

## EXHIBIT ONE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF  
MASSACHUSETTS,

*Plaintiff,*

and

AQUINNAH/GAY HEAD COMMUNITY  
ASSOCIATION, INC. and TOWN OF  
AQUINNAH,

*Intervenor-Plaintiffs/Counterclaim-  
Defendants,*

**vs.**

THE WAMPANOAG TRIBE OF GAY  
HEAD (AQUINNAH), THE  
WAMPANOAG TRIBAL COUNCIL OF  
GAY HEAD, INC., and THE AQUINNAH  
WAMPANOAG GAMING  
CORPORATION,

*Defendants/Counterclaim-Plaintiffs,*

and

CHARLIE BAKER, in his official capacity  
as GOVERNOR, COMMONWEALTH OF  
MASSACHUSETTS, et al.,

*Third-Party Defendants.*

**CASE NO: 1:13-cv-13286-FDS**

[Formerly Supreme Judicial Court for Suffolk  
County, Massachusetts, CIVIL ACTION NO.  
2013-0479]

**TOBIAS J. VANDERHOOP'S DECLARATION IN OPPOSITION TO THE  
TOWN OF AQUINNAH'S MOTION FOR TEMPORARY RESTRAINING  
ORDER AND/OR PRELIMINARY INJUNCTION**

I, TOBIAS J. VANDERHOOP declare:

1. I am the elected Chairman of the Wampanoag Tribe of Gay Head (Aquinnah). I make this Declaration in support of the Wampanoag Tribe of Gay Head (Aquinnah) (“Tribe”) and Aquinnah Wampanoag Gaming Corporation, parties to the above-captioned litigation. I am a resident of the Town of Aquinnah, Massachusetts.
2. The Tribe is a federally-recognized tribe located on Martha’s Vineyard in the County of Dukes County, Massachusetts. After surviving years of federal and state policies designed to exterminate Native American people, including the Aquinnah, the Tribe was federally recognized in 1987.
3. As Chairman of the Tribe, I am the presiding officer over the Tribal Council, and am the highest-ranking officer among the tribal officers. I make this declaration based on my role as Tribal member, elected official of the Tribe, a member of the Board of Directors of the Aquinnah Wampanoag Gaming Corporation, and as a member of the Town of Aquinnah community, each of which I take very seriously.
4. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to the contents of this Declaration.
5. The total number of enrolled members of the Wampanoag Tribe of Gay Head (Aquinnah) is currently 1289. The total number of enrolled members of the Tribe whose domicile is the County of Dukes County, otherwise known as Martha’s Vineyard, is approximately 315. Members of the Tribe live in high concentrations within Suffolk, Norfolk, Bristol, Plymouth, Barnstable and Worcestor Counties of Massachusetts. Many of those members living off of the Island of Martha’s Vineyard do so because the cost of living is high compared to the career opportunities available to them, but many have remained in

southeastern Massachusetts in order to be as close to their tribal homelands and family as possible.

6. The Tribe currently has no economic base of its own. It is almost entirely dependent on federal funds to support all governmental operations.
7. As an elected tribal official, I swore an oath of office and am charged with the fiduciary duty of expanding our limited economic power for the good of all members. The development of a gaming operation is the best option we currently have to create a revenue stream outside of federal funding.
8. As an elected tribal official, I am informed and act upon the policy embraced by Congress in the passage of the Indian Gaming Regulatory Act, which is to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, tribal self-sufficiency, and strong tribal government. 25 U.S.C. § 2702(1).
9. After struggling since the mid-1990's to develop a gaming operation on the mainland, having a Gaming Compact rejected by the State legislature and more recently being refused good faith negotiations by Governor Patrick, the Tribe and the General Membership decided to move forward with a Class II gaming operation on tribal lands on Martha's Vineyard. Class II gaming is bingo-based gaming that, when conducted by tribes, is subject only to the jurisdiction of the tribe and the federal government. It has been used by many tribes to create an economic base from gaming when the state within which the tribe's lands are located refuses to negotiate a compact with the tribe.
10. The Tribe has tried for two decades to work with the Commonwealth to develop a Class III gaming facility and in the process, accumulated significant debt. After being rejected

over and over, the Tribe has now re-focused under the Indian Gaming Regulatory Act, federal legislation enacted with the express purpose of promoting tribal economic development, self-sufficiency, and strong tribal government. Without this endeavor, the Tribe cannot meet the goals of IGRA or any other federal legislation designed to bring tribes from dependence on the federal government to self-sufficiency.

