



MAINE AUDUBON SOCIETY

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The responsible voice for Maine's environment and natural resources.

**MAINE AUDUBON SOCIETY
TESTIMONY NEITHER FOR NOR AGAINST
ON
L.D. 2030, AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE MAINE
INDIAN TRIBAL-STATE COMMISSION RELATING TO TRIBAL LAND USE
REGULATION
BEFORE THE COMMITTEE ON JUDICIARY
TUESDAY, APRIL 13, 1999**

Good afternoon, Senator Longely, Representative Thompson, and members of the Judiciary Committee. My name is Jennifer Cost and I represent Maine Audubon Society and its 6000 household members. I am here to present the Committee with some information it might find helpful in determining how to proceed with L.D. 2030.

While the Committee must grapple with the larger issue of sovereignty, Maine Audubon asks that you also consider the State's natural resources. Our water and wildlife are unfamiliar with territorial boundaries. Removing the Indian territories from LURC jurisdiction will impact our water and wildlife. As written, the State of Maine and its citizens would have no opportunity for notice or comment on land use regulation within Indian territory despite the potential impacts on the State's natural resources. We are uncertain whether the Indians have the staff, expertise, and/or resources to manage the authority they seek.

Thank you for your consideration.



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To: Senator Longley; Representative Thompson; Members of the Judiciary Committee
Re: L.D. 2030 (Tribal land use regulation of Indian territory)

On the attached page are a list of amendments that would address the issues I raised at the Public Hearing on LD 2030:

It is important that the Legislature not contradict the Superior Court's recent decision that the Tribe's land in Albany Township does not qualify as Indian Territory. Please add to the beginning of the L.D. "Summary" something to the effect that : Up until now, Indian Territory, other than the Reservations, has been under the jurisdiction of the Land Use Regulation Commission.

It might be helpful to the Committee to request a list of the parcels of Indian Township that are less than 500 acres and in what Township or municipality they are located.

If there are further questions, the Tribes might want to show the Committee their Land Use Plans that will replace those of LURC.

TO: JUDICIARY COMMITTEE
FROM: Jeff Rosenblatt
RE: L.D. 2030 (REMOVING INDIAN TERRITORY FROM LURC JURISDICTION)

At the public hearing on L.D. 2030, I urged the Committee to amend the bill by adding the words "which shall continue to be under the jurisdiction of the Land Use Regulation Commission", in order to make absolutely clear that Indian Territory in Albany Township will remain under LURC jurisdiction even if the bill passes and all other Indian Territory is removed from LURC jurisdiction. At the hearing I discussed my position that in agreeing to the terms of the Settlement Act, both the tribes and the State understood clearly that Indian Territory would be subject to LURC's zoning rules. I mentioned several documents, and I have enclosed them, as follows:

1. A letter dated August 19, 1996, from Governor King to Governor Dore of the Passamaquoddy Tribe. This letter states, in relevant part:

"After consultation with my Legal Counsel and the Office of the Attorney General ... I believe it is clear that [LURC] does have jurisdiction over the proposed development on Passamaquoddy land in Albany Township I am advised that [LURC] has jurisdiction to regulate any development on Passamaquoddy Trust lands throughout the state, under the terms of the Maine Indian Land Claims Settlement Act and [LURC] laws. This has been the State's clear position articulated at the time of, and throughout the period since, the enactment of the Settlement Act To determine otherwise would seriously undermine the State's authority as established under the Constitution and laws of the State, including the terms of the Settlement Act."

2. Section 6204 of the Settlement Act, which states that Indian "lands or other natural resources ... shall be subject to the laws of the state ... to the same extent as any other ... lands or other natural resources therein."

3. Transcript of the hearing of March 28, 1980, before the Joint Select Committee on the Maine Indian Claims Settlement, pages 6,7,36, and 169. On page 6, Attorney General Richard Cohen explains that state laws, including zoning laws, which are "usually unenforceable on state Indian Lands", *would* be enforceable in Maine pursuant to the Settlement Act. On page 36, Mr.

