Register** on May 23, 2007, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

ADDRESSES: Requests for a copy of the Summary Evaluation of the Criteria

should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B-SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513-7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the ADS by Secretarial Order 3259, of February 8, 2005, as amended on August 11, 2005, and on March 31, 2006. This notice is based on a determination that the Mashpee Wampanoag Tribal Council, Inc. (MWT) meets all of the seven mandatory criteria for acknowledgment in 25 CFR 83.7.

The Department considered the Mashpee petition under slightly modified timeframes set by a July 22, 2005, Joint Settlement Agreement and Stipulated Dismissal (Agreement) resolving the case of *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 180 F. Supp. 2d 130 (D.D.C. 2001), rev'd, 336 F.3d 1094 (D.C. Cir. 2003), on remand, No. CA 01-111 JR (D.D.C.).

A notice of the proposed finding (PF) to acknowledge the petitioner was published in the **Federal Register** on April 6, 2006 (71 FR 17488). Publishing notice of the PF initiated a 180-day comment period during which time the petitioner, and interested and informed parties, could submit arguments and evidence to support or rebut the PF. The comment period ended on October 3, 2006. The regulations at 25 CFR 83.10(k) provide the petitioner a minimum of 60 days to respond to comments that interested and informed parties submitted on the PF during the 180-day comment period. The Agreement modified this timeframe, providing the petitioner a 30-day response period, which ended on November 1, 2006. This final determination (FD) is made following a review of the petitioner's and public comments as well as the petitioner's response to the public comments.

During the comment period, the petitioner submitted an updated membership list, supplemental genealogical and governmental materials, and historical documents, in response to requests for information made by the Department in the PF and in an informal technical assistance teleconference with the petitioner. These materials did not change the conclusions of the PF. The Department received several letters of support from the public for the Mashpee group. These

letters did not provide substantive comment. The Department also received a letter from a former selectman of the Town of Mashpee pertaining to negotiations between the petitioner and the Town. This letter did not comment substantively on the PF. The only substantive comment by interested or informed parties came from the Office of the Massachusetts Attorney General (Massachusetts AG), to which the petitioner submitted a response on October 30, 2006. The Massachusetts AG's comments are discussed under criteria 83.7(b) and 83.7(c) below.

Criterion 83.7(a) requires external identifications of the petitioner as an American Indian entity on a substantially continuous basis since 1900. The PF concluded external observers identified the petitioning group as an American Indian entity on a substantially continuous basis since 1900. However, it pointed out that the available identifications of the Mashpee in the record for 1900-1923 constituted sufficient but minimal evidence for substantially continuous identification for those years, and encouraged the petitioner to strengthen its evidence for criterion 83.7(a) by submitting additional identifications for that period. In response, the petitioner submitted a new argument concerning a 1907 document. As reevaluated for the FD, this document provides an additional identification of the Mashpee. When combined with the other identifications in the record for the PF for those years, the additional evidence is sufficient to show consistent identifications of the Mashpee from 1900 to 1923. The evidence submitted for both the PF and the FD demonstrates external observers identified the Mashpee as an Indian entity on a substantially continuous basis since 1900. Therefore, the petitioner meets the requirements of criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF concluded that the petitioner presented sufficient evidence to satisfy this criterion. During the comment period, in response to the Department's request for information, the petitioner submitted a copy of the 1776 Gideon Hawley census of Mashpee. As part of an analysis of residential patterns of the Mashpee group for the colonial and Revolutionary periods, the PF described this document's details using only descriptions of it from both State reports and secondary sources. For the FD, Department researchers analyzed the newly-submitted 1776 Hawley census

and found that it supported the PF's conclusions regarding the residential patterns of the group for the colonial and Revolutionary periods.

In its comments on the PF dated October 2, 2006, the Massachusetts AG expressed concern that the PF did not adequately consider the evidence contained in the record of the lengthy jury trial in the Mashpee's land claim suit of 1977–1978. The jury concluded that the Mashpee group did not constitute an Indian tribe for purposes of the Indian Nonintercourse Act (25 U.S.C. 177). See *Mashpee Tribe v. Town of Mashpee*, 447 F. Supp. 940 (D. Mass. 1978), *aff'd*, *Mashpee Tribe v. New Seabury Corp.*, 592 F. 2d 575 (1st Cir. 1979). In particular, the Massachusetts AG cited the testimony of the defendants' two expert witnesses at specific sections of the trial transcript as examples of evidence that appeared to militate against Federal acknowledgment of the group. The Massachusetts AG then urged the Department to give the trial record of the case the fullest review before issuing the FD. In a follow-up letter dated October 3, 2006, the Massachusetts AG clarified that it was not taking a position on the recognition of the Mashpee in its October 2, 2006, comments, but was simply addressing those issues related to its concerns about adequate consideration of the evidence in the 1978 trial record.

The Department gave the evidence from the trial record a thorough review at the time of the PF. The Department examined all of the transcripts of the testimony (over 7,300 pages) as part of its evaluation of the Mashpee petition before the PF's issuance. Although quality, not quantity, is critical, the Department also based the PF on considerably more evidence, over 10,100 documents totaling about 54,000 pages in the petition record. In contrast, there were only about 274 exhibits before the Court. None of these materials with the exception of the exhibits were available to the court at the time of the trial. In response to the Massachusetts AG's comments, the Department reviewed again the evidence from the trial record, particularly the cited testimony of the defendants' two expert witnesses. This review did not change the findings in the PF.

The PF additionally examined the group's community and politics for the lengthy period since the suit, approximately 30 years, as well as the earlier periods. It also incorporated more in-depth evaluations of the evidence, including detailed marriage and residency analyses, as well as 31

interviews conducted by the Department's anthropologist during an on-site investigation in 2006.

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF addressed the issues dealing with distinct community raised by the defendants' expert witnesses in the trial transcript pages cited by the Massachusetts AG. Generally, the two witnesses argued the Mashpee lacked cultural distinctiveness and economic autonomy from the wider society and therefore were not a tribe. The Federal acknowledgment regulations, however, do not require a petitioner to maintain cultural distinctiveness or economic autonomy to be an Indian community. Instead, the regulations require the petitioner to be a socially distinct group of people within the wider society. In the Mashpee case, the PF described at length their continued community cohesion and social distinction from non-Indian populations since first sustained contact.

In sum, neither the comments of the Massachusetts Attorney General nor the evidence in the trial transcript it referenced changed the PF's conclusions that the Mashpee were a distinct community (criterion 83.7(b)). The Massachusetts AG raised concerns that the Department may not have fully considered the evidence and issues raised in the trial transcript. The PF was thorough in its review of the materials in the trial transcript and a larger body of evidence that the court did not have in the land claim suit. This FD reevaluated the evidence in the trial testimony. In response to the comments submitted by the Massachusetts AG citing the testimony of the two defendants' witnesses, the FD reviewed this testimony and finds that the standards and definitions of a tribe used by these witnesses differ substantially from the requirements in the seven mandatory criteria of the regulations. The FD also finds that the trial testimony did not provide any evidence or arguments not already discussed in the PF, and did not merit a change in the evaluation of the evidence under criterion 83.7(b) in the PF. Therefore this FD affirms the PF's conclusions. The petitioner meets the requirements of criterion 83.7(b).

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The PF concluded that the petitioner presented sufficient evidence to satisfy this

criterion. Neither the petitioner nor any third parties submitted new evidence related to the PF's conclusions regarding criterion 83.7(c). Several of the pages in the trial transcript of the 1977–1978 land claim suit that the Massachusetts AG cited in its comments dealt with issues related to criterion 83.7(c). The defendants' expert witnesses claimed, for instance, that the Mashpee were not a tribe because they lacked political autonomy from the wider society. The acknowledgment regulations only require political autonomy in relation to other Indian groups, defining autonomy as the exercise of political authority independent of any other Indian governing entity (See 25 CFR section 83.1). Participation in the political processes of the wider society, as in the Mashpee's case, is not evidence that a group does not exist as an Indian tribe exercising political influence or authority over its members. These witnesses also tended to ignore or minimize informal forms of leadership based on consensus and persuasion, and alternative forms of governance the Mashpee adopted in response to their unique history, geography, culture, and social organization, in favor of restrictive and limited notions of Indian leadership.

Political influence over the group's members was demonstrated by a long line of Mashpee leaders. Since the colonial period, the Mashpee have had sachems, proprietors, spiritual leaders, informal leaders, district and town officials, and council members who influenced and were influenced by the members on political matters of importance. The PF also showed group members considered the actions of their leaders important and were highly involved in political processes.

In sum, the reevaluation of the evidence in the trial transcript referenced in the comments of the Massachusetts AG did not result in a modification of the PF's conclusions that the Mashpee demonstrated political influence (criterion 83.7(c)). The PF dealt with the issues raised in the trial testimony affecting the evaluation of evidence under criterion 83.7(c) in its review of the materials in the trial transcript and a larger body of evidence that the court did not have in the land claim suit. This FD reevaluated the evidence in the trial testimony. In response to the comments submitted by the Massachusetts AG citing the testimony of the two defendants' witnesses, the FD reviewed this testimony and finds that the standards and definitions of a tribe used by these witnesses differ substantially from the requirements in the seven mandatory

criteria of the regulations. The FD finds that this material did not provide any evidence or arguments not already discussed in the PF, and did not merit a change in the evaluation under criterion 83.7(c) that the Mashpee demonstrated political influence from first historical contact to the present. Therefore, the petitioner meets the requirements of criterion 83.7(c).

The PF found that the petitioner met the requirements of criterion 83.7(d) by submitting its present governing document: a constitution dated September 28, 2004, which described the group's membership criteria and the current governing procedures. For the FD, the petitioner submitted a membership enrollment ordinance dated September 21, 2006, which clarifies certain sections of the constitution and provides additional evidence concerning the group's membership criteria. The FD affirms the PF's conclusion that the petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. The PF found that 88 percent of the petitioning group descended from the historical tribe and met the requirement for criterion 83.7(e). The PF advised the petitioner to submit evidence to document descent for the remaining 12 percent and to update its membership list.

