

Public Law 100-95
100th Congress

An Act

Aug. 18, 1987
[H.R. 2855]

To settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Wampanoag
Tribal Council of
Gay Head, Inc.,
Indian Claims
Settlement Act
of 1987.
25 USC 1771
note.
25 USC 1771.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

The Congress hereby finds and declares that—

(1) there is pending before the United States District Court for the District of Massachusetts a lawsuit that involves Indian claims to certain public lands within the town of Gay Head, Massachusetts;

(2) the pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by clouding the titles to much of the land in the town, including land not involved in the lawsuit;

(3) the Congress shares with the Commonwealth of Massachusetts and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claim;

(4) the parties to the lawsuit and others interested in settlement of Indian land claims within the Commonwealth of Massachusetts executed a Settlement Agreement which, to become effective, requires implementing legislation by the Congress of the United States and the General Court of the Commonwealth of Massachusetts;

(5) the town of Gay Head has agreed to contribute approximately 50 percent of the land involved in this settlement;

(6) the State of Massachusetts has agreed to provide up to \$2,250,000 to be used for the purchase of land to be held in trust by the Secretary for the use and benefit of the Wampanoag Tribal Council of Gay Head, Inc.; and

(7) the Secretary has acknowledged the existence of the Wampanoag Tribal Council of Gay Head, Inc. as an Indian tribe and Congress hereby ratifies and confirms that existence as an Indian tribe with a government to government relationship with the United States.

25 USC 1771a.

SEC. 3. GAY HEAD INDIAN CLAIMS SETTLEMENT FUND.

(a) **FUND ESTABLISHED.**—There is hereby established within the Treasury of the United States a fund to be known as the "Wampanoag Tribal Council of Gay Head, Inc. Claims Settlement Fund". Amounts in the fund shall be available to the Secretary to carry out the purposes of this Act.

(b) **AUTHORIZATION FOR APPROPRIATION.**—There is hereby authorized to be appropriated \$2,250,000 for such fund to remain available until expended.

(c) **STATE CONTRIBUTION REQUIRED.**—Amounts may be expended from the fund only upon deposit by the State of Massachusetts into the fund of an amount equal to that amount to be expended by the United States so that both the United States and the State of Massachusetts bear one-half of the cost of the acquisition of lands under section 6.

SEC. 4. APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF ABORIGINAL TITLE AND CLAIMS OF GAY HEAD INDIANS. 25 USC 1771b.

(a) **APPROVAL OF PRIOR TRANSFERS.**—(1) Any transfer before the date of the enactment of this Act of land or natural resources now located anywhere within the United States from, by, or on behalf of the Wampanoag Tribal Council of Gay Head, Inc., or (2) any transfer before the date of the enactment of this Act by, from, or on behalf of any Indian, Indian nation, or tribe or band of Indians, of any land or natural resources located anywhere within the town of Gay Head, Massachusetts, including any transfer pursuant to any statute of the State, and the incorporation of the town of Gay Head, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof). Any such transfer and any transfer in implementation of this Act, shall be deemed to have been made with the consent and approval of Congress as of the date of such transfer.

(b) **EXTINGUISHMENT OF ABORIGINAL TITLE.**—Any aboriginal title held by the Wampanoag Tribal Council of Gay Head, Inc. or any other entity presently or at any time in the past known as the Gay Head Indians, to any land or natural resources the transfer of which is consented to and approved in subsection (a) is considered extinguished as of the date of such transfer.

(c) **EXTINGUISHMENT OF CLAIMS ARISING FROM PRIOR TRANSFERS OR EXTINGUISHMENT OF ABORIGINAL TITLE.**—Any claim (including any claim for damages for use and occupancy) by the Wampanoag Tribal Council of Gay Head, Inc., the Gay Head Indians, or any other Indian, Indian nation, or tribe or band of Indians against the United States, any State or political subdivision of a State, or any other person which is based on—

(1) any transfer of land or natural resources which is consented to and approved in subsection (a), or

(2) any aboriginal title to land or natural resources the transfer of which is consented to and approved in subsection (b), is extinguished as of the date of any such transfer.

(d) **PERSONAL CLAIMS NOT AFFECTED.**—No provision of this section shall be construed to offset or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians.

