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Testimony in SUPPORT of LD 2030

April 13, 1999

An Act to Implement Recommendations of the Maine Indian Tribal State Commission Relating to Tribal Land Use Regulations

Senator Longley and Representative Thompson and members of the Judiciary Committee

I am Representative Donald Soctomah and I am providing testimony in support of LD 2030. This Bill would have the Passamaquoddy Tribe overseeing land use management of over 130,000 acres of Federal Tribal land.

I will give a brief overview of our existing structure within the Tribe. All our policies are driven by a desire to protect our land, as Native people it is our duty to protect the environment. Legends and stories of our past originate from the land, stories of the creation originate from the land. The animals are also part of the stories of our legends, our concept of Man and animal are intertwined with spirituality, a concept which is not understood by many groups.

The Tribe has been managing the land since the signing of the Maine Land Claims Settlement in 1980. I have been the forest land manager for the last 15 years, since I graduated from the University of Maine. We manage the timber harvesting, the recreation activities, camp building, house lot assignments, every aspect of land use. There is also a Tribal Natural Resource Committee, this group of 8 individuals, works with Tribal and State and Federal agencies on creation of policies as it relates to land use. Another Tribal department which works on the environmental protection of our land is the Environmental Protection Department, they monitor the water quality, review policies affecting our land, and set the environmental goals of the Tribe. The Tribal Game Wardens monitor and prevent any land abuses by the ever increasing population and enforce all land use policies set by the different agencies.

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The Tribes view the management of our land as our sovereign right, this was long before the colonial law. Tribes have been living in harmony with nature for thousands of years, land management is not something new!

We have addressed the concerns of the Albany Twp. by excluding that parcel of land in this Bill. This Bill addresses Land use, it is not designed to impact the impoundment zone of local dams, we are willing to work with any concerns within this zone. Impoundment zones are regulated by FERC federal energy regulator commission.

We have specialist in all aspects of land management, so we continue to refine & improve our goals.

I thank you for your time and consideration.

Representative Donald Soctomah

**TESTIMONY OF EVAN RICHERT
DIRECTOR, MAINE STATE PLANNING OFFICE
TO THE JOINT STANDING COMMITTEE ON THE JUDICIARY**

**IN FAVOR OF LD 2030
AN ACT TO IMPLEMENT RECOMMENDATIONS
OF THE MAINE INDIAN TRIBAL-STATE COMMISSION
RELATING TO TRIBAL LAND USE REGULATION**

April 13, 1999

Senator Longley, Representative Thompson, members of the Committee, my name is Evan Richert, and I am director of the State Planning Office. I also am a member of the Maine Indian Tribal-State Commission, but today I am speaking on behalf of the King Administration in support of LD 2030.

This bill, by explicitly removing Indian Territory from the jurisdiction of the Land Use Regulation Commission, except for such territory that lies in Albany Township, would clarify that the Passamaquoddy Tribe and the Penobscot Nation have the same land use authority within the boundaries of their territories as a municipality has within its corporate boundaries.

We believe that this was the intention of the Indian Claims Settlement Act. Section 6206 of the Settlement Act reads as follows: "Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, *shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances* and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State...." (emphasis added)

On the face of it, the language seems crystal clear. The tribes have all the powers of a municipality, which includes the power to control land use.

However, another section, Section 6204, reads as follows: "Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State to the same extent as any other person or lands or other natural resources therein."

One reading of this section confounds the otherwise clear reading of Section 6206. That reading assumes that Section 6206 did not automatically give the tribes automatic status as an organized municipality, with full power to enact their own land use ordinances. Rather, because Indian Territory is being drawn from land in the unorganized part of the state, according to this interpretation, the tribes have to go through a formal withdrawal process in order to get out from underneath LURC's land use control.

