



**THE MASHPEE WAMPANOAG TRIBE  
TESTIMONY OF THE HONORABLE CEDRIC CROMWELL, CHAIRMAN  
U.S. HOUSE OF REPRESENTATIVES HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON INDIAN, INSULAR, AND ALASKA NATIVE AFFAIRS**

**July 24, 2018**

**Introduction**

Good afternoon, Chairman LaMalfa, Ranking Member Gallego, and distinguished members of the Subcommittee. My name is Cedric Cromwell and I am the Chairman of the Mashpee Wampanoag Tribe. On behalf of the Tribe, I urge you to support passage of the bipartisan bill H.R. 5244, the “Mashpee Wampanoag Reservation Reaffirmation Act.”

Our ancestors welcomed the Pilgrims who landed at Plymouth Rock – we are the Tribe that helped saved the first colonists from starvation and we are the last surviving tribe of the original nine tribes granting Indian Title to lands forming Plymouth Colony. Our relationship with the new Americans who settled around us is one of the oldest such relationships in the United States, and one which we highly value. The Mashpee were well known to the young United States government, and the Tribe and its members repeatedly have been enumerated in federal reports listing tribal nations within the United States’ jurisdiction and federal census documents during the 1800s and through the mid-1900s. Although early in the United States’ history Congress directed in the Indian Trade and Intercourse Act (25 U.S.C. § 177, or “Non-Intercourse Act”) that no Indian land title may be extinguished without express congressional consent, as time went on the federal government failed to adequately enforce the Non-Intercourse Act to protect our lands. Eventually we lost all of our lands and became landless.

**I. The Establishment of the Mashpee Wampanoag Tribe’s Reservation Lands**

We are a resilient people, and despite these constant assaults our tribe continued to persevere through many generations. In 2007, through the Department’s Part 83 administrative acknowledgement process, the federal government finally acknowledged our status, restoring the

federal recognition we enjoyed earlier in our history. Even before our recognition was restored, we began the process of re-acquiring historical land that could be set aside as a federally-protected reservation. In the late 1970s, we embarked on a long and ultimately successful effort to work cooperatively with the Commonwealth of Massachusetts, the Town of Mashpee and City of Taunton, and other stakeholders as part of our overall effort to find land within our historical homeland that could be taken into trust to serve as our reservation.

In 2015, with the strong support of the same local governments and the State, the Department of the Interior took into trust lands in the City of Taunton and the Town of Mashpee for the Tribe and proclaimed them as our reservation pursuant to the Indian Reorganization Act (IRA). The Department's decision finally allowed Mashpee to have a land base on which we can exercise our sovereignty, provide for our people, build homes and conduct the business of government. Our reservation includes our Meeting House, Government Center, burial grounds and cemeteries, tribal museum, tribal offices, conservation land, and cultural recreation land, and we are working on additional tribal housing and economic development projects. This economic development at last will be able to generate revenue to fund our government and the jobs we need to enable our people to support themselves. Finally – and this is no small thing – having a reservation also means being treated as an equal with other federally recognized tribes.

Unfortunately, shortly after the land was taken into trust, the Department's decision was challenged by some local residents. The court rejected the Department's original legal theory (which was based on the second definition of "Indian" in the IRA), creating confusion about the legal status of the Tribe's reservation. However, the court allowed the Tribe to petition the Department under a different legal theory (based on the first definition of Indian in the IRA). While the Department originally defended its decision and the Tribe's reservation by filing an appeal in December 2016, in May 2017, the Department of Justice inexplicably withdrew from the litigation and is no longer defending the litigation or the status of the Tribe's reservation.

The Mashpee Wampanoag Tribe is deeply concerned about the federal government's refusal to defend its original decision to take our land in trust, and we are fearful that the Department will move to take our land out of trust and disestablish our reservation. This would be the first time since the termination era that the United States acts to disestablish an Indian reservation and make a tribe landless. Furthermore, unlike every other federally recognized tribe in New England, Mashpee does not benefit from a federal land claim settlement statute providing independent statutory land acquisition authority – the *only* authority the Department has to acquire trust land for Mashpee is pursuant to the IRA. Accordingly, unless Congress acts, the Department's action would effectively prevent Mashpee from ever acquiring *any* land in trust or ever having *any* reservation.