In response, the MWT submitted a properly certified membership list dated September 13, 2006, naming 1,453 members. The petitioner provided evidence acceptable to the Secretary demonstrating that about 97 percent of its members (1,403 of 1,453) descend from the historical Mashpee tribe as defined by the 1861 Earle Report. About 2 percent (41 members) descend from the two Christiantown Wampanoag Indian families, Peters-DeGrasse and Peters-Palmer, who did not document descent from the historical tribe as defined in the Earle Report, but who are defined as qualifying ancestors in the MWT constitution. One of these families settled in Mashpee shortly after 1861 and became part of the group by the early 1900's. Descendants of both families became part of Mashpee community socially and politically by the mid-20th century. Nine remaining members (about 1 percent), do not have complete birth records naming parents, but are expected to be able to provide the proper evidence.

The new evidence for the FD modifies the PF's conclusions by changing the number of members in the MWT from 1,462 to 1,453 and the percentage of members who have documented descent from the historical tribe from about 88 percent to approximately 97 percent. The evaluation of additional documentation submitted strengthens the conclusion that the Mashpee petitioner meets the requirements of criterion 83.7(e). This FD concludes that the evidence is sufficient to meet the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian tribe. A review of the available documentation for the PF and the FD revealed that the membership is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. A review of the available documentation for the PF and the FD showed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

A report summarizing the evidence, reasoning, and analyses that are the bases for the FD will be provided to the petitioner and interested parties, and is available to other parties upon written request.

After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of the FD in the **Federal Register**. The FD will become effective as provided in the regulations 90 days from the **Federal Register** publication unless a request for reconsideration is received within that time.

Dated: February 15, 2007.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. E7-2966 Filed 2-21-07; 8:45 am]

BILLING CODE 4310-G1-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Two Permits for Incidental Take of a Threatened Species to the Cedar City Corporation and the Paiute Indian Tribe in Iron County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; issuance of permit.

SUMMARY: This document provides notice that we, the U.S. Fish and Wildlife Service, issued two permits for the incidental take of the Utah prairie dog, a threatened species, on the Cedar Ridge Golf Course and the Paiute Tribal Lands in Iron County, Utah.

ADDRESSES: Documents and other information submitted with the permit application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, from the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Elise Boeke, Fish and Wildlife Biologist, Utah Field Office (see **ADDRESSES**), telephone (801) 975-3330.

SUPPLEMENTARY INFORMATION: On May 15, 2006, we published a notice in the **Federal Register** (71 FR 28048) announcing that we had received an application from the Cedar City Corporation and the Paiute Indian Tribe (Applicants), for permits to incidentally take, under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), the Utah prairie dog on the Cedar Ridge Golf Course and the Paiute Tribal Lands in Iron County, Utah.

On January 5, 2007, we issued permits (TE-125039-0, TE-143347-0) to the Applicants subject to certain conditions, which we listed on the permit. We issued the permits only after we determined that—(1) The Applicants applied in good faith, (2) granting the permits will not be to the disadvantage of the Utah prairie dog, and (3) issuing the permits will be consistent with the purposes and policy set forth in the Act.

Authority: The action is authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: January 5, 2007.

Mike Stempel,

Acting Regional Director, Region 6.

[FR Doc. E7-2981 Filed 2-21-07; 8:45 am]

BILLING CODE 4310-55-P

electronic manifests originated in the e-Manifest system as the legal equivalent to paper manifests; (2) require manifest users to submit paper copies of the manifest to the system for data processing; (3) collect manifests in the e-Manifest system for hazardous waste subject to federal or state law; and (4) set up user fees to offset the costs of developing and operating the e-Manifest system.

Pursuant to the Act, EPA modified the manifest regulations on February 7, 2014 (the e-Manifest “One Year Rule”), to authorize use of electronic manifests (or e-Manifests) for tracking offsite shipments of hazardous waste from a generator’s site to the site of the receipt and disposition of the hazardous waste. On January 3, 2018, EPA finalized the e-Manifest User Fee Final Rule which established the fee methodology that EPA uses to determine the user fees applicable to the electronic and paper manifests submitted to the national system. EPA launched the e-Manifest system on June 30, 2018. TSDFs and other receiving facilities must submit manifests, both paper and electronic, to EPA. In addition to fees for RCRA wastes, EPA is charging TSDFs and other facilities receiving state-only regulated wastes a fee for each manifest submitted to the system. Regulations regarding copy submission requirements for interstate shipments and the applicability of e-Manifest system and fees to facilities receiving state-only regulated wastes are found in 40 CFR part 260 (Hazardous Waste Management System). Regulations regarding imposition of user fees on receiving facilities for their manifest submissions, with references to key fee methodology, fee dispute, and fee sanction requirements are found in parts 264 and 265.

Form Numbers: Form 8700–22 and 8700–22A.

Respondents/affected entities: Business or other for-profit.

Respondent’s obligation to respond: Mandatory (RCRA 3002(a)(5)).

Estimated number of respondents: 106,136 (total).

Frequency of response: Each shipment.

Total estimated burden: 2,362,089 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$118,940,729 (per year), includes \$29,043,234 annualized capital costs and operation & maintenance costs.

Changes in the Estimates: There is a decrease of 140,411 hours in the total estimated respondent burden compared with the ICR currently approved by OMB, resulting from EPA’s updates to

the annual number of manifests offered into transportation. Based on its recent analysis of e-Manifest data, EPA estimates a decrease in the annual number of paper and electronic manifests from the currently approved ICR. In addition, there is an increase of \$3,273,919 in the total respondent costs compared with the currently approved ICR. This increase resulted primarily from an improved methodology and updated data for estimating the user fees paid by destination facilities.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–01974 Filed 1–28–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/
A0A501010.999900]

Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 574 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes.

DATES: The list is updated from the notice published on January 30, 2020 (85 FR 5462).

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 3645–MIB, 1849 C Street NW, Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8. Published below is an updated list of federally acknowledged Indian Tribes in the contiguous 48 states and Alaska. Amendments to the list include formatting edits, name changes, and name corrections.

To aid in identifying Tribal name changes and corrections, the Tribe’s previously listed or former name is included in parentheses after the correct current Tribal name. We will continue to list the Tribe’s former or previously

listed name for several years before dropping the former or previously listed name from the list.

The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes. We have continued the practice of listing the Alaska Native entities separately for the purpose of facilitating identification of them.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
 Ak-Chin Indian Community [previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona]
 Alabama-Coushatta Tribe of Texas [previously listed as Alabama-Coushatta Tribes of Texas]
 Alabama-Quassarte Tribal Town
 Alturas Indian Rancheria, California
 Apache Tribe of Oklahoma
 Arapaho Tribe of the Wind River Reservation, Wyoming
 Aroostook Band of Micmacs [previously listed as Aroostook Band of Micmac Indians]
 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
 Augustine Band of Cahuilla Indians, California [previously listed as Augustine Band of Cahuilla Mission Indians of the Augustine Reservation]
 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
 Bay Mills Indian Community, Michigan
 Bear River Band of the Rohnerville Rancheria, California
 Berry Creek Rancheria of Maidu Indians of California
 Big Lagoon Rancheria, California
 Big Pine Paiute Tribe of the Owens Valley [previously listed as Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California]
 Big Sandy Rancheria of Western Mono Indians of California [previously listed as Big Sandy Rancheria of Mono Indians of California]
 Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
 Bishop Paiute Tribe [previously listed as Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California]
 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana

