



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

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September 4, 2012

Mr. Donald Laverdure
Acting Assistant Secretary- Indian Affairs
United States Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington, DC 20240

Mr. Franklin Keel
Regional Director
c/o Mr. Scott C. Meneely
Acting Regional Director
Bureau of Indian Affairs
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214
Attention: Real Estate Services

RE: Land-In-Trust Application of the Mashpee Wampanoag Tribe of Massachusetts

Dear Messrs. Laverdure and Keel:

In response to the Bureau of Indian Affairs May 30, 2012 letter and pursuant to 25 C.F.R. § 151, the Office of the Governor writes on behalf of the Commonwealth of Massachusetts ("Commonwealth") to express the Commonwealth's support for the amended application of the Mashpee Wampanoag Tribe ("Tribe") to have approximately 170 acres in Mashpee, Massachusetts ("Mashpee Lands") and approximately 146 acres in Taunton, Massachusetts ("Taunton Lands") (jointly referred to as the "Amended Application") taken into trust for the Tribe by the Department of the Interior ("DOI"), Bureau of Indian Affairs ("BIA"). The

Commonwealth's support arises from our review and consideration of the Amended Application, as well as our commitment in the Mashpee Wampanoag Tribe-Commonwealth of Massachusetts Tribal-State Compact ("Compact") we executed on July 12, 2012, to urge your early and expeditious approval of the Tribe's Amended Application.

In addition, at your request, the Commonwealth provides the following information on the effect which the land-in-trust acquisitions in the Amended Application might have on property taxes, special assessments, regulatory jurisdiction and zoning.

Property Taxes

The charts below indicate the FY12 property taxes assessed on the parcels.

Mashpee Lands

Five parcels on the Mashpee Lands remained on the tax rolls in FY12. The total amount of taxes on the Mashpee Lands in FY12 was \$16,267.

	Owner	Address	Current Use	FY2012 Valuation	FY2012 Taxes \$8.51/1000 (all)*
1	MWT ¹	410 Meetinghouse Road	Old Indian Meetinghouse	478,900	Exempt 4,076 abated
2	MWITC ²	17 Mizzenmast	Burial Ground/ Cemetery	240,400	Exempt
3	MWT	414 Meetinghouse Road	Cemetery	467,600	Exempt
4	MWT	431 Main Street	Parsonage (unoccupied)	150,700	1,283
5	MWT	414 Main Street	Tribe Museum	241,700	Exempt 2,057 abated
6	MWITC	483 Great Neck Road South	Tribal Council Offices	818,700	Exempt 6,967 abated
7	MWITC	41 Hollow Road	Vacant	69,400	591
8	MOIMHA ³	Meetinghouse Road	Vacant	752,900	6,407
9	MWITC	Es Res Great Neck Road	Cultural/ Recreational	39,700	Exempt 338 abated
10	MWITC	56 Uncle Percy's Road	Vacant	13,400	114
11	Maushop, LLC (MWT)	213 Sampsons Mill Road	Agriculture/ Tribal Offices	925,000	7,872
			TOTAL	4,198,400 1,911,400 taxable	16,267

*Town has single tax rate for all classes of property.

¹ Mashpee Wampanoag Tribe, Inc.

² Mashpee Wampanoag Indian Tribal Council, Inc.

³ Mashpee Old Indian Meeting House Authority, Inc.

Taunton Lands

Nine parcels on the Taunton Lands remained on the tax rolls in FY12. The total amount of taxes on the Taunton Lands in FY12 was \$257,452.

	Owner	Address	Current Use	FY2012 Valuation	FY2012 Taxes \$27.62/1000 (CIP)**	
1	One Stevens, LLC	50 O'Connell Way	Industrial/Office/ Warehouse with multiple tenants	5,531,900	152,791	
2	Two Stevens, LLC	60 O'Connell Way	Office/Warehouse/ Light Manufacturing with multiple tenants	1,301,500	35,946	
3	L&U, LLC	Lot 11 O'Connell Way	Vacant	303,700	8,388	
4	Douglas Porter, Trustee of OCTS Realty Trust	O'Connell Way	Vacant	17,600	486	
5	Douglas Porter, Trustee of OCTS Realty Trust	Stevens Street	Vacant	1,700	47	
6	Jamins, LLC	73 Stevens Street	Office with multiple tenants	525,200	14,506	
7	71 Stevens Street, LLC	71 Stevens Street	Warehouse with multiple tenants	928,400	25,643	
8	Daniel G. DaRosa & Laurie B. DeRosa	O'Connell Way	Vacant	217,600	6,010	
9	Daniel G. DaRosa & Laurie B. DeRosa	61R Stevens Street	Office	493,600	13,633	
10	Taunton Development Corporation	O'Connell Way (Lot 9A)	Vacant	333,400	Exempt	
11	Taunton Development Corporation	O'Connell Way (Lot 9B)	Vacant	668,100	Exempt	
12	Taunton Development Corporation	O'Connell Way (Lot 13)	Vacant	1,370,100	Exempt	
13	Taunton Development Corporation	Middleborough Avenue (Lot 14)	Vacant	1,560,100	Exempt	
				TOTAL	13,252,900 9,321,200 taxable	257,452