Cohen explains that Indian Territories “would be considered a *new* municipality” and would “come under the Statutes for a new municipality.” On page 169, Attorney Thomas Tureen, representing the Passamaquoddy Tribe, also agrees that pursuant to the Settlement Act, “in instances in the Maine Statutes where there are differences made between existing municipalities and new municipalities that the Indian Territories would come under the definition of a new municipality.”

4. Section 685-A (4)(A) of Title 12 of the Maine Statutes, which explains that any land in a LURC zoning district which “subsequently becomes an organized municipality ... shall continue to be regulated by [LURC] ... until such time as the municipality ... shall adopt land use plans and regulations not less protective of the existing ... resources than those adopted by [LURC].” Until LURC approves of the “new” municipality’s planning and zoning laws, the new municipality remains under LURC jurisdiction. The tribes have neither sought nor received such approval.

5. Section 1725 of Title 25 of the United States Code (“Maine Indian Claims Settlement”), which provides that all Maine Indian Tribes and “any lands or natural resources held in trust by the United States” for such Tribes shall be subject to the laws of the State “to the same extent as any other person or land therein.” Further, it says that no federal law which gives special rights to Indians, “Indian lands, ... Indian territory or land held in trust for Indians”, and which also “affects or preempts the ... regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use ... shall apply within the State.”

These are just some of the documents and evidence that support the proposition that the State does in fact have complete regulatory jurisdiction, including zoning power, over Indian lands within the State. I offer this in support of my amendment, that you may with a clear mind expressly provide in L.D. 2030 that LURC jurisdiction will continue over Indian Territory in Albany Township, as it has since the Albany land purportedly became Indian Territory.

TO: JUDICIARY COMMITTEE

RE: L.D. 2030 (TO REMOVE INDIAN TERRITORY FROM LURC JURISDICTION)

FROM: Jeff Rosenblatt

I am truly sorry I missed the work session on April 16 on this bill. Apparently you are generally opposed to including language in this bill that would make clear that LURC jurisdiction *does* apply in Albany Township. The reason I was told was that you did not want to "interfere with the court case." Do I correctly understand then that you think passing a bill that takes Indian Territory out of LURC jurisdiction would *not* interfere with the court case, but amending the bill to clarify that Albany stays within LURC jurisdiction *would* interfere? The illogic of this astounds me. So please bear with me for these few observations:

1. The issue of LURC's jurisdiction over Indian Territory is not now and has never been an issue in the court appeal. Apparently, the Tribe intends to make it an issue on appeal, but I assure you the issue has *never* been raised in the court to date.

2. If LURC's jurisdiction over Indian Territory does become an issue in this lawsuit, then passage of L.D.2030 in *any* form would constitute "interference". Surely the issue before the court, if it becomes an issue, is going to be whether under the Settlement Act, LURC has jurisdiction over Indian Territory generally, not just Indian Territory in Albany Township. This bill, then, in its current form and without any amendments, would absolutely "interfere" with the court's deciding that issue as much as a bill that provided that LURC jurisdiction did apply in Albany. If you don't want to interfere, then you must not pass this bill at all in any form.

3. MITSC recommended this bill on the express understanding that LURC jurisdiction *did* apply in Albany Township. According to Evan Richert, this was a specific condition of MITSC's support for the bill. Mr. Richert, for one, promised to support my suggested amendment, because in all fairness, that was exactly what MITSC intended to accomplish. Now all of a sudden, Albany is again abandoned. Without my suggested amendment, the purpose of the bill fails, and you must not pass this bill at all in any form.

4. It is you, the Legislature, that makes the laws, *not* the courts. This is an issue that cries out for attention now, and it is *your* responsibility, not the court's, to settle it. Let me never hear any of you say that an "activist" judge has "made" new law in an area where you refuse to accept responsibility for making the law yourself. Rather than allowing judges to say what they think the Legislature might have meant in 1980 when it passed the Settlement Act, why don't you just look at what the law *should* be, in today's radically altered context, and let the court enforce the law that you make. That you would consider reversing these roles is an abandonment of your responsibility.