Blue Lake Rancheria, California
 Bridgeport Indian Colony [previously listed as Bridgeport Paiute Indian Colony of California]
 Buena Vista Rancheria of Me-Wuk Indians of California
 Burns Paiute Tribe [previously listed as Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon]
 Cabazon Band of Mission Indians, California
 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
 Caddo Nation of Oklahoma
 Cahto Tribe of the Laytonville Rancheria
 Cahuilla Band of Indians [previously listed as Cahuilla Band of Mission Indians of the Cahuilla Reservation, California]
 California Valley Miwok Tribe, California
 Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
 Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California;
 Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
 Catawba Indian Nation [previously listed as Catawba Tribe of South Carolina]
 Cayuga Nation
 Cedarville Rancheria, California
 Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
 Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
 Cherokee Nation
 Cheyenne and Arapaho Tribes, Oklahoma [previously listed as Cheyenne-Arapaho Tribes of Oklahoma]
 Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
 Chickahominy Indian Tribe
 Chickahominy Indian Tribe—Eastern Division
 Chicken Ranch Rancheria of Me-Wuk Indians of California
 Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]
 Chitimacha Tribe of Louisiana
 Citizen Potawatomi Nation, Oklahoma
 Cloverdale Rancheria of Pomo Indians of California
 Cocopah Tribe of Arizona
 Coeur D'Alene Tribe [previously listed as Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho]
 Cold Springs Rancheria of Mono Indians of California
 Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
 Comanche Nation, Oklahoma
 Confederated Salish and Kootenai Tribes of the Flathead Reservation
 Confederated Tribes and Bands of the Yakama Nation
 Confederated Tribes of Siletz Indians of Oregon [previously listed as Confederated Tribes of the Siletz Reservation]
 Confederated Tribes of the Chehalis Reservation
 Confederated Tribes of the Colville Reservation
 Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
 Confederated Tribes of the Goshute Reservation, Nevada and Utah
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of the Umatilla Indian Reservation [previously listed as Confederated Tribes of the Umatilla Reservation, Oregon]
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Coquille Indian Tribe [previously listed as Coquille Tribe of Oregon]
 Coushatta Tribe of Louisiana
 Cow Creek Band of Umpqua Tribe of Indians [previously listed as Cow Creek Band of Umpqua Indians of Oregon]
 Cowlitz Indian Tribe
 Coyote Valley Band of Pomo Indians of California
 Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
 Crow Tribe of Montana
 Delaware Nation, Oklahoma
 Delaware Tribe of Indians
 Dry Creek Rancheria Band of Pomo Indians, California [previously listed as Dry Creek Rancheria of Pomo Indians of California]
 Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
 Eastern Band of Cherokee Indians
 Eastern Shawnee Tribe of Oklahoma
 Eastern Shoshone Tribe of the Wind River Reservation, Wyoming [previously listed as Shoshone Tribe of the Wind River Reservation, Wyoming]
 Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
 Elk Valley Rancheria, California
 Ely Shoshone Tribe of Nevada
 Enterprise Rancheria of Maidu Indians of California
 Ewiiapaayp Band of Kumeyaay Indians, California
 Federated Indians of Graton Rancheria, California
 Flandreau Santee Sioux Tribe of South Dakota
 Forest County Potawatomi Community, Wisconsin
 Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
 Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
 Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
 Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
 Fort McDowell Yavapai Nation, Arizona
 Fort Mojave Indian Tribe of Arizona, California & Nevada
 Fort Sill Apache Tribe of Oklahoma
 Gila River Indian Community of the Gila River Indian Reservation, Arizona
 Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
 Greenville Rancheria [previously listed as Greenville Rancheria of Maidu Indians of California]
 Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
 Guidiville Rancheria of California
 Habematolel Pomo of Upper Lake, California
 Hannahville Indian Community, Michigan
 Havasupai Tribe of the Havasupai Reservation, Arizona
 Ho-Chunk Nation of Wisconsin
 Hoh Indian Tribe [previously listed as Hoh Indian Tribe of the Hoh Indian Reservation, Washington]
 Hoopa Valley Tribe, California
 Hopi Tribe of Arizona
 Hopland Band of Pomo Indians, California [previously listed as Hopland Band of Pomo Indians of the Hopland Rancheria, California]
 Houlton Band of Maliseet Indians
 Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
 Iipay Nation of Santa Ysabel, California [previously listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation]
 Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
 Ione Band of Miwok Indians of California
 Iowa Tribe of Kansas and Nebraska
 Iowa Tribe of Oklahoma
 Jackson Band of Miwok Indians [previously listed as Jackson Rancheria of Me-Wuk Indians of California]
 Jamestown S'Klallam Tribe
 Jamul Indian Village of California
 Jena Band of Choctaw Indians
 Jicarilla Apache Nation, New Mexico
 Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
 Kalispel Indian Community of the Kalispel Reservation
 Karuk Tribe [previously listed as Karuk Tribe of California]
 Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
 Kaw Nation, Oklahoma
 Kewa Pueblo, New Mexico [previously listed as Pueblo of Santo Domingo]
 Keweenaw Bay Indian Community, Michigan
 Kialegee Tribal Town
 Kickapoo Traditional Tribe of Texas
 Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
 Kickapoo Tribe of Oklahoma
 Kiowa Indian Tribe of Oklahoma
 Klamath Tribes
 Kletsel Dehe Band of Wintun Indians [previously listed as Cortina Indian Rancheria]
 Koi Nation of Northern California [previously listed as Lower Lake Rancheria, California]
 Kootenai Tribe of Idaho
 La Jolla Band of Luiseno Indians, California [previously listed as La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation]
 La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
 Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
 Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
 Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
 Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
 Little River Band of Ottawa Indians, Michigan

Little Shell Tribe of Chippewa Indians of Montana

Little Traverse Bay Bands of Odawa Indians, Michigan

Lone Pine Paiute-Shoshone Tribe [previously listed as Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California]

Los Coyotes Band of Cahuilla and Cupeno Indians, California [previously listed as Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation]

Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada

Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota

Lower Elwha Tribal Community [previously listed as Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington]

Lower Sioux Indian Community in the State of Minnesota

Lummi Tribe of the Lummi Reservation

Lytton Rancheria of California

Makah Indian Tribe of the Makah Indian Reservation

Manchester Band of Pomo Indians of the Manchester Rancheria, California [previously listed as Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California]

Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California

Mashantucket Pequot Indian Tribe [previously listed as Mashantucket Pequot Tribe of Connecticut]

Mashpee Wampanoag Tribe [previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.]

Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan

Mechoopda Indian Tribe of Chico Rancheria, California

Menominee Indian Tribe of Wisconsin

Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

Mescalero Apache Tribe of the Mescalero Reservation, New Mexico

Miami Tribe of Oklahoma

Miccosukee Tribe of Indians

Middletown Rancheria of Pomo Indians of California

Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)

Mississippi Band of Choctaw Indians

Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada

Modoc Nation [previously listed as The Modoc Tribe of Oklahoma]

Mohegan Tribe of Indians of Connecticut [previously listed as Mohegan Indian Tribe of Connecticut]

Monacan Indian Nation

Mooretown Rancheria of Maidu Indians of California

Morongo Band of Mission Indians, California [previously listed as Morongo Band of Cahuilla Mission Indians of the Morongo Reservation]

Muckleshoot Indian Tribe [previously listed as Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington]

Nansemond Indian Nation [previously listed as Nansemond Indian Tribe]

Narragansett Indian Tribe

Navajo Nation, Arizona, New Mexico, & Utah

Nez Perce Tribe [previously listed as Nez Perce Tribe of Idaho]

Nisqually Indian Tribe [previously listed as Nisqually Indian Tribe of the Nisqually Reservation, Washington]

Nooksack Indian Tribe

Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana

Northfork Rancheria of Mono Indians of California

Northwestern Band of the Shoshone Nation [previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie)]

Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]

Oglala Sioux Tribe [previously listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]

Ohkay Owingeh, New Mexico [previously listed as Pueblo of San Juan]

Omaha Tribe of Nebraska

Oneida Indian Nation [previously listed as Oneida Nation of New York]

Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]

Onondaga Nation

Otoe-Missouria Tribe of Indians, Oklahoma

Ottawa Tribe of Oklahoma

Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)

Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada

Pala Band of Mission Indians [previously listed as Pala Band of Luiseno Mission Indians of the Pala Reservation, California]

Pamunkey Indian Tribe

Pascua Yaqui Tribe of Arizona

Paskenta Band of Nomlaki Indians of California

Passamaquoddy Tribe

Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California

Pawnee Nation of Oklahoma

Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California

Penobscot Nation [previously listed as Penobscot Tribe of Maine]

Peoria Tribe of Indians of Oklahoma

Picayune Rancheria of Chukchansi Indians of California

Pinoleville Pomo Nation, California [previously listed as Pinoleville Rancheria of Pomo Indians of California]

Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancheria)

Poarch Band of Creeks [previously listed as Poarch Band of Creek Indians of Alabama]

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Ponca Tribe of Indians of Oklahoma

Ponca Tribe of Nebraska

Port Gamble S'Klallam Tribe [previously listed as Port Gamble Band of S'Klallam Indians]

Potter Valley Tribe, California

Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]

Prairie Island Indian Community in the State of Minnesota

Pueblo of Acoma, New Mexico

Pueblo of Cochiti, New Mexico

Pueblo of Isleta, New Mexico

Pueblo of Jemez, New Mexico

Pueblo of Laguna, New Mexico

Pueblo of Nambe, New Mexico

Pueblo of Picuris, New Mexico

Pueblo of Pojoaque, New Mexico

Pueblo of San Felipe, New Mexico

Pueblo of San Ildefonso, New Mexico

Pueblo of Sandia, New Mexico

Pueblo of Santa Ana, New Mexico

Pueblo of Santa Clara, New Mexico

Pueblo of Taos, New Mexico

Pueblo of Tesuque, New Mexico

Pueblo of Zia, New Mexico

Puyallup Tribe of the Puyallup Reservation

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada

Quapaw Nation [previously listed as The Quapaw Tribe of Indians]

Quartz Valley Indian Community of the Quartz Valley Reservation of California

Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona

Quileute Tribe of the Quileute Reservation

Quinalt Indian Nation [previously listed as Quinalt Tribe of the Quinalt Reservation, Washington]

Ramona Band of Cahuilla, California [previously listed as Ramona Band or Village of Cahuilla Mission Indians of California]

Rappahannock Tribe, Inc.

Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin

Red Lake Band of Chippewa Indians, Minnesota

Redding Rancheria, California

Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California [previously listed as Redwood Valley Rancheria of Pomo Indians of California]

Reno-Sparks Indian Colony, Nevada

Resighini Rancheria, California

Rincon Band of Luiseno Mission Indians of Rincon Reservation, California

Robinson Rancheria [previously listed as Robinson Rancheria Band of Pomo Indians, California]

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota

Round Valley Indian Tribes, Round Valley Reservation, California [previously listed as Round Valley Indian Tribes of the Round Valley Reservation, California]

Sac & Fox Nation of Missouri in Kansas and Nebraska

Sac & Fox Nation, Oklahoma

Sac & Fox Tribe of the Mississippi in Iowa

Saginaw Chippewa Indian Tribe of Michigan

Saint Regis Mohawk Tribe [previously listed as St. Regis Band of Mohawk Indians of New York]