The Department has indicated in prior testimony that it does not object to Congress making a determination that a tribe should be eligible to have land taken in trust, and has acknowledged that Congress has the plenary authority to enact legislation to do so. As James Cason, then-Acting Deputy Secretary of Interior testified last year, "... if it is Congress' determination that they would like those tribes [that would not qualify under *Carvier*] to be eligible to take land into trust, then it

would require some sort of legislation to do that ... If Congress wants to establish and articulate the standards that are ‘consistent’ with *Carvieri* or change new standards, that is certainly their prerogative.” See Testimony of James Cason, Acting Deputy Secretary, U.S. Department of the Interior, Oversight Hearing before the House Natural Resources Committee, Subcommittee on Indian, Insular and Alaska Native Affairs, “Comparing 21st Century Trust Land Acquisition with the Intent of the 73rd Congress in Section 5 of the Indian Reorganization Act,” 115th Cong., 1st Sess. (July 13, 2017).

## **II. H.R. 5244, “The Mashpee Wampanoag Reservation Reaffirmation Act”**

The purpose of H.R. 5244, the Mashpee Wampanoag Reservation Reaffirmation Act, is to reaffirm the status of the Tribe’s reservation and make clear that the Tribe is entitled to be treated the same way under the IRA as other federally recognized tribes. This is a noncontroversial, bipartisan bill with the singular, straightforward purpose of protecting our reservation.

The language of the bill tracks language from two other tribal bills that have already been enacted by Congress, the Gun Lake Restoration Act (S. 1603, passed in the 113th Congress) and the Indian Tribes of Virginia Recognition Act (H.R. 984, passed in the 115th Congress). Subsection (a) tracks language from the Gun Lake statute, and it confirms the status of the Tribe’s reservation. Subsection (b) also tracks language from the Gun Lake legislation, and it serves put an end to the perpetual litigation plaguing the Tribe regarding the status of the Tribe’s reservation. Finally, subsection (c) tracks language from the Virginia Tribes recognition statute, and makes clear that the Tribe will be treated equally with other federally recognized tribes under the IRA.

H.R. 5244 does not provide any new or special rights to Mashpee. This legislation merely asks Congress to exercise its plenary power over Indian affairs to ensure that the Tribe will be treated the same as other federally recognized tribes, thereby protecting the Tribe’s existing reservation so that it can continue to provide government services to its members, protect its culture, and provide employment opportunities and housing for its members. A Tribal land base is critical for the exercise of tribal sovereignty, and for the protection and continuation of tribal culture, and represents the foundation for tribal economic development. Like other federally recognized tribes, we have the right to exercise our tribal sovereignty within our reservation, which reduces federal control and intervention in internal tribal matters. Preservation of our reservation allows our tribal government to exercise sovereignty by providing services and protection to our citizens through tribally-run programs. Having reservation land where we can generate tribal revenue increases our self-sufficiency and decreases our dependence on federal funding and grants.

What is more, economic development on our reservation land will not only serve to benefit our members, but will also bring greater economic prosperity to surrounding regions. If our reservation is preserved, we will be able to create thousands of new jobs, and follow through on our commitments to help fund millions of dollars’ worth of local infrastructure improvements.

## **II. Enactment of H.R. 5244 Will Provide Critical Economic Development Opportunities to Southeastern Massachusetts and is Strongly Supported by Local Governments and Indian Country**

**Intergovernmental Agreements.** As part of the fee-to-trust process, Mashpee worked cooperatively and extensively with the Commonwealth and all of the related local governmental bodies on the plans for our reservation. The Tribe has entered into an intergovernmental agreement (IGA) with the Town of Mashpee, where a portion of the lands subject to our land-into-trust application are located. Our reservation land in Mashpee will be used for housing development and tribal government buildings. I should note that the Tribe and the Town of Mashpee have worked together to propose a minor amendment to the legislation relating to our IGA, and Tribe urges the Committee to adopt the amendment at such time as the bill is considered during a business meeting.