SEC. 5. CONDITIONS PRECEDENT TO FEDERAL PURCHASE OF SETTLEMENT LANDS. 25 USC 1771c.

(a) **INITIAL DETERMINATION OF STATE AND LOCAL ACTION.**—No action shall be taken by the Secretary under section 6 before the

Federal Register, publication.

Secretary publishes notice in the Federal Register of the determination by the Secretary that—

(1) the Commonwealth of Massachusetts has enacted legislation which provides that—

(A) the town of Gay Head, Massachusetts, is authorized to convey to the Secretary to be held in trust for the Wampanoag Tribal Council of Gay Head, Inc. the public settlement lands and the Cook lands subject to the conditions and limitations set forth in the Settlement Agreement; and

(B) the Wampanoag Tribal Council of Gay Head, Inc. shall have the authority, after consultation with appropriate State and local officials, to regulate any hunting by Indians on the settlement lands that is conducted by means other than firearms or crossbow to the extent provided in, and subject to the conditions and limitations set forth in, the Settlement Agreement;

(2) the Wampanoag Tribal Council of Gay Head, Inc., has submitted to the Secretary an executed waiver or waivers of the claims covered by the Settlement Agreement all claims extinguished by this Act, and all claims arising because of the approval of transfers and extinguishment of titles and claims under this Act; and

(3) the town of Gay Head, Massachusetts, has authorized the conveyance of the public settlement lands and the Cook Lands to the Secretary in trust for the Wampanoag Tribal Council of Gay Head, Inc.

(b) RELIANCE UPON THE ATTORNEY GENERAL OF MASSACHUSETTS.—In making the findings required in subsection (a) of this section, the Secretary may rely upon the opinion of the Attorney General of the Commonwealth of Massachusetts.

25 USC 1771d.

SEC. 6. PURCHASE AND TRANSFER OF SETTLEMENT LANDS.

(a) PURCHASE OF PRIVATE SETTLEMENT LANDS.—The Secretary is authorized and directed to expend, at the request of the Wampanoag Tribal Council of Gay Head, Inc., \$2,125,000 to acquire the private settlement lands. At the request of the Wampanoag Tribal Council of Gay Head, Inc., the Secretary shall not purchase lots 705, 222, and 528 of the private settlement lands, but, at the request of the Wampanoag Tribal Council of Gay Head, Inc., the Secretary shall acquire in lieu thereof such other lands that are contiguous to the remaining private settlement lands. Upon the purchase of such contiguous lands, those lands shall be subject to the same restrictions and benefits as the private settlement lands.

Paul O'Leary.

(b) PAYMENT FOR SURVEY AND APPRAISAL.—The Secretary is authorized and directed to cause a survey of the public settlement lands to be made within 60 days of acquiring title to the public settlement lands. The Secretary shall reimburse the Native American Rights Fund and the Gay Head Taxpayers Association for an appraisal of the private settlement lands done by Paul O'Leary dated May 1, 1987. Such funds as may be necessary may be withdrawn from the Fund established in section 3(a) and may be used for the purpose of conducting the survey and providing reimbursement for the appraisal.

(c) ACQUISITION OF ADDITIONAL LANDS.—The Secretary shall expend, at the request of the Wampanoag Tribal Council of Gay Head, Inc., any remaining funds not required by subsection (a) or (b)

to acquire any additional lands that are contiguous to the private settlement lands. Any lands acquired pursuant to this section, and any other lands which are hereafter held in trust for the Wampanoag Tribal Council of Gay Head, Inc., any successor, or individual member, shall be subject to this Act, the Settlement Agreement and other applicable laws. Any after acquired land held in trust for the Wampanoag Tribal Council of Gay Head, Inc., any successor, or individual member, shall be subject to the same benefits and restrictions as apply to the most analogous land use described in the Settlement Agreement.

(d) **TRANSFER AND SURVEY OF LAND TO WAMPANOAG TRIBAL COUNCIL.**—Any right, title, or interest to lands acquired by the Secretary under this section, and the title to public settlement lands conveyed by the town of Gay Head, shall be held in trust for the Wampanoag Tribal Council of Gay Head, Inc. and shall be subject to this Act, the Settlement Agreement, and other applicable laws.