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona

- Samish Indian Nation [previously listed as Samish Indian Tribe, Washington]
 San Carlos Apache Tribe of the San Carlos Reservation, Arizona
 San Juan Southern Paiute Tribe of Arizona
 San Manuel Band of Mission Indians, California [previously listed as San Manuel Band of Serrano Mission Indians of the San Manuel Reservation]
 San Pasqual Band of Diegueno Mission Indians of California
 Santa Rosa Band of Cahuilla Indians, California [previously listed as Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation]
 Santa Rosa Indian Community of the Santa Rosa Rancheria, California
 Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
 Santee Sioux Nation, Nebraska
 Sauk-Suiattle Indian Tribe
 Sault Ste. Marie Tribe of Chippewa Indians, Michigan
 Scotts Valley Band of Pomo Indians of California
 Seminole Tribe of Florida [previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood, & Tampa Reservations)]
 Seneca Nation of Indians [previously listed as Seneca Nation of New York]
 Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]
 Shakopee Mdewakanton Sioux Community of Minnesota
 Shawnee Tribe
 Sherwood Valley Rancheria of Pomo Indians of California
 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
 Shinnecock Indian Nation
 Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation [previously listed as Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington]
 Shoshone-Bannock Tribes of the Fort Hall Reservation
 Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
 Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
 Skokomish Indian Tribe [previously listed as Skokomish Indian Tribe of the Skokomish Reservation, Washington]
 Skull Valley Band of Goshute Indians of Utah
 Snoqualmie Indian Tribe [previously listed as Snoqualmie Tribe, Washington]
 Soboba Band of Luiseno Indians, California
 Sokaogon Chippewa Community, Wisconsin
 Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
 Spirit Lake Tribe, North Dakota
 Spokane Tribe of the Spokane Reservation
 Squaxin Island Tribe of the Squaxin Island Reservation
 St. Croix Chippewa Indians of Wisconsin
 Standing Rock Sioux Tribe of North & South Dakota
 Stillaguamish Tribe of Indians of Washington [previously listed as Stillaguamish Tribe of Washington]
 Stockbridge Munsee Community, Wisconsin
 Summit Lake Paiute Tribe of Nevada
 Suquamish Indian Tribe of the Port Madison Reservation
 Susanville Indian Rancheria, California
 Swinomish Indian Tribal Community [previously listed as Swinomish Indians of the Swinomish Reservation of Washington]
 Sycuan Band of the Kumeyaay Nation
 Table Mountain Rancheria [previously listed as Table Mountain Rancheria of California]
 Tejon Indian Tribe
 Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band)
 The Chickasaw Nation
 The Choctaw Nation of Oklahoma
 The Muscogee (Creek) Nation
 The Osage Nation [previously listed as Osage Tribe]
 The Seminole Nation of Oklahoma
 Thlopthlocco Tribal Town
 Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
 Timbisha Shoshone Tribe [previously listed as Death Valley Timbi-sha Shoshone]
 Tohono O'odham Nation of Arizona
 Tolowa Dee-ni' Nation [previously listed as Smith River Rancheria, California]
 Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]
 Tonkawa Tribe of Indians of Oklahoma
 Tonto Apache Tribe of Arizona
 Torres Martinez Desert Cahuilla Indians, California [previously listed as Torres-Martinez Band of Cahuilla Mission Indians of California]
 Tulalip Tribes of Washington [previously listed as Tulalip Tribes of the Tulalip Reservation, Washington]
 Tule River Indian Tribe of the Tule River Reservation, California
 Tunica-Biloxi Indian Tribe
 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
 Turtle Mountain Band of Chippewa Indians of North Dakota
 Tuscarora Nation
 Twenty-Nine Palms Band of Mission Indians of California
 United Auburn Indian Community of the Auburn Rancheria of California
 United Keetoowah Band of Cherokee Indians in Oklahoma
 Upper Mattaponi Tribe
 Upper Sioux Community, Minnesota
 Upper Skagit Indian Tribe
 Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
 Ute Mountain Ute Tribe [previously listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah]
 Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
 Walker River Paiute Tribe of the Walker River Reservation, Nevada
 Wampanoag Tribe of Gay Head (Aquinnah)
 Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
 White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
 Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma
 Wilton Rancheria, California
 Winnebago Tribe of Nebraska
 Winnemucca Indian Colony of Nevada
 Wiyot Tribe, California [previously listed as Table Bluff Reservation—Wiyot Tribe]
 Wyandotte Nation
 Yankton Sioux Tribe of South Dakota
 Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
 Yavapai-Prescott Indian Tribe [previously listed as Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona]
 Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
 Yocha Dehe Wintun Nation, California [previously listed as Rumsey Indian Rancheria of Wintun Indians of California]
 Yomba Shoshone Tribe of the Yomba Reservation, Nevada
 Ysleta del Sur Pueblo [previously listed as Ysleta Del Sur Pueblo of Texas]
 Yurok Tribe of the Yurok Reservation, California
 Zuni Tribe of the Zuni Reservation, New Mexico
- Native Entities Within the State of Alaska Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs**
- Agdaagux Tribe of King Cove
 Akiachak Native Community
 Akiak Native Community
 Alatna Village
 Algaaciq Native Village (St. Mary's)
 Allakaket Village
 Alutiiq Tribe of Old Harbor [previously listed as Native Village of Old Harbor and Village of Old Harbor]
 Angoon Community Association
 Anvik Village
 Arctic Village (See Native Village of Venetie Tribal Government)
 Asa'carsarmiut Tribe
 Beaver Village
 Birch Creek Tribe
 Central Council of the Tlingit & Haida Indian Tribes
 Chalkyitsik Village
 Cheesh-Na Tribe [previously listed as Native Village of Chistochina]
 Chevak Native Village
 Chickaloon Native Village
 Chignik Bay Tribal Council [previously listed as Native Village of Chignik]
 Chignik Lake Village
 Chilkat Indian Village (Klukwan)
 Chilkoot Indian Association (Haines)
 Chinik Eskimo Community (Golovin)
 Chuloonawick Native Village
 Circle Native Community
 Craig Tribal Association [previously listed as Craig Community Association]
 Curyung Tribal Council
 Douglas Indian Association
 Egegik Village
 Eklutna Native Village
 Emmonak Village
 Evansville Village (aka Bettles Field)
 Galena Village (aka Loudon Village)
 Gulkana Village Council [previously listed as Gulkana Village]
 Healy Lake Village
 Holy Cross Tribe [previously listed as Holy Cross Village]
 Hoonah Indian Association

Hughes Village
 Huslia Village
 Hydaburg Cooperative Association
 Igigug Village
 Inupiat Community of the Arctic Slope
 Iqumtut Traditional Council [previously listed as Iqurmut Traditional Council]
 Ivanof Bay Tribe [previously listed as Ivanoff Bay Tribe and Ivanoff Bay Village]
 Kaguyak Village
 Kaktovik Village (aka Barter Island)
 Kasigluk Traditional Elders Council
 Kenaitze Indian Tribe
 Ketchikan Indian Community [previously listed as Ketchikan Indian Corporation]
 King Island Native Community
 King Salmon Tribe
 Klawock Cooperative Association
 Knik Tribe
 Kokhanok Village
 Koyukuk Native Village
 Levelock Village
 Lime Village
 Manley Hot Springs Village
 Manokotak Village
 McGrath Native Village
 Mentasta Traditional Council
 Metlakatla Indian Community, Annette Island Reserve
 Naknek Native Village
 Native Village of Afognak
 Native Village of Akhiok
 Native Village of Akutan
 Native Village of Aleknagik
 Native Village of Ambler
 Native Village of Atka
 Native Village of Atkasuk [previously listed as Atkasuk Village (Atkasook)]
 Native Village of Barrow Inupiat Traditional Government
 Native Village of Belkofski
 Native Village of Brevig Mission
 Native Village of Buckland
 Native Village of Cantwell
 Native Village of Chenega (aka Chanega)
 Native Village of Chignik Lagoon
 Native Village of Chitina
 Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
 Native Village of Council
 Native Village of Deering
 Native Village of Diomedea (aka Inalik)
 Native Village of Eagle
 Native Village of Eek
 Native Village of Ekuk
 Native Village of Ekwok [previously listed as Ekwok Village]
 Native Village of Elim
 Native Village of Eyak (Cordova)
 Native Village of False Pass
 Native Village of Fort Yukon
 Native Village of Gakona
 Native Village of Gambell
 Native Village of Georgetown
 Native Village of Goodnews Bay
 Native Village of Hamilton
 Native Village of Hooper Bay
 Native Village of Kanatak
 Native Village of Karluk
 Native Village of Kiana
 Native Village of Kipnuk
 Native Village of Kivalina
 Native Village of Kluti Kaah (aka Copper Center)
 Native Village of Kobuk
 Native Village of Kongiganak
 Native Village of Kotzebue
 Native Village of Koyuk
 Native Village of Kwigillingok
 Native Village of Kwinhagak (aka Quinhagak)
 Native Village of Larsen Bay
 Native Village of Marshall (aka Fortuna Ledge)
 Native Village of Mary's Igloo
 Native Village of Mekoryuk
 Native Village of Minto
 Native Village of Nanwalek (aka English Bay)
 Native Village of Napaimute
 Native Village of Napakiak
 Native Village of Napaskiak
 Native Village of Nelson Lagoon
 Native Village of Nightmute
 Native Village of Nikolski
 Native Village of Noatak
 Native Village of Nuiqsut (aka Nooiksut)
 Native Village of Nunam Iqua [previously listed as Native Village of Sheldon's Point]
 Native Village of Nunapitchuk
 Native Village of Ouzinkie
 Native Village of Paimiut
 Native Village of Perryville
 Native Village of Pilot Point
 Native Village of Point Hope
 Native Village of Point Lay
 Native Village of Port Graham
 Native Village of Port Heiden
 Native Village of Port Lions
 Native Village of Ruby
 Native Village of Saint Michael
 Native Village of Savoonga
 Native Village of Scammon Bay
 Native Village of Selawik
 Native Village of Shaktolik
 Native Village of Shishmaref
 Native Village of Shungnak
 Native Village of Stevens
 Native Village of Tanacross
 Native Village of Tanana
 Native Village of Tatitlek
 Native Village of Tazlina
 Native Village of Teller
 Native Village of Tetlin
 Native Village of Tuntutuliak
 Native Village of Tununak
 Native Village of Tyonek
 Native Village of Unalakleet
 Native Village of Unga
 Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
 Native Village of Wales
 Native Village of White Mountain
 Nenana Native Association
 New Koliganek Village Council
 New Stuyahok Village
 Newhalen Village
 Newtok Village
 Nikolai Village
 Ninilchik Village
 Nome Eskimo Community
 Nondalton Village
 Noorvik Native Community
 Northway Village
 Nulato Village
 Nunakauyarmiut Tribe
 Organized Village of Grayling (aka Holikachuk)
 Organized Village of Kake
 Organized Village of Kasaan
 Organized Village of Kwethluk
 Organized Village of Saxman
 Orutsarmiut Traditional Native Council [previously listed as Orutsarmiut Native Village (aka Bethel)]
 Oscarville Traditional Village
 Pauloff Harbor Village
 Pedro Bay Village
 Petersburg Indian Association
 Pilot Station Traditional Village
 Pitka's Point Traditional Council [previously listed as Native Village of Pitka's Point]
 Platinum Traditional Village
 Portage Creek Village (aka Ohgsenakale)
 Pribilof Islands Aleut Communities of St. Paul & St. George Islands (Saint George Island and Saint Paul Island)
 Qagan Tayagungin Tribe of Sand Point [previously listed as Qagan Tayagungin Tribe of Sand Point Village]
 Qawalangin Tribe of Unalaska
 Rampart Village
 Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Salamatof Tribe [previously listed as Village of Salamatoff]
 Seldovia Village Tribe
 Shageluk Native Village
 Sitka Tribe of Alaska
 Skagway Village
 South Naknek Village
 Stebbins Community Association
 Sun'aq Tribe of Kodiak [previously listed as Shoonaq' Tribe of Kodiak]
 Takotna Village
 Tangirnaq Native Village [previously listed as Lesnoi Village (aka Woody Island)]
 Telida Village
 Traditional Village of Togiak
 Tuluksak Native Community
 Twin Hills Village
 Ugashik Village
 Umkumiut Native Village [previously listed as Umkumiute Native Village]
 Village of Alakanuk
 Village of Anaktuvuk Pass
 Village of Aniak
 Village of Atmautluak
 Village of Bill Moore's Slough
 Village of Chefornek
 Village of Clarks Point
 Village of Crooked Creek
 Village of Dot Lake
 Village of Iliamna
 Village of Kalskag
 Village of Kaltag
 Village of Kotlik
 Village of Lower Kalskag
 Village of Ohogamiut
 Village of Red Devil
 Village of Sleetmute
 Village of Solomon
 Village of Stony River
 Village of Venetie (See Native Village of Venetie Tribal Government)
 Village of Wainwright
 Wrangell Cooperative Association
 Yakutat Tlingit Tribe
 Yupiit of Andreafski