We believe this is a strained interpretation of the Settlement Act, but it creates enough ambiguity that it should be clarified. And in deciding in which direction to clarify it, it is helpful to go back to the legislative history of the Act. On April 2, 1980, then Attorney General Richard Cohen responded to a series of questions posed by the Legislature's Joint Select Committee on Indian Land Claims. One response had to do with questions of taxation, but it included statements that give clarity to the issue at hand. The exchange was as follows:

Q: "What is the status of Indian Territory after settlement, either organized or unorganized, and what are the tax consequences? Will it result in any tax exemptions? What will be the effect on the Forest District, the Spruce Budworm District, and the Tree Growth Tax Law?"

A: "The Unorganized Territory Educational and Service Tax, Title 36 M.R.S.A., Sections 1601-1605, will not apply to the Indian Territory. *Since the Indian territories will be functional equivalent of organized areas*, these taxes will not apply to the Territory....Since the effect of L.D. 2037 [the Implementation Act] will be to remove certain areas of the State from the unorganized territory it will automatically reduce State costs to the territory. Thus, *removal of the Indian Territory from unorganized territory* will result in no loss of revenue to the State." (Memorandum from Richard S. Cohen to Joint Select Committee on Indian Land Claims, April 2, 1980, page 2; emphasis added)

Later in the exchange, there is a question and response on point:

Q. "What specific municipal powers and duties are given to the Tribe and Nation under the bill?"

A. "The effect of the bill is to make the Indian Territories the functional equivalent of a municipality. *The bill confers on the Tribes within their Territories those powers and duties possessed by municipalities under 'home rule.'* Those powers and duties include but are not limited to ordinance powers, taxation powers, home rule powers, the power to sue and be sued and the power to dispense and receive services." (*Ibid.*, page 9; emphasis added)

Clearly, at the time of passage of the Settlement Act, the Attorney General who negotiated the final provisions on behalf of the State believed that the Tribes were conferred with the home rule powers of a municipality, which includes land use authority.

This question has been addressed only once in the courts since the enactment of the Settlement Acts. In the case of *Kimball v. Land Use Regulation Commission and Passamaquoddy Tribe*, decided just three months ago on January 5, 1999, the Kennebec Superior Court stated the following in a footnote to the case:

"The legal designation 'Indian Territory' has particular significance to this case in at least two respects. First, the federal Maine Indian Claims Settlement Act, 25 USC

Sec. 1724(h) and the Maine Implementing Act, 30 M.R.S.A. Sec. 6206, *grant full state municipal powers to the Passamaquoddy Tribe within their Indian Territory, which if exercised, includes zoning and regulatory powers paramount to those of LURC....*" (*Kimball vs. Land Use Regulation Commission and Passamaquoddy Tribe*, Kennebec County Superior Court, Docket AP-97-102, Jan. 5, 1999; emphasis added).

Thus, the one time a court has addressed the issue, it simply assumed that the language of Sec. 6206, on its face, provides the Tribes with full local land use authority.

It is time for us to sweep away any ambiguity that may exist by enacting LD 2030.

In enacting LD 2030, I want to make clear that the Tribes still would be subject to certain state-level land use laws. This is, indeed, where the language of Section 6204 does apply. Just as a development within a municipality that, by its location or size, triggers a state land use law, such as the Natural Resources Protection Act or the Site Location of Development Act, so would such a development within Indian Territory. And, just as a municipality must abide by the State's Mandatory Shorelands Zoning Act, so must the Tribes within Indian Territory. Nor would enacting LD 2030 in any way give the tribes extra-territorial authority -- that is, the ability to control land uses outside of their territories even if they had an interest in such land uses -- any more than a municipality has authority beyond its boundaries.

What it will do is give the Tribes the same exclusive local land use authority within their territories that a municipality has within its boundaries. And that appears to be what the Settlement Act intended.

Thank you. I would be happy to answer any questions.

PASSAMAQUODDY
TRIBE
INDIAN TOWNSHIP

LD 2030

MITSC LAND-Use BILL



MARTIN DANA

4-13-99

Testimony to the Judiciary Majority

Good afternoon
Senators Longley / Rep. Thompson and
Hi, distinguished committee members.

My name is Martin Dana and I'm here on behalf of the Passamaquoddy tribe of Indian Township, I am an employee of the Environmental Department, under the lead program. And a former council member.