(e) **PROCEEDINGS AUTHORIZED TO ACQUIRE OR TO PERFECT TITLE.**—The Secretary is authorized to commence such condemnation proceedings as the Secretary may determine to be necessary—

- (1) to acquire or perfect any right, title, or interest in any private settlement land, and
- (2) to condemn any interest adverse to any ostensible owner of such land.

(f) **PUBLIC SETTLEMENT LANDS HELD IN TRUST.**—The Secretary is authorized to accept and hold in trust for the benefit of the Wampanoag Tribal Council of Gay Head, Inc. the public settlement lands as described in section 8(7) of this Act immediately upon the effective date of this Act.

(g) **APPLICATION.**—The terms of this section shall apply to land in the town of Gay Head. Any land acquired by the Wampanoag Tribal Council of Gay Head, Inc., that is located outside the town of Gay Head shall be subject to all the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts.

(h) **SPENDING AUTHORITY.**—Any spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974) provided in this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

2 USC 651.

SEC. 7. JURISDICTION OVER SETTLEMENT LANDS; RESTRAINT ON ALIENATION.

25 USC 1771e.

(a) **LIMITATION ON INDIAN JURISDICTION OVER SETTLEMENT LANDS.**—The Wampanoag Tribal Council of Gay Head, Inc., shall not have any jurisdiction over nontribal members and shall not exercise any jurisdiction over any part of the settlement lands in contravention of this Act, the civil regulatory and criminal laws of the Commonwealth of Massachusetts, the town of Gay Head, Massachusetts, and applicable Federal laws.

(b) **SUBSEQUENT HOLDER BOUND TO SAME TERMS AND CONDITIONS.**—Any tribe or tribal organization which acquires any settlement land or any other land that may now or in the future be owned by or held in trust for any Indian entity in the town of Gay Head, Massachusetts, from the Wampanoag Tribal Council of Gay Head, Inc. shall hold such beneficial interest to such land subject to the same terms and conditions as are applicable to such lands when held by such council.

(c) **RESERVATIONS OF RIGHT AND AUTHORITY RELATING TO SETTLEMENT LANDS.**—No provision of this Act shall affect or otherwise impair—

(1) any authority to impose a lien or temporary seizure on the settlement lands as provided in the State Implementing Act;

(2) the authority of the Secretary to approve leases in accordance with the Act entitled “An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases”, approved August 9, 1955 (25 U.S.C. 415 et seq.); or

(3) the legal capacity of the Wampanoag Tribal Council of Gay Head, Inc. to transfer the settlement lands to any tribal entity which may be organized as a successor in interest to Wampanoag Tribal Council of Gay Head, Inc. or to transfer—

(A) the right to use the settlement lands to its members,

(B) any easement for public or private purposes in accordance with the laws of the Commonwealth of Massachusetts or the ordinances of the town of Gay Head, Massachusetts, or

(C) title to the West Basin Strip to the town of Gay Head, Massachusetts, pursuant to the terms of the Settlement Agreement.

(d) **EXEMPTION FROM STATE ASSESSMENT.**—Any land held in trust by the Secretary for the benefit of the Wampanoag Tribal Council of Gay Head, Inc. shall be exempt from taxation or lien or “in lieu of payment” or other assessment by the State or any political subdivision of the State to the extent provided by the Settlement Agreement: *Provided, however,* That such taxation or lien or “in lieu of payment” or other assessment will only apply to lands which are zoned and utilized as commercial: *Provided further,* That this section shall not be interpreted as restricting the Tribe from entering into an agreement with the town of Gay Head to reimburse such town for the delivery of specific public services on the tribal lands.

25 USC 1771f.

SEC. 8. DEFINITIONS.

For the purposes of this Act:

(1) **COOK LANDS.**—The term “Cook lands” means the lands described in paragraph (5) of the Settlement Agreement.