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BILLING CODE 4337-15-P

§ 5. Action in the nature of mandamus, MA ST 249 § 5

Massachusetts General Laws Annotated
Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title IV. Certain Writs and Proceedings in Special Cases (Ch. 246-258e)
Chapter 249. Audita Querela, Certiorari, Mandamus and Quo Warranto (Refs & Annos)

M.G.L.A. 249 § 5

§ 5. Action in the nature of mandamus

Effective: January 1, 2003

[Currentness](#)

A civil action to obtain relief formerly available by writ of mandamus may be brought in the supreme judicial or superior court or, if the matter involves any right, title or interest in land, or arises under or involves the subdivision control law, the zoning act, or municipal zoning, or subdivision ordinances, by-laws or regulations, in the land court.

Credits

Amended by St.1938, c. 202; St.1943, c. 374, § 2; St.1949, c. 176; St.1973, c. 1114, § 291; [St.2002, c. 393, § 21](#).

M.G.L.A. 249 § 5, MA ST 249 § 5

Current through Chapter 8 of the 2021 1st Annual Session

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§ 2A. Tort, contract to recover for personal injuries, and replevin actions, MA ST 260 § 2A

Massachusetts General Laws Annotated
Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title V. Statutes of Frauds and Limitations (Ch. 259-260)
Chapter 260. Limitation of Actions (Refs & Annos)

M.G.L.A. 260 § 2A

§ 2A. Tort, contract to recover for personal injuries, and replevin actions

[Currentness](#)

Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action accrues.

Credits

Added by St.1948, c. 274, § 2. Amended by St.1973, c. 777, § 1.

M.G.L.A. 260 § 2A, MA ST 260 § 2A

Current through Chapter 8 of the 2021 1st Annual Session

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Mashpee Wampanoag Tribe

2018-ORD-007 AMENDED AND RESTATED MASHPEE WAMPANOAG TRIBAL JUDICIARY

TABLE OF CONTENTS

CHAPTER 1: GENERAL

- Section 1. Findings
- Section 2. Authority and Purpose
- Section 3. Definitions
- Section 4. Laws and Ordinances of the Mashpee Wampanoag Tribe
- Section 5. No Waiver of Sovereign Immunity
- Section 6. Repealer
- Section 7. Severability
- Section 8. Effective Date

CHAPTER 2: SUPREME COURT AND LOWER COURTS; TRIBAL COURT ADMINISTRATION

- Section 1. Establishment
- Section 2. Jurisdiction
- Section 3. Powers of the Tribal Judiciary
- Section 4. Judges
- Section 5. Court Administrator
- Section 6. Court Clerk
- Section 7. Prosecutor
- Section 8. Probation Officer
- Section 9. Attorneys

CHAPTER 3: PEACEMAKER COURT

- Section 1. Guiding Principles
- Section 2. Scope of Jurisdiction
- Section 3. Peacemakers
- Section 4. Peacemaking Procedures

CHAPTER 4: [WELLNESS COURT – RESERVED]



Mashpee Wampanoag Tribe

CHAPTER 5: ELDERS JUDICIARY COMMITTEE

Section 1: Establishment of Elders Judiciary Committee as a part of and as an office of the Tribal Judiciary

Section 2: Duties of Elders Judiciary Committee

Section 3: Compensation

The Mashpee Wampanoag Tribal Council does ordain as follows:

CHAPTER 1: GENERAL

Section 1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

(a) We ask the Creator and Spirit of the People of the First Light to join as one, and to promote justice, peace, harmony, and respect through the Mashpee Wampanoag Judicial System. Our purpose through the Tribal Courts is to be fair and unbiased, maintain rights, and correct wrongs for all cases brought before the courts of the Mashpee Wampanoag Tribe. Through Tribal laws, rules of court, decisional law, Tribal custom, common sense and in the context of all relevant circumstances, we as a Tribe seek to justly deal with all cases so as to protect all inherent rights of the parties. This Ordinance is designed to provide a means of settling conflicts and to provide a standard for the regulation of judicial conduct.

(b) The Mashpee Wampanoag Tribe is a federally-recognized Indian Tribe with a duly-enacted Constitution.

(c) Article V, § 1 of the Constitution provides that the Tribal Council and Tribal Judiciary shall be separate and equal branches of the Tribe's government and each branch shall exercise only the powers vested in it and shall have no authority over the other branch except as may be granted by the Constitution.

(d) Article V, § 1 of the Constitution provides that separation of the Tribal Judiciary from the other branch shall become effective upon the appointment of the three Judges of the Tribal Supreme Court under Article X of the Constitution.



Mashpee Wampanoag Tribe

(e) Article V, § 3 of the Constitution provides that the Tribal Judiciary, as established in Article X, shall be vested with all the Tribe's judicial powers.

(f) Article X of the Constitution provides for the structuring of the Tribal Judiciary.

(g) The Mashpee Wampanoag Tribe deems it essential to the promotion of the welfare of, to the preservation and maintenance of justice for, and the protection of the rights of, all persons under the jurisdiction of the Tribe that it separate the powers of the Tribe's government by establishing the Mashpee Wampanoag Tribal Judiciary as a duly-established branch of Tribal government.

Section 2. AUTHORITY AND PURPOSE

(a) The authority for this Ordinance is found in Articles V and X of the Constitution of the Mashpee Wampanoag Tribe.

(b) The purpose of this Ordinance is to accomplish the following objectives of the Tribe:

- (1) To exert jurisdiction over all persons and matters to the full extent of the law;
- (2) To provide orderly procedures that reflect Tribal traditions as well as the prevailing community standards for the resolution of conflicts;
- (3) To afford all affected persons a fair, prompt and impartial hearing;
- (4) To establish a court system for the interpretation of Mashpee Wampanoag Tribal Law and such other law as may properly come before the Tribal Judiciary;
- (5) To ensure that all matters shall be so conducted as to afford all persons who appear before the Mashpee Wampanoag Tribal Judiciary all rights guaranteed by the Constitution of the Tribe; and
- (6) To ensure that the inherent sovereignty of the Mashpee Wampanoag Tribe is recognized in all matters affecting the Mashpee Wampanoag Tribe.

Section 3. DEFINITIONS



Mashpee Wampanoag Tribe

(a) "Chief Judge" shall mean the Chief Judge of the Supreme Court of the Mashpee Wampanoag Tribe.

(b) "Constitution" shall mean the document that has been adopted for the self-governance of the Mashpee Wampanoag Tribe, titled "Constitution of the Mashpee Wampanoag Tribe" and certified into law on June 28, 2004, with any amendments thereto that may be enacted from time to time.

(c) "Immediate family member" shall mean any spouse, parent, child, sibling and those raised or temporarily living in the immediate home.

(d) "Elders Judiciary Committee" shall mean the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and described in Chapter 4 of this Ordinance.

(e) "Lower Courts" shall mean the District Court, Peacemaker Court, and any other lower level courts created by the Tribal Council in the future.

(f) "Peacemaker" shall mean a person who satisfies the qualifications set forth in this Ordinance and is selected to mediate a conflict under the provisions of this Ordinance.

(g) "Perjury" shall mean any person who knowingly makes a false statement under oath, whether verbal or in writing, or procures or induces another person to do so, in any proceeding before or ancillary to the Supreme Court and lower courts of the Tribe.

(h) "Supreme Court" shall mean the Supreme Court of the Mashpee Wampanoag Tribe as established under Article X, § 1(a) of the Mashpee Wampanoag Constitution.

(i) "Tribal Council" and "Mashpee Wampanoag Tribal Council" shall mean the governing body of the Tribe pursuant to the Constitution of the Mashpee Wampanoag Tribe.

(j) "Tribal Judiciary" shall mean the Judicial Branch of the Tribe as divided into the Supreme Court, District Court, Peacemaker Court and such other lower courts and offices as may be established by amendment to this Ordinance.