I am here to testify "for" the ^{support} passing of L.D. ~~1961~~ ²⁰³⁰ an Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation"

I have been a member of the Tribe for 40 years and in those 40 years I have seen many changes takes place on the reservation. When I was a child growing up on the reservation economy was tougher than today and our ancestors had no control over the land. We the Passamaquoddys have inhabited the region for more than 10,000 years and thus have a strong sense of belonging to the land.

Today we are struggling to gain control over the destiny that our ancestors had lost. What does it take to see where self-determination goes from here? When are we going to see results? It's a

been long battle for our ancestors who tried to maintain control over the land that was taken away years ago.

We are beginning to see the seeds of a better life and those seeds have been planted and have taken roots. We the Passamaquoddy^s want to protect and keep the natural resources, but also see a possibility ^{And the ability} to develop these resources in a way that will not exhaust the environment.

And the ability

As a child growing up, my elders have always taught us to only take what is needed and not more. When we take from the earth what it provides we need to give back something in return for what we take. Maintaining a cultural significance to the land and water has always been in our lifestyle and will always be both in the past and the future. Written and oral history tells us the true facts how us the Native Americans are bound to the land, and water, to care for it and in return be cared for from its resources.

The Tribe has done so much to gain status of self-determination. And not granting the passage of this bill would be a serious blow to the continuity of this heritage, and an insult to the Passamaquoddy people. Thank you for your time. And hope you consider passing this bill.



The Passamaquoddy Tribe
Pleasant Point Reservation

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TESTIMONY ON L.D. 2030
Tuesday, April 13, 1999

Good Morning, the Chairpersons and to all the Members of the Committee, I extend greetings from the Passamaquoddy People.

I submit this testimony in support of L.D. 2030, an act to allow the Passamaquoddy and Penobscot to manage our land resources in harmony with our Tribal culture. Our ancestors have taught us that the Great Spirit provided the land for all to live upon. This gift from the Great Spirit is sacred and must be respected and protected for future generations yet unborn. The Passamaquoddy People have managed lands for many centuries in a manner that provides for our people while maintaining a balance within our Mother Earth. Our ancestors have left their mark on this land in many ways and have passed down through the generations their stewardship which is based upon a true respect and knowledge on the lands.

The Tribe's Forestry Program is committed to a practice of a Sustainable Harvest, in order to preserve this resource for those Passamaquoddies unborn. The Passamaquoddy Tribe is actively engaged in securing resources that will permit us to begin development of Comprehensive Land Use Plans that harmonize with our Culture. Our philosophy regarding Economic Development is that it must respect and honor our People and All Natural Resources. The Passamaquoddy Tribe is capable of making its own decisions in management of its land, we do not need or want a paternal intrusion into internal matters of the Tribe. I submit my words to you today to ask for your support of this legislation and to ensure you that once the authority to manage our land is again recognized by the State, that the Passamaquoddy will be "good neighbors".

The Passamaquoddy Tribe has presented L.D. 2030 in order to regain the management of Tribal Lands . The Passamaquoddy Tribe asks each of you on the Judiciary Committee to support L.D. 2030, an Act to Implement the Recommendations of the Maine Indian Tribal-State Commission ... (regarding Use and Management on Tribally Held Land) . Kci Woliwon (thank you).

MAINE INDIAN TRIBAL-STATE COMMISSION

Testimony in Support of LD 2030

An Act to Implement Recommendations of the
Maine Indian Tribal-State Commission
Relating to Tribal Land Use Regulation

April 13, 1999

Introduction. Good afternoon, Senator Longley, Representative Thompson, and other members of the Joint Standing Committee on Judiciary. I am Diana Scully, Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am standing in for MITSC's Chair Cushman Anthony today in support of LD 2030, a bill recommended by MITSC relating to tribal land use regulation.