(2) **WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.**—The term “Wampanoag Tribal Council of Gay Head, Inc.” means the tribal entity recognized by the Secretary of the Interior as having a government to government relationship with the United States. The Wampanoag Tribal Council of Gay Head, Inc. is the sole and legitimate tribal entity which has a claim under the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), to land within the town of Gay Head. The membership of the Wampanoag Tribal Council of Gay Head, Inc., includes those 521 individuals who have been recognized by the Secretary of the Interior as being members of the Wampanoag Tribal Council of Gay Head, Inc., and such Indians of Gay Head ancestry as may be added from time to time by the governing body of the Wampanoag Tribal Council of Gay Head, Inc.: *Provided,* That nothing in this section shall prevent the voluntary withdrawal from membership in the Wampanoag Tribal Council of Gay Head, Inc., pursuant to procedures established by the Tribe. The governing body of the

Wampanoag Tribal Council of Gay Head, Inc. is hereby authorized to act on behalf of and bind the Wampanoag Tribal Council of Gay Head, Inc., in all matters related to carrying out this Act.

(3) **FUND.**—The term “fund” means the Wampanoag Tribal Council of Gay Head, Inc. Claims Settlement Fund established under section 3.

(4) **LAND OR NATURAL RESOURCES.**—The term “land or natural resources” means any real property or natural resources or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(5) **LAWSUIT.**—The term “lawsuit” means the action entitled Wampanoag Tribal Council of Gay Head, and others versus Town of Gay Head, and others (C.A. No. 74-5826-McN (D. Mass.)).

(6) **PRIVATE SETTLEMENT LANDS.**—The term “private settlement lands” means approximately 177 acres of privately held land described in paragraph 6 of the Settlement Agreement.

(7) **PUBLIC SETTLEMENT LANDS.**—The term “public settlement lands” means the lands described in paragraph (4) of the Settlement Agreement.

(8) **SETTLEMENT LANDS.**—The term “settlement lands” means the private settlement lands and the public settlement lands.

(9) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(10) **SETTLEMENT AGREEMENT.**—The term “Settlement Agreement” means the document entitled “Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts, Indian Land Claims,” executed as of November 22, 1983, and renewed thereafter by representatives of the parties to the lawsuit, and as filed with the Secretary of the Commonwealth of Massachusetts.

(11) **STATE IMPLEMENTING ACT.**—The term “State implementing act” means legislation enacted by the Commonwealth of Massachusetts conforming to the requirements of this Act and the requirements of the Massachusetts Constitution.

(12) **TRANSFER.**—The term “transfer” includes—

(A) any sale, grant, lease, allotment, partition, or conveyance,

(B) any transaction the purpose of which is to effect a sale, grant, lease, allotment, partition, or conveyance, or

(C) any event or events that resulted in a change of possession or control of land or natural resources.

(13) **WEST BASIN STRIP.**—The term “West Basin Strip” means a strip of land along the West Basin which the Wampanoag Tribal Council is authorized to convey, under paragraph (11) of the Settlement Agreement, to the town of Gay Head.

SEC. 9. APPLICABILITY OF STATE LAW.

25 USC 1771g.

Except as otherwise expressly provided in this Act or in the State Implementing Act, the settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head,

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

25 USC 1771h.

SEC. 10. LIMITATIONS OF ACTION; JURISDICTION.

Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this Act shall be barred unless the complaint is filed within thirty days after the date of enactment of this Act. Exclusive original jurisdiction over any such action and any proceedings under section 6(e) is hereby vested in the United States District Court of the District of Massachusetts.

25 USC 1771
note.**SEC. 11. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall take effect upon the date of enactment.

(b) **EXCEPTION.**—Section 4 shall take effect upon the date on which the title of all of the private settlement lands provided for in this Act to the Wampanoag Tribal Council of Gay Head, Inc. is transferred. The fact of such transfer, and the date thereof, shall be certified and recorded by the Secretary of the Commonwealth of Massachusetts.

25 USC 1771i.

SEC. 12. ELIGIBILITY.

For the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes, because of their status as Indians, members of this tribe residing on Martha's Vineyard, Massachusetts, shall be deemed to be living on or near an Indian reservation.

Approved August 18, 1987.

LEGISLATIVE HISTORY—H.R. 2855:

HOUSE REPORTS: No. 100-238 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 133 (1987):

July 28, considered and passed House.

Aug. 6, considered and passed Senate.