(k) "Tribal Judge" shall mean any judge of the Tribal Judiciary.

(m) "Tribe" shall mean the Mashpee Wampanoag Tribe.

Section 4. LAWS AND ORDINANCES OF THE MASHPEE WAMPANOAG TRIBE

The Tribal Council shall provide the Mashpee Wampanoag Tribal Judiciary with copies of this Ordinance, any amendments thereto, and all other Tribal Law adopted by the Tribal Council.

Section 5. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Ordinance shall be construed to waive, alter, or amend the Tribe's sovereign immunity or the sovereign immunity of any of the Tribe's enterprises, agencies, departments, officers, agents, appointees or employees, including, but not limited to, the Elders Judiciary Committee and any member thereof, a judge, court administrator, court clerk, prosecutor, probation officer and peacemaker.

Section 6. REPEALER

All ordinances or parts of ordinances inconsistent with this Ordinance are repealed.

Section 7. SEVERABILITY

If any section, subsection, paragraph, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 8. EFFECTIVE DATE

This Ordinance shall take effect and be enforced from and after its passage.

CHAPTER 2: SUPREME COURT AND LOWER COURTS; TRIBAL COURT ADMINISTRATION



Mashpee Wampanoag Tribe

- (f) To work on a continuous basis on behalf of Tribal Council on system development, including the system to catalogue and publish court opinions, and improvement for the Tribal Judiciary.
- (g) To serve as the sole and only point of contact, with the cooperation of the Judges, Court Administrator and Court Clerk, to develop and maintain a website, online social networking connections such as Facebook and Twitter, blogs, and other such means that will enhance communication and dissemination of information to and from the Tribal Judiciary to the Tribal members and the general public. Such development and maintenance shall include, but not be limited to, the approval of all changes, additions or deletions, of any nature, the responsibility to engage website engineer contractors to recommend to Tribal Council for its approval, to determine the content for each means of communication and to develop policy related thereto.
- (h) To provide oversight of the Tribal Judiciary on behalf of the Tribal Council and to report thereon from time to time to the Tribal Council.
- (i) To serve in the capacity as an Elders Panel as required by Tribal law or policy.
- (j) To carry out such other duties as required by Tribal law or policy.

Section 3. COMPENSATION OF ELDERS JUDICIARY COMMITTEE

Members of the Elders Judiciary Committee shall receive reasonable compensation for their services from the Tribe as fixed from time to time by the Tribal Council, but no less than Fifty dollars (\$50) per Member per meeting, hearing, or other activity as required by Tribal law. The compensation to be received shall be determined by the Tribal Council with input from the Elders Judiciary Committee. Committee members shall not be entitled to participate in any Tribal employee bonus compensation plan merely by virtue of their Committee position.

Legislative history

Enacted October 7, 2009

Amended June 2, 2010

Amended May 22, 2013

Amended June 28 2018

Passed by the Mashpee Wampanoag Tribal Council on 28th of June, 2018




Mashpee Wampanoag Tribe


CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe hereby certify that the Tribal Council is composed of 13 members, of whom 10 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 28th day of June, 2018, and that the foregoing Ordinance was duly adopted by the affirmative vote of 8 members, with 0 opposing, and with 2 not voting.

DATED THIS 28th day of June, 2018


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

ATTEST:


Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribe



Mashpee Wampanoag Tribe

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2018-ORD-000, Amended and Restated Mashpee Wampanoag Tribal Judiciary, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, as amended.

DATED this 28th day of June, 2018.

A handwritten signature in black ink, appearing to read "Cedric Cromwell", is written over a horizontal line.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

A handwritten signature in black ink, appearing to read "Ann Marie Askew", is written over a horizontal line.

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council



MASHPEE WAMPANOAG TRIBAL COURT
MASHPEE WAMPANOAG TRIBE

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ADMINISTRATIVE ORDER #31

AMENDMENTS TO RULES
OF CIVIL PROCEDURE

The Rules of Civil Procedure are hereby amended in accordance with the attached effective upon execution of this Order. The amendments will apply to all existing cases as well as cases filed after the effective date of this Order.

The amendments of Rules of Civil Procedure were developed in conjunction with student Cara Libman and Nicole Friederichs, Practitioner in Residence, of the Suffolk Law School Indian Law and Indigenous Peoples Clinic. The Court and the Elders Judiciary Committee Express their gratitude for their invaluable assistance.

IT IS SO ORDERED this 17th day of December, 2018.

BY THE COURT:

Hon. Robert F. Mills, Acting Chief Justice
Mashpee Wampanoag Supreme Court

**RULES OF CIVIL PROCEDURE
MASHPEE WAMPANOAG DISTRICT COURT**

As amended December 17th, 2018

Title I General Provisions

- Rule 1. Purpose of the Rules**
- Rule 2. Mission of the Court**
- Rule 3. Definitions**
- Rule 4. Citation to Rules of Civil Procedure**
- Rule 5. Construction**
- Rule 6. Timing**
- Rule 7. Courtroom Behavior**
- Rule 8. Sanctions**

Title II Beginning a Lawsuit

- Rule 9. The Complaint**
- Rule 10. Serving the Complaint and Summons**
- Rule 11. Amending the Complaint**
- Rule 12. Answering the Complaint**
- Rule 13. Defenses to the Complaint**
- Rule 14. Counter-Claims**
- Rule 15. Form and Service of Documents and Papers**
- Rule 16. Attorney Notice of Appearance**

Title III Before a Trial

- Rule 17. Motions Generally**
- Rule 18. Motion to Dismiss**
- Rule 19. Conference Hearing**
- Rule 20. Purpose of Discovery**
- Rule 21. Automatic Disclosure**
- Rule 22. Limited Discovery**
- Rule 23. Formal Discovery**
- Rule 24. Exhibit Book**
- Rule 25. Scope and Limitations of Discovery**
- Rule 26. Failure to Cooperate in Discovery**
- Rule 27. Summary Judgment**
- Rule 28. Pre-Trial Conference**
- Rule 29. Settlements**
- Rule 30. Pre-Trial Injunctions and Temporary Restraining Orders**

Title IV Mashpee Wampanoag Tribal Customary Law/Oral Traditions

- Rule 31. Referral on Questions of Mashpee Wampanoag Tribal Customary Law/Oral Traditions**

Title V During a Trial

Rule 32. Trial Procedure

Rule 33. Compelling Witnesses to Appear; Subpoena

Rule 34. Standard of Proof

Title VI Cases Transferred from District Court to Peacemakers

Rule 35. Cases Transferred from District Court to Peacemakers

Title VII After the Trial

Rule 36. Final Judgment

Rule 37. Remedies

Rule 38. Default Judgment

Rule 39. Foreign Judgment

Rule 40. Execution of Judgments, Procedures and Accrued Interest

Rule 41. Notice of Appeal

Title VIII Effective Date

Rule 42. Effective Date

Glossary of Legal Terms *(The Glossary of Legal Terms is not part of the Rules of Civil Procedure of the Mashpee Wampanoag District Court.)*

Title I General Provisions

Rule 1. Purpose of the Rules

These Rules set forth the procedure for civil actions in the Mashpee Wampanoag District Court and must be applied to achieve the following purposes: resolving disputes efficiently, revealing the truth, and treating all parties fairly and without prejudice.

Rule 2. Mission of the Court

The Mashpee Wampanoag Tribe's purpose through the Tribal Courts is to be fair and unbiased, maintain rights, and correct wrongs for all cases brought before the courts. Through Tribal laws, rules of court, case law, Tribal custom, common sense and in the context of all relevant circumstances, the Tribe seeks to justly deal with all cases so as to protect all inherent rights of the parties.

Rule 3. Definitions

“District Court” means the District Court of the Mashpee Wampanoag Tribe.

“Legal Holiday” means those official holidays observed by the Tribe as confirmed by Administrative Order of the Chief Judge.

“District Court Judge” means a judge of the District Court of the Mashpee Wampanoag Tribe.

“Court Clerk” means the clerk of the Tribal Judiciary of the Mashpee Wampanoag Tribe.

“Mashpee Wampanoag Tribal Government Office” means the offices located at Tribal Community Building at 483 Great Neck Rd S, Mashpee, MA 02649.

“Entity” means any institution, company, corporation, partnership, or any other organization distinguishable from individuals.

“Peacemaker Court” means the Mashpee Wampanoag Peacemaker Court.

“Peacemakers” means those persons who have been trained to facilitate an agreement between two opposing parties through the traditional process of healing differences. Peacemakers are appointed to the Peacemaker Court pursuant to the Mashpee Wampanoag Tribal Judiciary Ordinance, 2008-ORD-002, ch. 3, § 3.

“Elders Judiciary Committee” or “EJC” means the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and fully described in Chapter 4 of the Judiciary Ordinance, 2008-ORD-022, and as amended by the Amendment to the Judiciary Ordinance, 2013-ORD-003. Of emphasis, the Elders Judiciary Committee is recognized as a long-standing institution of the Tribe, now forever memorialized in time, and charged with fostering and achieving the Tribe’s vision, mission and goals for the Mashpee Tribal Courts, and forever sanctioned by the guardianship of the Elders Judiciary Committee of the Tribe. Specifically, the EJC provides oversight of the Tribal Judiciary on behalf of the Tribal Council and to report thereon from time to time to the Tribal Council.

“Foreign Court” means any state, federal, or tribal court other than a court of the Mashpee Wampanoag Tribal Judiciary.