The Tribe also has entered into an IGA with the City of Taunton that contemplates and supports our proposed gaming development there. Construction and operation of our First Light Resort & Casino in Taunton is expected to bring over 7,000 jobs to Taunton and surrounding communities. The development is located in an area that was zoned for industrial use and designated by Taunton for economic development stimulation over a decade ago in 2003. Our IGA with Taunton specifies enforceable mitigation measures and evidences the Tribe's commitment to adopt building, health and safety codes that are at least as restrictive as those of the City.

Finally, the Tribe also has entered into an agreement with the State of Massachusetts as embodied in our Tribal-State Gaming Compact, entered into pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2710. Our Compact was reviewed and approved by the Secretary of the Interior as published in the Federal Register at 79 Fed. Reg. 6,213 (Feb. 3, 2014)

**Strong local support for H.R. 5344.** The City of Taunton and Town of Mashpee both strongly support H.R. 5244, and the Taunton Chamber of Commerce recently submitted a letter to this Subcommittee urging its support as well. By protecting our reservation lands, the passage of H.R. 5244 will bring more than just jobs to Taunton and surrounding communities. The Tribe has committed to \$30 million in upgrades to the Taunton water system and roadways, \$10 million per year to local first responders and Taunton city services, and \$65 million per year to the State for broader community development initiatives that will benefit the entire State. Once implemented, these commitments made by the Tribe to the City of Taunton will represent the single largest urban renewal effort in Southeastern Massachusetts in a generation. The Tribe is committed to working closely with the Taunton community and Southeastern Massachusetts as a whole to bring greater economic prosperity to our shared region, for the benefit of all.

**Support from Indian Country.** H.R. 5244 has also received widespread support from throughout Indian country. Tribes across the country have recognized the need to protect against the disestablishment of our reservation. On June 6th, at the National Congress of American Indians Midyear Conference, NCAI passed a motion by the full body stating its complete support for Mashpee and calling upon Congress to enact H.R. 5244. On June 7th, NCAI provided a letter to this Subcommittee stating its strong support for H.R. 5244. In addition, the following intertribal

organizations, along with 25 individual tribes, have written letters and resolutions in support of H.R. 5244:

- The Rocky Mountain Tribal Leaders Council (Member Tribes in Idaho, Montana, and Wyoming)
- The United South and Eastern Tribes (Member Tribes in Massachusetts, Maine, Rhode Island, Connecticut, New York, Virginia, North Carolina, South Carolina, Louisiana, Mississippi, Alabama, Florida and Texas)
- The Apache Alliance (Member Apache Tribes in Arizona, New Mexico, and Oklahoma)
- The Affiliated Tribes of Northwest Indians (Member Tribes in Alaska, California, Idaho, Nevada, Montana, Oregon, and Washington)
- The Midwest Alliance of Sovereign Tribes (Member Tribes in Iowa, Michigan, Minnesota, and Wisconsin)
- The National Indian Gaming Association (Member Tribes across the country)

#### **IV. Conclusion**

The Mashpee Wampanoag have called Southeastern Massachusetts home since time immemorial. As a Tribal Nation, it is of crucial importance to us to restore our homelands and provide for our people.

No other tribe in the United States currently faces this very real threat of having its reservation disestablished over a legal technicality. H.R. 5244 is an emergency measure by which Congress can exercise its plenary authority to resolve this otherwise meaningless legal technicality to provide legal certainty not just to the Tribe, but also to our surrounding communities. Congress uniquely has it within its power to take action to allow the Mashpee Tribe to exercise its sovereignty and provide for our members for generations to come. For this reason we urge this Subcommittee to do everything within its power to save our reservation by supporting passage of H.R. 5244.

With respect and gratitude, on behalf all our 2,877 citizens of the Mashpee Wampanoag Tribe, I thank you for your time today and for your consideration of the impact of your actions on our future generations.

I am happy to answer any questions you may have.