



**Passamaquoddy Tribe
Pleasant Point Reservation**

**Office of the Governor
*Richard M. Doyle***

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**Testimony in Support of LD 2607
An Act Concerning Previous Passamaquoddy Indian Territory
Legislation
presented by Governor Richard M. Doyle
March 15, 2000**

Good Afternoon to Chairperson Longley and Chairperson Thompson and members of the Judiciary Committee. My name is Richard M. Doyle, Governor of the Passamaquoddy Tribe at the Pleasant Point Reservation. I have spoken with Governor Stevens of the Passamaquoddy Indian Township Reservation and we concurred that I shall speak on behalf of the Passamaquoddy Tribal Government.

I am here in Augusta today to ask for your support on a matter that I thought was attended to back in 1992. The matter of designating Albany Township as Passamaquoddy Indian Territory was done by a previous legislature in 1992. The State agreed to allow this designation, the Tribe

agreed by its passage of a Joint Tribal Council Resolution ratifying this decision, in other words you gave us your word and we accepted it. We did not take shortcuts to your process, in fact the Law followed a State Attorney General's Opinion, the Maine Indian Tribal State Commission reviewed this matter twice and agreed both times, the State Legislature reviewed this matter and agreed, Governor McKernan reviewed this matter and agreed, and the Secretary of State's office received our certification that the Tribe had ratified this change to the Implementing Act. We thought we had a law.

The Tribe thought we had your word on this matter. As happens to the Tribe so often, by no fault of the Legislature, some 3rd party expends a lot of energy to find or create a loophole in a deal or treaty that the Tribe makes in good faith with another party. It seems that there are many instances when the Tribe is exposed to these tactics by 3rd parties. These tactics have been barriers which the Tribe must hurdle. These tactics may have slowed the development of the Passamaquoddy people, but let me assure you that they will not stop us.

Because it was the Implementing Act that was being amended in 1992, we understood we had a law that neither the Tribe nor the State could undo without the cooperation and consent of the other. That is one of the most basic and essential parts of the Settlement. The Tribe still feels that your word is good. The Tribe desires to continue building our mutually beneficial relationship. The Tribe trusts that you will do right and honor the decision made by your predecessors.

It is that decision that needs a minor tweak to make it palatable to the Courts. The minor adjustment we seek in LD2607 will help to clearly state the intent that we, the State and the Tribe mutually and unanimously agreed upon back in 1992.

Some of our adversaries might like to cloud the issue by making this an argument about High Stakes Bingo. First, let me say that TO US this bill is NOT about Bingo, it is about correcting an oversight which has been pointed out by the Maine Supreme Court; it is about clarifying our mutual intent of designating the Tribe's land in Albany Township as Indian Territory, it is about honoring the word the State of Maine had given to the Passamaquoddy people in 1992.

The development of a Tribal Bingo by the Passamaquoddy people is allowable under current law. The questions and concerns regarding development of a Tribal Bingo by the Passamaquoddy people are subject to a process defined by the State and fully complied with by the Tribe. The Tribe has answered the questions and addressed the concerns regarding development of a Tribal Bingo by going through the full LURC permit process, with months of study and two days of public hearing, with a full opportunity for LURC, their staff, other government agencies and the general public to study the Tribe's proposal and make their comments. By issuing those permits, LURC has certified that the Tribe meets all State standards, and the courts have not disputed that conclusion in any way.

This bill is about a process, and a relationship between the State and the Tribe, much more than it is about one small piece of land, or how the Tribe could use it.

The intent and spirit of the 1992 law is clear to the Tribe. The 1992 law has never been repealed. The bill before you today is an opportunity to resolve the inconsistency and clarify the intent of the original 1992 legislation. Please recommend passage to the full body.

Those are my words on behalf of the Passamaquoddy Tribe. May the eagle deliver you the guidance to honor your past. Kci Woliwon (thank you very much)

MAINE INDIAN TRIBAL-STATE COMMISSION

March 15, 2000

The Honorable Susan Longley, Senate Chair
The Honorable Richard Thompson, House Chair
Committee on Judiciary
Room 438 State House
Augusta, Maine 04333

Dear Senator Longley and Representative Thompson:

I am writing on behalf of the Maine Indian Tribal-State Commission (MITSC) to comment on LD 2607, An Act Concerning Previous Passamaquoddy Indian Territory Legislation. During its meeting of March 10, 2000, MITSC voted to support LD 2607.