** City has multiple tax rates. This is the business property rate (commercial, industrial, personal).

In Section 5A of the Intergovernmental Agreement By and Between the Mashpee Wampanoag Tribe and the City of Taunton ("IGA") executed on July 10, 2012, the Tribe agreed to give the City payment in lieu of taxes ("PILOT") equivalent to the property taxes on the assessed value of the Taunton Lands based on the greater of the current value or the value when the parcels are taken into trust. For the first 10 years, the Tribe also will pay the City an additional 3% increase from the prior year's PILOT.

Special Assessments

The Commonwealth is unaware of any special assessments currently assessed by the Commonwealth against the Mashpee Lands or the Taunton Lands.

Regulatory Jurisdiction

In 2008, the Commonwealth commented to the BIA on the Tribe's original land-in-trust application (for lands in Mashpee and Middleborough) by raising concerns about the effects the land acquisition would have on the Commonwealth's regulatory jurisdiction. Most of those concerns have been addressed in the Compact and the IGA. The Commonwealth is confident that the Tribe will work with the Commonwealth, as well as the affected communities surrounding the Mashpee Lands and Taunton Lands, to mitigate any remaining concerns, which are set forth below. In addition, the Amended Application and the Tribe's intended uses for the Taunton Lands (for a gaming facility and related amenities) and the Mashpee Lands (for housing and governmental purposes) are subject to review and approval pursuant to the National Environmental Policy Act, which itself provides for substantial public review and comment by local governments and community groups.

Environmental

With regard to environmental concerns, the Compact and the IGA both include commitments by the Tribe to mitigate project-related impacts on the environment. In subpart 5.4.3 of the Compact, the Tribe agrees that for all facility construction, expansion or modification work, it will use commercially reasonable efforts to advance the objective of utilizing sustainable development principles, including a goal of meeting construction standards equivalent to those in effect on January 1, 2012, or some later date chosen by the Tribe, for being certified as gold or higher by the Leadership in Energy and Environmental Design program created by the United States Green Building Council. In subpart 5.4.7 of the Compact, the Tribe agrees to comply with all applicable requirements of the Massachusetts Environmental Policy Act ("MEPA"). Sections 9, 10 and 11 of the IGA address water service, sewer and wastewater service, and solid waste disposal. The remaining environmental concerns can be mitigated in the manner and spirit envisioned in the Compact.

The Mashpee Lands include a 0.361 acre parcel that is subject to a conservation restriction held by the Department of Conservation and Recreation ("DCR"). Due to the environmental benefits of maintaining the conservation restriction on the parcel and the lack of any cited need by the Tribe to develop the parcel, the Commonwealth respectfully requests that the Secretary exercise his discretionary authority under 25 C.F.R. § 151.14 to maintain the conservation restriction and recommends that the Tribe enter into an agreement with the Commonwealth to ensure that the conservation restriction remains enforceable by DCR.

Transportation

The Compact and the IGA both address the transportation issues that the Commonwealth expressed to the BIA in 2008. In subpart 5.4.5 of the Compact, the Tribe agrees that prior to the

commencement of any construction related to the gaming facility, the Tribe will share with the Commonwealth its plans for all infrastructure improvements and traffic mitigation measures onsite and in the vicinity of the Facility, completed studies and reports which examine the gaming facility's traffic and infrastructure impacts, and a timeline for construction that includes the deadline by which all infrastructure improvements and traffic mitigation measures will be completed. In subpart 5.4.11 of the Compact, the Tribe agrees that not less than 15 days before opening its gaming facility for business, it will certify to the Commonwealth that the infrastructure improvements and traffic mitigation projects onsite and in the vicinity of the facility are complete in accordance with the plans previously submitted pursuant to subpart 5.4.5. In addition, the MEPA review process gives the Commonwealth an opportunity to comment on the transportation issues related to the project, and accordingly, the Commonwealth expressed its concerns regarding transportation issues in the Environmental Notification Form on August 31, 2012.