NOTE: (As amended Dec. 17, 2014)

Rule 4. Citation to Rules of Civil Procedure

Citations to these Rules should look as follows:

MWT RCP 7

MWT RCP 8(a)

MWT RCP 9(b)(2)

NOTE: (Added May 20, 2016)

Rule 5. Construction

- a. These rules of civil procedure must be liberally construed in order for justice to be served and to allow for cases to be resolved efficiently.
- b. Nothing in these rules is intended to limit the jurisdiction or waive the sovereign immunity of the Mashpee Wampanoag Tribe.
- c. The parties and the District Court Judge may agree to depart from procedures established by these Rules in order to save time and expense while still achieving the purposes of these Rules. A party may only agree, however, to waive a right or protection guaranteed by Tribal law if he or she clearly understands what rights he or she is giving up and must sign a waiver to that effect.
- d. In a situation where these Rules do not contain a procedure, the parties and the District Court Judge may agree on a procedure or the Judge may determine the procedure that will be followed.
- e. Whether to depart from the Rules or adopt another procedure will be considered by the parties and the Judge during the Conference Hearing, and if necessary, at the Pre-Trial Conference.
- f. Application of these Rules must be consistent with the Mashpee Wampanoag Tribal Court Code of Judicial Conduct and applicable Tribal law.

NOTE: (As amended Dec. 17, 2014)

Rule 6. Timing

- a. Whenever a rule or an order of the District Court requires that an action be taken within a certain number of days:
 - 1. Exclude the day of the event that triggers the period;
 - 2. Count every calendar day, including Saturdays, Sundays, and legal holidays; and
 - 3. Include the last day of the period, but if the last day is a Saturday, Sunday, or observed legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, legal holiday, or closing of the Tribal Court offices.
- b. Upon the request of a party, the District Court Judge may allow an extension of any time limit described in these rules upon good cause.

NOTE: (As amended May 20, 2016)

Rule 7. Courtroom Behavior

The District Court is an expression of the sovereignty of the Mashpee Wampanoag Tribe and the business of the District Court is to be conducted in a just and orderly fashion. Accordingly, all persons appearing in the District Court must treat the Court and each other with respect and follow the Rules of Conduct and other applicable administrative orders that the Court may issue.

Rule 8. Sanctions

- a. The District Court Judge may impose appropriate sanctions upon an unrepresented party or his or her attorney who is found to have filed a lawsuit, motion or any other

2016 WL 4586045

Only the Westlaw citation is currently available.

Massachusetts Land Court.

Department of the Trial Court, Barnstable County.

Robert WOLPE, Michelle Wolpe, James Atkins, Jr., John Weltman, and Webster Bank N.A., Plaintiffs,

v.

Matthew HANEY as trustee of SN Trust, The Trustees of Reservations,
Arnold Chace, Stephen Orange, Crystal Orange, and Mary Grant, Defendants.

Town of Mashpee, Plaintiff,

v.

Matthew Haney as trustee of SN Trust, Defendant.

Nos. 14 MISC. 487495 KCL, 14 MISC. 486868 KCL.

|

Aug. 31, 2016.

**MEMORANDUM AND ORDER ON NON-PARTY WITNESSES GEORGE GREEN AND
JESSIE LITTLE DOE BAIRD'S MOTIONS TO QUASH DEPOSITION SUBPOENAS**

LONG, J.

Introduction

*1 At issue in these consolidated cases is the ownership of a tract of salt marsh off Punkhorn Point, near Gooseberry Island, in the Town of Mashpee. Defendant Matthew Haney, as trustee of SN Trust, claims ownership of that marshland and wants to build a private bridge across it to access his Gooseberry Island property for development. Each of the other parties, on theories of record or adverse possession title, claims ownership¹ of some or all of that marshland as well.

The case is not straightforward. The salt marsh was divided by Commissioners in the late 1800's in accordance with a division plan. That plan, however, has now been lost and must thus be re-created from other sources. This will not be easy. Subsequent plans are alleged to be inaccurate, and a critical page may be missing from the records at the Barnstable Superior Court. Adverse possession and long-standing lines of occupation may thus be of particular importance in the ultimate resolution of the parties' competing claims.

Mr. Haney believes he can prove he has record title.² He intends to rebut the other parties' claims of adverse possession by showing that none of them has been in actual, open, and notorious possession of the marshland at issue, adversely, exclusively, and continuously, for twenty years or more. *See Ryan v. Stavros*, 348 Mass. 251, 262, 203 N.E.2d 85 (1964) (elements of adverse possession). Important to this, he contends, will be the testimony of George Green and Jessie Little Doe Baird who, in speaking before the Mashpee Conservation Commission when it was considering Mr. Haney's application for an Order of Conditions to build his bridge, claimed to have regularly shell-fished in this area of the salt marsh and may have observed others doing so as well. Mr. Haney has noticed their depositions to learn the details—where and how they shell-fished; when they did so; and what they saw of others doing the same.

Mr. Green and Ms. Baird have moved to quash those depositions. According to their counsel: (1) they are officials of the Mashpee Wamponoag Tribe (a non-party to the case), (2) the Tribe has a grant to harvest shellfish in the area, (3) they shellfished

solely in their capacity as Tribe officials. In reliance on the Tribe's sovereign immunity from suit, *see, e.g., Michigan v. Bay Mills Indian Community*, 572 U.S. —, 134 S.Ct. 2024, 2030, 188 L.Ed.2d 1071 (2014), they contend that they cannot be subpoenaed to testify as third-party witnesses to anything they did or observed while on official business. On the facts of this case, for the reasons that follow, I disagree. Once proper service has been made on Mr. Green and Ms. Baird, the motions to quash their depositions are **DENIED**.

Discussion

The Mashpee Wamponoag Tribe has sovereign immunity from suit. *See Michigan v. Bay Mills Indian Community, supra*. The question before me is whether that immunity stretches to protect Mr. Green and Ms. Baird from testifying as percipient fact witnesses to their actions and observations while on the marsh, simply because they were there harvesting shellfish on behalf of the Tribe. I rule that it does not.

*2 I start with a basic proposition. The judicial process has legitimate needs, and one of those is “the right to every man's evidence except for those persons protected by a constitutional, common-law or statutory privilege.” *United States v. Nixon*, 418 U.S. 683, 709, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974). Importantly, “[w]hatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth.” *Id.* at 710.

Cases have held that a subpoena to a *Tribe* in private civil litigation to which it is not a party is a “suit” within its sovereign immunity. *See, e.g., Bonnet v. Harvest (U.S.) Holdings Inc.*, 741 F.3d 1155, 1160 (10th Cir.2014); *Alltel Communications LLC v. DeJordy*, 675 F.3d 1100, 1102 (8th Cir.2012). Some courts have extended this immunity to individual tribe members when the subject of their testimony will be contracts by the Tribe, Tribal policy-making, or internal Tribal affairs—matters at the core of “tribal self-determination, economic development, and cultural autonomy that underlie the federal doctrine of tribal immunity” and the third-party subpoenas would be “disruptive” of those interests. *Alltel*, 675 F.3d at 1104–1105. *See also United States v. Wahtomy*, 2008 WL 4690519 (D.Idaho, Oct.22, 2008) (Winmill, J.) (noting that subpoenas being quashed “seek to inquire into the integrity of the Tribal Court system, including the selection process for its judges”); *Grand Canyon Skywalk Development LLC v. Ciesiak*, 2015 WL 4773585 at *3–*4 (D.Nevada, Aug. 13, 2015) (Foley, Magistrate–Judge) (ruling at *7, however, that the subpoena at issue did not fall within the immunity because the testimony it sought would have no effect on the tribe's treasury, and then quashing it on other grounds); *Dillon v. BMO Harris Bank N.A.*, 2016 U.S. Dist. LEXIS 13433, 2016 WL 447502 (N.D.Oklahoma, Feb. 4, 2016) (Wilson, Magistrate–Judge).

I am aware of no case, however, and certainly none persuasive, that quashed a subpoena to a tribal official seeking simply, as here, strictly factual testimony of the witnesses' own actions and observations, simply because the witness was on “tribal business” at the time. No relief is sought against the Tribe (none could be granted anyway, due to its sovereign immunity). No inquiry is sought into tribal contracts, policy-making or internal affairs. The witnesses were shellfishing. What is sought is nothing more than the equivalent of the testimony of the driver of a Tribal-owned vehicle, on Tribe business, of an accident scene the driver happened to pass by, and with which he had no involvement. Tribal sovereignty does not bar the right of litigants to obtain such testimony. *See Bay Mills Indian Community*, 134 S.Ct. at 2034–2035 (noting the applicability of state law to individuals, including tribal officials, in a variety of contexts).

Conclusion

For the foregoing reasons, once they have been properly served with subpoenas, the motions to quash the depositions of George Green and Jessie Little Doe Baird are **DENIED. SO ORDERED**.

Wolpe v. Haney, Not Reported in N.E.3d (2016)

All Citations

Not Reported in N.E.3d, 2016 WL 4586045

Footnotes

- 1 Webster Bank as mortgagee; the others as equity owners.
- 2 So do the other parties, although (at least in the case of the Wolpes, Mr. Atkins, and Mr. Weltman) their main claim appears to be based on adverse possession under color of title. See *Norton v. West*, 8 Mass.App.Ct. 348, 350–351, 394 N.E.2d 1125 (1979).

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, S.S.

TRIAL COURT DEPARTMENT
DISTRICT COURT DEPARTMENT
FALMOUTH DISTRICT COURT
DOCKET NOS. 1989CV218
1989CV219

COMMONWEALTH

v.

ONE CHECK IN THE
AMOUNT OF \$480

(CHEENULKA POCKNETT)

COMMONWEALTH

v.

ONE CHECK IN THE
AMOUNT OF \$540.30

(JAMIE HARDING)

COMMONWEALTH'S
MEMORANDUM IN OPPOSITION
TO CLAIMANTS' MOTIONS FOR
SUMMARY JUDGMENT

Now comes the Commonwealth in the above-captioned matters and respectfully submits this Memorandum in Opposition to the Claimants' respective motions for summary judgment. The Claimants' motions fail for the same reasons that the Court denied the Claimants' motions to dismiss and because the Claimants have not presented the Court with admissible evidence in support of their claim that they each had an aboriginal right to engage in commercial oyster fishing at Green Pond in Falmouth.