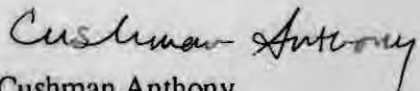
We first reviewed MITSC's past actions on this issue. Minutes indicate that on January 22, 1991 MITSC voted unanimously "to support legislation to add the farm in Albany Township owned by the Passamaquoddy Tribe to the list of territory that can be held in trust for the Tribe." Then on December 17, 1991, MITSC voted unanimously "to reaffirm MITSC's support of legislation proposed by the Passamaquoddy Tribe to place into trust the small farm in Albany Township." On February 4, 1992, MITSC presented testimony to the Committee on Judiciary in support of LD 2081, the bill to add this land to Indian Territory.

We then discussed what action MITSC ought to take concerning the bill. As you know, on February 7, 2000, the Maine Supreme Judicial Court issued a decision in Kimball v. LURC that this land in Albany Township is not in Indian Territory as defined by 30 MRSA §6205. Passamaquoddy Representative Donald Soctomah sponsored LD 2607 in response to that decision.

Several MITSC members believe that the actions taken in 1991 and conveyed to the Legislature in 1992 were sufficient, and MITSC does not need to undertake a full review the matter again. Others believe that MITSC needs to go through its review process anew, probably including public notice by advertisement and taking public comment on the proposal, because LD 2607 is interpreted by those members as a new proposal.

With one member absent, MITSC's vote on LD 2607 was five in favor and three against. Those who voted against the motion to support the bill clarified that they did so only because they felt the public notice provisions of our bylaws should be applied to this before we took action, and there was not enough time to undertake that review process prior the March 15, 2000 hearing on the bill.

Very Truly Yours,


Cushman Anthony
Chair

cc: Members, Committee on Judiciary ✓
Tribal Representatives
MITSC Members

Governor
Richard Stevens

Lt. Governor
Phyllis Saunders

Tribal Representative
Donald Soctomah



Council Members

Victoria Boston
Ralph Doten
Jeannette Parker
Richard Sabattus
Gerald Stevens
John Stevens

March 15, 2000

Hon. Susan Longley Senate Chair
Hon. Richard Thompson, House Chair
Committee on Judiciary
Room 438
State House
Augusta, ME 04333

Dear Hon. Longley, Thompson and members of the Judiciary Committee:

I am Wayne A. Newell, current member of the Maine Indian Tribal/State Commission, MITSC, I am a former member of the Passamaquoddy Tribal Council at Indian Township, I am also a former member of the Maine Legislature as the Passamaquoddy representative during the first half of the 1980s and lastly I was honored to be a member of the negotiating committee of the historic 1980 Land Claims Settlement Act. I have discussed the contents of this letter with William Eric Altvater, the other Passamaquoddy representative to MITSC, we share the same view on this matter. I wanted to deliver this brief testimony in person today but previously scheduled medical tests prevent me from doing that.

This letter is to address a concern that seems to be circulating on the question of whether or not this is a new or old legislative process or that the Law Court somehow voided completely the clear intent and actions taken by the Tribe and by the Legislature in 1992.

At a March 10, 2000, meeting of MITSC, a Passamaquoddy Commission member asked the Commission's support for L.D. 2607, "An Act Concerning Previous Passamaquoddy Indian Territory Legislation." The proposal passed but divided the Commission, with three State appointees declining support on procedural grounds, seeing the request as one for a **new** Commission recommendation for **new lands** to be added to Passamaquoddy Indian Territory, for which public notice and an opportunity for public comment would be required.

The Tribal-State Commission completed its role in 1992. Their recommendation of this same land led the Legislature to list the Albany parcel in the description of Passamaquoddy Indian Territory in 1992. The Commission's advisory role is limited by law to lands "**other than those described in subsections 1, 2, 3 and 4.**" Section 6205(5). In *Kimball v LURC*, the court concluded that the legal effect of the legislature's (and the Tribe's) 1992 amendment of the Implementing Act was that "the Albany land has, in fact, been identified and added to the list of lands that may become Indian territory upon the completion of other acts." 2000 ME 20 at 12.

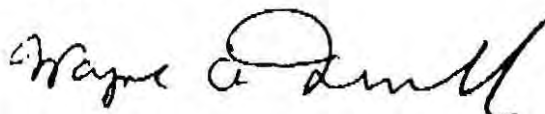
Since the Albany land is listed in subsection 1, following MITSC's 1992 recommendation, there is now no need for the Commission to act again on the same land. As the Kimball

Wayne A. Newell
Page Two

Court said, "the Albany parcel met all of the conditions precedent to becoming Indian territory except one-it was not placed in trust with the Secretary [of Interior] and certified before January 31, 1991." Opinion, at 11-12.

I am hopeful that LD 2607 will do what it is intended to do, to correct an error. The Law Court does not suggest anything else. This issue is not complicated. To read more into Kimball v LURC would, in my opinion, not further the cause of cooperation between the Maine Tribes and the State of Maine.