11. The Tribal Council has assigned property to the Aquinnah Wampanoag Gaming Corporation (“AWGC”), a wholly owned and tribally chartered corporation. The AWGC is responsible for advancing the Tribal gaming initiative and has been doing so since its Charter was issued in 2003. The Tribal Council has mandated that all work on the gaming facility must be done in compliance with the requirements of the 2009 International Building Code.
12. The renovations of the facility must also meet the standards of IGRA which require the construction and maintenance of the gaming facility to be conducted in a manner, which adequately protects the environment and the public health and safety. 25 U.S.C. § 2710 (b)(2)(E).
13. The Tribe and the federal government have the same goals of ensuring that any construction is completed in a manner that protects the public health and safety.
14. The Tribal Council, pursuant to the provisions of the NIGC-approved Gaming Ordinance, has appointed three experienced and well-credentialed Commissioners to comprise the Aquinnah Tribal Gaming Commission. The Commission Chairman has more than two decades of experience as a gaming regulator, including serving as a Commissioner to the NIGC. The second Commissioner has extensive experience as a gaming regulator, and the third Commissioner is a lawyer in Washington D.C. who formerly served as Chief of

Staff to the Senate Indian Affairs Committee.

15. The Tribe intends to ensure that the renovations comply with the 2009 International Building Code and federal statute and the Tribe's Gaming Ordinance mandates that the Aquinnah Wampanoag Tribal Gaming Commission will not issue a facility license as required by federal statute, federal regulation and tribal ordinance unless the construction meets those requirements. The gaming facility will not be open to the public until a facility license has been issued.
16. The Tribe has adopted the Aquinnah Gaming Ordinance which requires the Aquinnah Wampanoag Gaming Commission or Tribal Council to issue a Facility License that ensures the construction, maintenance of the Gaming Facility and the operation of gaming be conducted in a manner that protects the environment and the public health and safety and complies with the requirements of all applicable health, safety, and environmental standards enacted by the Tribe and any applicable federal and state laws.
17. The Tribe is proceeding in manner that ensures that there can be no question about the quality of the construction and that the construction has been completed consistent with industry best-practices in order to protect the health and safety of the patrons and employees.
18. On July 1, 2015, I participated in a meeting with the Tribe's legal counsel and Mr. Ronald Rappaport, legal counsel for the Town of Aquinnah, wherein I delivered the message to Mr. Rappaport that although the Tribe was not willing to divest any jurisdiction regarding gaming on the Tribe's lands, it was willing to allow the Town's officials (including the building inspectors) to have access and to observe any and all work and renovations.

19. The Town informed me that the Selectmen were willing to meet with me informally to discuss the matter and other pending issues between the two governments, and scheduled a meeting for the morning of Monday, July 20, 2015. At the scheduled time of our meeting, only one Selectman was present. We discussed the matter informally, wherein I repeated the Tribe's position, including the offer to have Town officials view any work being done at the gaming facility. Although the Selectman did not indicate that the Town would accept the Tribe's offer, I reiterated that it remains on the table.
20. The property that is being converted into a casino is an unfinished building that was originally intended to be a community center. However, the Tribe did not have the funds necessary to complete the community center and the building has been vacant and unfinished for over 10 years. Without the completion of the building as a gaming facility, the Tribe will not have a finished community center building. A condition of the property assignment is that the gaming facility will ultimately be converted back to a community center. The gaming operation meets the goals of increasing governmental revenue and providing a community center to the community.
21. The gaming operation is intended to provide sorely needed revenue to the Tribe. That revenue will expand on current tribal programs such as elders programs, youth programs, court system, law enforcement, education, health care, cultural activities, housing, historic preservation, and environmental protection and will create others such as Head Start programs, language reclamation classes, and additional economic development opportunities. For example, the Tribe recently lost a grant, which would have studied the impact of climate change on shellfish within Menemsha Pond a resource area vital to the local economy for tribal members and non-tribal member alike. Additional revenue will

allow the Tribe to implement its own studies on this very important tribal-regional issue.

22. With the development of the gaming operation, the Tribe will also be able to provide jobs not only for our members, but for members of the greater community. Those jobs will include employment at the gaming facility as well as employment at all the ancillary businesses that will support the operation such as shuttles, laundry, food vendors, and others.
23. The copy of the Town of Aquinnah's Zoning By-Laws in effect in 1983 attached to the Stipulated Facts Not in Dispute (doc.107-2, Exh. B, pp. 20 of 65 to 43 of 65) is difficult to read. I have reviewed a document that was prepared using best efforts to review and duplicate the language submitted as Exh. B to doc. 107. That document is attached hereto as Exhibit A. I have also reviewed the Town of Aquinnah's zoning by-laws and the Town's general by-laws currently posted on the Town's web page, aquinnah-ma.gov. Copies are attached hereto as Exhibit's B and C, respectively. No provisions in any of the by-laws appear to prohibit gaming of any kind. Indeed, in my review, the words "bingo," "gaming", "gambling" and "chance" appear nowhere in those Town By-laws
24. The Tribe is prepared to proffer additional tribal documentation that support the representations set forth in this Declaration if the Court deems such information to be necessary for its deliberations on the Town's Motion for Preliminary Injunctive relief. However, the Tribe would want such information to be submitted under a protective order, under seal or submitted to the Court for *in camera* review because it contains confidential and/or proprietary information.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th Day of July 2015.





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TOBIAS J. VANDERHOOP, Chairman  
Wampanoag Tribe of Gay Head (Aquinnah)