Unfinished Business for 12 Years. This issue is a major piece of unfinished business between the State and the Tribes that has been dragging on for twelve years:

- ⇒ MITSC began discussions about jurisdiction of the Maine Land Use Regulation Commission (LURC) in relation to Indian Territory beginning in 1987. Over the next few years, MITSC facilitated meetings of LURC and tribal representatives to try to arrive at an agreement, but the State felt that statutory change would be required to resolve the issue.
- ⇒ In 1991, two bills were introduced—one provided that the Passamaquoddy Tribe is exempt from LURC's jurisdiction and another specified a process for the Penobscot Nation to develop a land use plan and submit it to the federal government for approval. The Judiciary Committee asked the Tribes to agree on a joint bill and the Penobscot Nation agreed to take the approach of the Passamaquoddy Tribe. The Judiciary Committee referred the bill to the Natural Resources Committee and eventually the Legislature enacted an amended version. In 1992, the bill was vetoed and the veto was not overridden.
- ⇒ In 1997, as part of the civil law review required by Resolves 1997, chapter 45, MITSC brought together the State and the Tribes to renew efforts to negotiate an arrangement for the regulation of land use in Indian Territory. During these discussions neither side conceded the basic question of whether the Tribes have jurisdiction or have to go through procedures to get out from the jurisdiction of LURC. Under the arrangement, MITSC was to review comprehensive plans by the Tribes, and once MITSC passed the plans, there would be no dispute about tribal authority. MITSC talked about excluding Albany Township or land areas of 500 acres or less.

- ⇒ MITSC took the arrangement to the 118th Legislature in 1998 and there was further negotiation there. MITSC won the majority support of the Judiciary Committee, the majority support of the House, and a 16-16 tie in the Senate. The Conference Committee could not resolve this, and the legislation lost as a result of a single lacking vote.

- ⇒ As part of its 1998 review of the civil laws of Maine, MITSC continued efforts to resolve questions and arrive at agreement about tribal land use regulation. Both the state and tribal members of MITSC now believe it is appropriate to clarify the issue and to declare that the Tribes have authority over land use in Indian Territory.

LD 2030. As a result of this past year's discussions, MITSC is recommending LD 2030. The bill excludes Indian territory (along with organized cities and towns and Indian reservations) from LURC's jurisdiction. Because of pending litigation, Albany Township has been excluded from this bill.

Time for Resolution. The failure to resolve this issue after so many years of extensive debate and negotiation has been frustrating, to say the least. MITSC urges you to support LD 2030, and hopes that 1999 will be the break-through year for clarifying that the Tribes have jurisdiction to regulate land use within their territory.

Thank you for your consideration.



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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Sen. Longley, Rep. Thompson, distinguished members of the Judiciary Committee; my name is Henry Joy, Rep. of Dist. # 141. My schedule will not permit me to be in attendance at your public hearing today, so I respectfully submit this testimony in support of LD 2030 in this written format. The proposal contains a long over-due redefinition of the land areas of Maine referred to as Indian Territory.

For some reason there is a definite trend in this state to give its citizens some level of control in their governance systems and then impose restrictions which curb that self-governance to a point that resembles a "Big Brother" oversight. Such is the current designation of "unorganized and deorganized" territories of Maine. Through the use of strings as referred to above, LURC currently "controls" the usage of lands within those areas designated ~~and~~ Indian Territories. It is past time for those strings to be removed. This LD would serve to remove them and allow a greater measure of self-governance.

The Passamaquoddy and Penobscot Nations have a strong governance system in place and are certainly more than capable of determining proper usages of their lands. I made this proposal in an LD which was presented to the State and Local Committee earlier this year. That proposal was carried over to the next year of this session. I

District 141 Amity, Bancroft, Crystal, Dyer Brook, Haynesville, Hersey, Island Falls, Linneus, Mattawamkeag, Oakfield, Orient, Patten, Sherman and Weston and Glenwood, Macwahoc and Reed Plantations and Benedicta and Kingman Townships

seek your assistance and ask that you work and pass this bill this year. That will give the Passamaquoddy and Penobscot Nations an earlier start to establish land use controls on their own lands. Thank you, and I would like to be notified of the workshop date.