Sincerely



Wayne A. Newell
Passamaquoddy, Indian Township Representative
MITSC

CC: Members; Judiciary Committee
Passamaquoddy & Penobscot Tribal Governors
MITSC Members
Ms. Diana Scully, MITSC Director

William Altvater, Jr.
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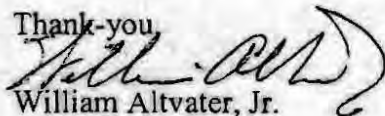
March 14, 2000

To the members of the Judiciary Committee:

My name is William Altvater, Jr., former Lt. Governor of the Passamaquoddy Tribe at Sipayik. As Lt. Governor I was the representative for the Tribe in the application process regarding the change in zoning for 18.3 acres in Albany Township. This change in zoning that was approved by the Land Use Regulation Commission would have facilitated the development of a High Stakes Bingo hall. Unfortunately, as the result of an apparent error in the revisors office while this legislation was going through the legislative process, a Maine court determined that the legislature made a mistake in the drafting of the bill. The goal of this bill before you is to merely correct a mistake that has been made and nothing more than that. This bill has been approved by the Maine Indian Tribal State Commission, a prior Judiciary Committee, the House of Representatives, the Senate, was signed into law by the Governor of the State of Maine and ratified by the Joint Tribal Council of the Passamaquoddy Tribe. In short, this previously approved bill is more than just a bill, it was and is an amendment to the Settlement Act, an agreement by two sovereign nations.

Some of the opponents to this bill have been articulating that since the court ruled a mistake was made, the Tribe needs to go through the entire process once again and to take public comments on various levels before consideration by any governmental body. I submit to you that this is not accurate, and ask you the question, "Why would the entire process need to be replicated, only because of a clerical error?"

In closing I would like to say that at present the Tribe is experiencing an unemployment rate of 63%, drug and alcohol abuse are at an all time high, and the outlook of our youth is very bleak. The State uses revenues from the lottery in the same manner that other revenues are used. The day has long ago come and gone, that the Tribes' legitimate goals are accommodated. We are neighbors, we want to be good neighbors, and the official record of the LURC hearings document that, I extend my hand in a spirit of good will and co-operation, and hope that you have a hand to exemplify the same.

Thank-you

William Altvater, Jr.

An Act Concerning Previous Passamaquoddy Indian Territory Legislation

NO FURTHER ACTION OF THE TRIBAL-STATE COMMISSION
IS REQUIRED

In 1992, by written testimony to the Judiciary Committee, the Tribal-State Commission recommended that the land affected by L.D. 2607, an 18 acre parcel in Albany Township, be included in Passamaquoddy Indian Territory. With the unanimous approval of the Committee and the Legislature, L.D. 2081 (1992) was enacted, ratified by the Passamaquoddy Tribe, and the Albany land was added to a list of lands previously approved for Indian Territory in 30 M.R.S.A. § 6205(1)(B) of the Implementing Act.

For the Albany parcel, the Legislature's 1992 acceptance of the Commission's recommendation completed the Tribal-State Commission's statutory role in designating new Indian Territory. The State delegates to the Tribal-State Commission have presented their view that Kimball v. LURC, 2000 ME 20 "invalidated the steps previously taken by the State to include certain lands within Albany Township into Indian Territory."

The opposite is true. The Maine Supreme Court *upheld* the 1992 Amendment as meaningful, and effective, *solely because* it found that "the Albany land has, in fact, been identified and added to the list of lands that may become Indian territory upon the completion of other acts." Kimball v. LURC, 2000 ME 20, at 12. The Commission's recommendation to the Legislature is required under the Implementing Act only for lands "**other than those described in [§ 6205] subsections 1, 2, 3 and 4.**" § 6205(5).

THE COMMISSION'S ROLE HAS ALREADY BEEN SATISFIED

Since *the Albany land is listed in subsection 1*, additional legislation to "complete the steps necessary" to make the Albany parcel Indian territory," Opinion, at 15, does not invoke the Commission's advisory authority on Indian Territory. The Albany parcel has gone beyond the stage of MITSC's recommendation. The Commission's prior recommendation **has become law**. The State is bound, as much as the Tribe.

The properties listed in § 6205(1)(B) are not all Indian Territory by virtue of being listed. The Kimball decision attests to that. But they *are* all State-approved for that purpose, or they would not be included on the statutory list.

Regardless of what recommendation MITSC might now make, formal approval of the Passamaquoddy Tribe would be required under the Settlement Act for the Albany Township parcel to be removed from the list of lands designated in § 6205(1)(B). 25 U.S.C. § 1725(e)(1).

Gregory W. Sample
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for the Passamaquoddy Tribe