In Section 7 of the IGA, the Tribe agrees to pay for all infrastructure improvements and traffic mitigation measures onsite and in the vicinity of and related to the gaming facility, and Exhibit C of the IGA sets forth the traffic mitigation measures agreed to by the Tribe. In subpart 9.2.3 of the Compact, the Commonwealth agrees to allocate 50% of the revenue share funds transferred to the Transportation Infrastructure and Development Fund established in Massachusetts General Laws Chapter 23K, Section 62 for the purpose of transportation and related infrastructure projects in the region in which the gaming facility is located, including but not limited to, transit expansion and maintenance.

Labor and Employment

The Compact addresses the concerns the Commonwealth expressed in 2008 regarding labor and employment on tribal lands. In Subpart 6.5.4 of the Compact, the Tribe agrees to abide by standards that meet or exceed the requirements contained in state laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder. In subpart 6.5.6 of the Compact, the Tribe agrees not to discriminate in the employment of persons on the grounds of race, color, national origin, gender, sexual orientation, age or disability. In Part 18.6 of the Compact, the Tribe agrees to adopt a Tribal Labor Relations Ordinance prior to opening its gaming facility. In Part 19.2 of the Compact, the Tribe agrees that tort claims by employees will be handled pursuant to state Workers' Compensation Law, in Part 19.3, the Tribe agrees that it will participate in the Commonwealth's statutory program for providing unemployment insurance benefits and unemployment compensation disability benefits to employees, and in Part 19.4, the Tribe agrees to provide its gaming employees with health care benefits which meet or exceed the benefits, protections and processes provided to other similarly situated employees within the Commonwealth by employers who are subject to the Commonwealth's Act Providing Access to Affordable, Quality, Accountable Health Care, as amended. Accordingly, the Commonwealth has no concerns regarding labor and employment on tribal lands.

Public Safety

The Compact and the IGA address many of the Commonwealth's concerns from 2008 about public safety on tribal lands. Part 5.4 of the Compact sets forth construction standards for the Tribe's construction of its gaming facility. For example, in subpart 5.4.4, the Tribe agrees to comply with the Americans with Disabilities Act, OSHA and comparable state law requirements. In addition, Part 5.6 of the Compact addresses the Tribe's provision of fire suppression services,

and Part 17 of the Compact allocates criminal jurisdiction between the Tribe and the Commonwealth. A few of the Commonwealth's concerns regarding public safety have not been addressed yet, but they can be mitigated as set forth below.

Under the Commonwealth's Civil Defense Act of 1950, Massachusetts cities and towns may request assistance from the Massachusetts Emergency Management Agency ("MEMA") in the case of an emergency. Upon the occurrence or threat of occurrence of any natural disaster or catastrophe, the Governor may declare a state of emergency, but the Governor's emergency authority may not extend to tribal lands. For that reason, the Commonwealth intends to propose at an appropriate time in the future that the Tribe adopt and agree to be governed by the provisions of Chapter 649 of the Acts of 1950, the Civil Defense Act, as amended from time to time, and all associated procedures, policies and regulations.

The Massachusetts National Guard ("MANG") has a mission to respond, at the Governor's direction, to natural disasters, civil emergencies and homeland security threats. Massachusetts General Laws Chapter 33, Section 51 allows armed forces on duty at the Governor's direction to enter upon and occupy any public or private lands for necessary purposes. However, the MANG may not have the authority to enter tribal lands without the approval of the Tribe and the BIA, or a direct request by the Chairperson of the Tribe to the Governor. Accordingly, the Commonwealth intends to propose at an appropriate time in the future that the Tribe agree that the Governor has the same authority to order the MANG troops onto the tribal lands as he does with all other locations within the Commonwealth, and that the Tribe and the Commonwealth establish a protocol structure for emergency response on tribal lands prior to, rather than at the time of, an emergency.