The Claimants identify no genuine issue of material fact with respect to the question of probable cause to seize the oysters at issue in these two libels. Instead, the Claimants recycle

E. Gb
1/31/22

legal arguments that the Court rejected in denying their motions to dismiss. The Commonwealth, rather than the Claimants, is entitled to summary judgment on the question of probable cause.

For the reasons set forth in the Commonwealth's motion for summary judgment, the Court need not determine the scope of the Claimants' aboriginal rights to enter judgment for the Commonwealth. As the Court wrote in denying the Claimants' motion to dismiss:

In that the claimants had collected a large quantity of oysters, bagged them for sale, tagged them with their commercial harvesting tags and sold them to a wholesale dealer, they were acting as commercial fisherman not as individuals exercising their aboriginal rights to provide sustenance.

June 22, 2021 Order (Edmonds, J.).

In other words, it does not matter whether either Claimant had an aboriginal right to engage in sustenance shellfishing at Green Pond because the Claimants were acting as commercial fishermen. If the Court were to reach the question of the scope of the Claimants' respective aboriginal rights, summary judgment is inappropriate because these are contested factual issues on which the Claimants each bear the burden of proof. The Supreme Judicial Court has been clear that "[w]hether aboriginal rights exist is a factual matter." Commonwealth v. Maxim, 429 Mass. 287, 290 (1999).

The Claimants suggest that it is undisputed that each "enjoys the aboriginal right to fish and hunt due to his status as a Native American." Claimant's Mot. for Summary Judgment, Undisputed Facts ¶ 2. The sole support for this conclusion cited by the Claimants is a 1982 House Resolution relating to Native American rights generally. Id. Even if this Resolution were admissible evidence (it is not), it does not purport to answer any of the disputed factual questions about the *scope* of the Claimants' rights:

- 1) Are their rights derived from a treaty?¹
 - a. If from a treaty that predates the Revolutionary War, how does that treaty bind the Commonwealth?
 - b. If from a treaty not signed by any member of the Wampanoag tribe, why can the Claimants claim the benefits of the treaty?
- 2) Assuming that the Claimants have a right to engage in some level of aboriginal shellfishing activity, what aboriginal shellfishing activities included commercial sales to regulated wholesale dealers?
- 3) Regardless of the source of the rights, what basis is there to conclude that members of the Mashpee Wampanoag Tribe (Claimant Pocknett) or the Herring Pond Wampanoag Tribe (Claimant Harding) may exercise those rights with respect to oysters at Green Pond in Falmouth?
- 4) Even if either tribe once had rights to fish for oysters at Green Pond, has subsequent activity extinguished those aboriginal rights?²

There is no generalized, free-floating right to engage in fishing activity at any time and in any place simply because one is a Native American. The scope of a particular tribe's rights, in

¹ The Commonwealth notes that, in the Maxim case, reference was made to two treaties known as the Treaties of Falmouth (Maine). At least on the face of these treaties, the Wampanoag do not appear to be parties. Determination of whether each tribe at issue here is a treaty tribe is a factual question. United States v. Washington, 641 F.2d 1368, 1371 (9th Cir. 1981), quoting United States v. Washington, 520 F.2d 676, 693 (9th Cir. 1975) ("treaty-tribe status is established when 'a group of citizens of Indian ancestry is descended from a treaty signatory and has maintained an organized tribal structure.' Whether these conditions are met 'is a factual question which a district court is competent to determine.'").

² Aboriginal rights flow from use and occupancy of particular areas of land. "[T]he exclusive right of the United States to extinguish Indian title has never been doubted. And whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts." United States v. Santa Fe Pac. R. Co., 314 U.S. 339, 347 (1941) (internal quotation marks omitted).

terms of what activity is protected and the territorial limits of that protected activity are highly fact specific. A party seeking to establish an aboriginal right has “the burden of proving ‘actual, exclusive, and continuous use and occupancy ‘for a long time’” **of the claimed area.**” Native Vill. of Eyak v. Blank, 688 F.3d 619, 622 (9th Cir. 2012) (quoting Sac & Fox Tribe of Indians of Okla. v. United States, 383 F.2d 991, 998 (Ct. Cl.1967)) (emphasis added). The Claimants fail to identify any admissible evidence supporting use and occupancy of Green Pond for any period of time by any particular group of Native Americans, let alone demonstrating that such use and occupancy was exclusive to one or the other of the Mashpee Wampanoag Tribe or Herring Pond Wampanoag Tribe or that the use and occupancy included commercial activities at Green Pond. Rather, they present a series of legal arguments as to why “sustenance” fishing includes commercial harvesting of shellfish. These arguments are wrong as a legal matter and, in any event, legal arguments cannot substitute for admissible evidence of facts. Even if the Claimants prevailed on these arguments, the arguments are insufficient to justify summary judgment for the Claimants without admissible evidence demonstrating the territorial scope of any alleged aboriginal rights and that the territory included oyster fishing at Green Pond in Falmouth.

The sole admissible evidence before the Court is contained in the Affidavit of Roy Charles Martinsen III, Deputy Director of Marine and Environmental Services in Falmouth.³ The oysters that the Claimants took from Green Pond grew there as a result of aquaculture activities engaged in by the Town. Martinsen Aff. ¶¶ 6–8. There is no evidence to suggest that anyone, let alone an Indian tribe to the exclusion of all others, was engaged in oyster fishing at Green Pond in pre-colonial times. In fact, the admissible evidence suggests that prior to 2015, there was no oyster fishing to speak of in Green Pond by anyone, although quahog and soft shell

³ See EXHIBIT A.

clam fishing did take place there. Id. ¶ 5. Oysters are a distinct species of shellfish. See, e.g., M.G.L. c. 130, § 1 (defining “shellfish” as “conchs, limpets, mussels, oysters, periwinkles, quahaugs, razor clams or razor fish, scallops, sea clams, sea quahaugs, sea scallops and winkles” and providing definitions of some of these species).

* * * *

For the foregoing reasons, the Court should deny the Claimants’ motions for summary judgment, enter summary judgment in favor of the Commonwealth and order the forfeiture of the proceeds of the sale of the subject oysters,

Respectfully submitted,

for the COMMONWEALTH

MAURA HEALEY
Attorney General

by:

/s/ Benjamin Goldberger
Benjamin A. Goldberger
Special Assistant Attorney General
BBO# 654357
Executive Office for Energy and Environmental
Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114
(c) (857) 278-5831
(e) Benjamin.goldberger@mass.gov

CERTIFICATE OF SERVICE

I, Benjamin A. Goldberger, hereby certify that I am causing a true and correct copy of the foregoing document and any attachments to be served

☐ by hand
☒ by electronic mail or the eFileMA system
☐ by facsimile

on counsel of record for the claimants on this 31st day of January, 2022.

/s/ Benjamin Goldberger
Benjamin A. Goldberger

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, S.S.

TRIAL COURT DEPARTMENT
DISTRICT COURT DEPARTMENT
FALMOUTH DISTRICT COURT
DOCKET NOS. 1989CV218
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COMMONWEALTH

v.

ONE CHECK IN THE
AMOUNT OF \$480

(CHEENULKA POCKNETT)

COMMONWEALTH

v.

ONE CHECK IN THE
AMOUNT OF \$540.30

(JAMIE HARDING)

AFFIDAVIT OF ROY CHARLES
MARTINSEN III

I, Roy Charles Martinsen III, do hereby state as follows:

1. My name is Roy Charles Martinsen III. I am employed by the Town of Falmouth as Deputy Director of Marine and Environmental Services.
2. I have been employed in this position since 2004. I have worked for the Town of Falmouth full-time for over 21 years. I have a Bachelor's Degree from Westfield State College and a Masters in Public Administration from Suffolk University. I have also graduated from the Agawam Massachusetts Reserve Police Academy in 1999 and the Seventh Massachusetts Police Officer Class in Weymouth in 2004. In addition to my

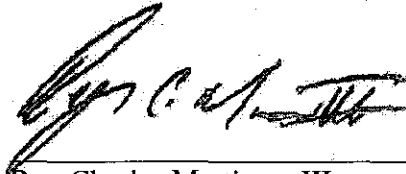
work for the Town, I have taught aquaculture classes at Quincy College as an adjunct professor. Throughout my entire career with the Town, I have been involved in shellfish propagation and husbandry in one form or another. I have conducted numerous shellfish surveys in the Town and have conducted thousands of inspections of harvested shellfish, including shellfish harvested from Green Pond. Because of my professional and recreational activities, I have an enhanced understanding of the fisheries within the Town of Falmouth. I have provided testimony on the subject of shell-fishing in coastal estuaries in the District Court and Land Court and have been deposed as an expert witness on another subject in a matter pending in the United States District Court.

3. I make this affidavit based on my personal knowledge. This affidavit was made at the request of counsel for the Commonwealth in opposition to the Claimants' Motion for Summary Judgment in the above-captioned matters. It does not contain every fact known to me regarding the above-captioned matters or Green Pond.
4. Green Pond is a coastal estuary located in the Town of Falmouth.
5. Prior to approximately 2015, for as long back as I can recall, the sole commercial fishing activity that took place in Green Pond was for quahog and soft shell clams.
6. The Town of Falmouth determined that the bottom of Green Pond, while lacking the features that would result in the growth and development of oysters through ordinary natural processes, was conducive to the propagation of oyster seeds and a resulting crop of mature oysters.
7. Accordingly, in approximately 2015, the Town began propagation of oysters in Green Pond. Propagation of oysters involves the growing of smaller (just larger than microscopic) animals, removing the animals from the waterways during the colder winter

months, and returning the animals to the waterways in the spring. This allows oysters to grow into mature animals, suitable for harvest, in approximately a year and a half. Propagation of shellfish requires significant labor, financial expenditures and state permitting.

8. While it is theoretically possible that an oyster found in Green Pond in December 2019 grew naturally, nearly 100% of the oysters in Green Pond, if not all of them, were present as a result of the Town's aquaculture activities.

Signed under the pains and penalties of perjury on this 26th day of January 2022 in
Falmouth, Massachusetts.



Roy Charles Martinsen III