Public Health

The Commonwealth's previous concerns about public health on tribal lands have been addressed in the Compact. Pursuant to subpart 9.2.3 of the Compact, 5% of the revenue share allocated by the Tribe to the Commonwealth will go to the Public Health Trust Fund established in Massachusetts General Laws Chapter 23K, Section 58. Part 14 of the Compact addresses problem gambling, including the Tribe's commitment to contribute an additional \$1.5 million annually to a Public Health Trust Fund and to implement a responsible gaming program. Part 18.1 of the Compact also prohibits smoking in the gaming facility.

Consumer Protection

The Commonwealth's previous concerns related to consumer protection have been addressed in the Compact. In subpart 6.5.7 of the Compact, the Tribe commits to prohibiting the following: (1) the cashing for any patron or employee any paycheck or any type of government assistance check; (2) the operation in the gaming facility of any credit card or automated teller machine that would allow a patron to obtain cash from a government-issued electronic benefits card; and (3) the extension of credit to a patron or employee who receives any form of income-based public assistance. In Part 19.1 of the Compact, the Tribe agrees to establish procedures for the resolution of patron disputes in the play of games covered by the Compact.

Education

Regarding education, the Tribe agreed to pay the City of Taunton \$370,000 per year for local schools in Exhibit D of the IGA. As set forth in subpart 9.2.3 of the Compact, 14% of the revenue share allocated by the Tribe to the Commonwealth will go to the Education Fund established in Massachusetts General Laws Chapter 23K, Section 64.

ZoningMashpee Lands

The Mashpee Lands are currently zoned as follows:

Parcel	Zoning	Proposed Use
Mashpee parcel 1	R-3 Residential ⁴	Old Indian Meeting House
Mashpee parcel 2	R-3 Residential	Burial Ground/Cemetery
Mashpee parcel 3	R-3 Residential	Cemetery
Mashpee parcel 4	R-5 Residential ⁵	Parsonage
Mashpee parcel 5	R-5 Residential, Mashpee Center Overlay District	Tribe Museum
Mashpee parcel 6	R-3 Residential, Groundwater Protection Overlay District	New Tribal Government Center (educational, cultural, health)
Mashpee parcel 7	R-5 Residential, Groundwater Protection Overlay District, Otis ANGB Accident Prevention Zone	Tribal Housing
Mashpee parcel 8	R-5 Residential, Groundwater Protection Overlay District, Otis ANGB Accident Prevention Zone	Tribal Housing
Mashpee parcel 9	R-3 Residential	Tribal Housing
Mashpee parcel 10	R-3 Residential, Popponesset Overlay District	Tribal Housing
Mashpee parcel 11	R-3 Residential (can qualify for agricultural farm use)	Tribal Housing

⁴ R-3 Residential zoning requires a 40,000 square foot minimum lot size for residential zoning.

⁵ R-5 Residential zoning requires an 80,000 square foot minimum lot size for residential zoning.

Taunton Lands

The Taunton Lands are currently zoned as follows:

Parcel	Zoning	Proposed Use
Taunton parcel 1	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 2	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 3	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 4	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 5	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 6	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 7	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 8	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 9	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 10	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 11	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 12	Industrial	Casino/Resort-Hotel Facility
Taunton parcel 13	Industrial	Casino/Resort-Hotel Facility

Affordable Housing

Any change to the zoning status of the Mashpee and/or Taunton Lands could raise concerns regarding the exemption of the lands from affordable housing requirements. Under the Massachusetts fair housing statute, Massachusetts General Laws Chapter 40B, a key means of determining a municipality's compliance with its affordable housing requirement is calculated based upon "available land area." The Commonwealth may address the effects of a change to the zoning status of the Mashpee Lands and Taunton Lands by including tribal lands in the calculation of "available land area," and thus maintain the same requirements for Mashpee and Taunton to provide affordable housing as before the land was taken into trust.

Conclusion

The Commonwealth respectfully requests that the BIA give early and expeditious approval to the Tribe's Amended Application to have the Mashpee Lands and Taunton Lands taken into trust for the benefit of the Tribe.

In accordance with 25 C.F.R. § 151, the comments submitted by the Commonwealth are preliminary and based on information available at this time. The Commonwealth reserves the right to supplement and expand on these comments as the process proceeds.

Thank you for your consideration of our comments. Please feel free to contact me should you need any further information from the Commonwealth in connection with your consideration of the Tribe's land-in-trust application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reilly', with a stylized flourish at the end.

Mark A. Reilly