

TO: MEMBERS OF THE JUDICIARY COMMITTEE

FROM: JEFFREY ROSENBLATT (RFD 1, Box 2200, N. Waterford) (Albany Township)

RE: L.D. 793, "AN ACT TO CONFINE TRIBAL GAMING TO THE RESERVATION OF THE LICENSED ORGANIZATION"

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I write to you in *support* of L.D. 793, which is titled "An Act to Confine Gaming to the Reservation of the Licensed Organization". This bill repeals a 1991 amendment to Title 17 M.R.S.A. §314-A(5) and reinstates the statute as it was originally enacted in 1987. I urge you to vote in favor of this bill, because this bill will protect Albany Township from an unwanted incursion by a destructive large-scale gambling development; because the 1991 amendment was ill-advised; and for the following reasons:

I have been a resident of Albany Township for more than 26 years. Albany is in the Unorganized Territory and under the planning and zoning jurisdiction of the Maine Land Use Regulation Commission. You may be aware of our community's long struggle to prevent the development in Albany of a high-stakes bingo hall by Tamir Sapir, a New York developer from the former Soviet Republic of Georgia, who has proposed in the name of and with the Passamaquoddy Tribe to build a massive 2,000-seat gambling hall. The 18-acre site is on the edge of the White Mountain National Forest and adjacent to and in the floodplain of the Crooked River, a Class AA protected river which is a principal spawning ground of landlocked salmon in this State and which is in the endangered watershed of the Sebago Lake drinking water system. Albany is a rural, backwoods community which has no commercial development, no store, no post office, nothing.

The residents and landowners in Albany unanimously oppose this gambling development. In

neighboring Bethel, 75% of residents who voted in a special election held last year opposed the development. The Oxford County Commissioners voted to oppose the development, as did the Bethel Board of Selectmen. It is, in short, an utterly misguided proposal which would be likely to cause irreparable harm to the environment, the local economy, and the character of our entire region.

This project was made possible by the 1991 amendment to the statutes regulating gambling, the amendment which L.D. 793 is designed to repeal. This is the background of the proposed legislation:

The Passamaquoddy Tribe has in the past suffered grave injustices and continues to suffer from the consequences of that past as well as from the injustices of the present. In their quest to remedy those injustices, the Tribe joined as a plaintiff with other tribes in a lawsuit against the State of Maine in the 1970's. After years of litigation, the State and the tribes negotiated a final settlement of the lawsuit, and their agreement became statutory law in the Maine Indian Claims Settlement Act of 1979 (30 M.R.S.A. §§6201 et seq.) and corresponding federal legislation (25 U.S.C. §§1721 et seq., 1980). The crux of the Settlement Act was an exchange of money and land from the State for a release from all liability for past injustices and an agreement from the tribes that they would surrender any claim to total "sovereignty" and would generally abide by the laws of the State of Maine. The United States government accorded federal recognition to two tribes, the Penobscot Nation and the Passamaquoddy Tribe.

After the Settlement, the Penobscot Nation continued to operate high-stakes (no limit on betting or on prizes) bingo games on its reservation in violation of Maine laws which prohibited high-stakes gambling completely. In spite of the agreement embodied in the Settlement Act, when the Maine Attorney General ordered the closure of the illegal gambling halls, the Nation sued the State.

The Maine Attorney General won that lawsuit in the Maine Supreme Court, shutting down the games in 1983 (Penobscot Nation v. Stilphen, 461 A.2d 478). The United States Supreme Court dismissed the Nation's appeal, saying that it did not raise any federal questions, that is, that the issue was entirely a matter of Maine law (464 U.S. 923 (1983)). This reaffirmed that under the Settlement Act, the terms of which were expressly *agreed to by the tribes*, Maine Law controls high-stakes gambling everywhere in this State, even on Indian land.

The Penobscot Nation responded by introducing a bill to legalize their games *on their reservation*, and the Tribe and the Nation persuaded the Legislature in 1985 to pass the bill permitting high-stakes bingo games ("Class II" gambling) *on the reservations* of each tribe. Governor Brennan vetoed the bill and it failed to become law. The tribes persisted, and in 1987 the Legislature enacted a law which permitted each federally recognized Indian tribe to obtain a license to operate *one* high-stakes bingo hall on up to 18 non-consecutive weekends per year (no more than nine weekends in six months). Subsection (5) of §314 of that law provided that "All games must be conducted *on the reservation* of the licensed organization." The Nation promptly applied for and received a license and reinstated its high-stakes bingo game on its reservation. The Passamaquoddy Tribe also ran a game on its reservation.

In 1991, at the request of the tribes, the Legislature amended the law again to expand the permissible dates of operation of the high-stakes games from 18 to 27 weekends per year, whether or not consecutive. At the same time, Subsection 5 of §314 was amended to provide that the games could operate on the "*Indian Territory*" of the licensed organization. It is that 1991 amendment which L.D. 793 would repeal.

The Indian Claims Settlement Act created a special category of property called "Indian Territory", defined in the Act to include the reservations *and* several specific large parcels of land, tens of thousands of acres located in the Unorganized Territories, which the Tribe could purchase and then deed in trust to the federal government as "trust lands". The designation as "Indian Territory" endows the land and its owners with certain rights and privileges, such as freedom from property taxation. The Tribe has successfully lobbied for six different amendments of the Act, in 1983, 1985 (twice), 1987, 1992, and 1993, to expand the scope of "Indian Territory". **At the time of the 1991 amendment to the bingo law, which allowed high-stakes gambling on Indian Territory, there was no Indian Territory in Albany Township.**

In 1992, the Tribe's representative in the Legislature successfully introduced a bill to amend the Settlement Act; and "Indian Territory" was extended to include "any lands in Albany Township acquired by the Passamaquoddy Tribe before January 1, 1991 ...". The Tribe had acquired the 18-acre site in Albany in 1988. The land, like almost all the land in Albany, was in a Land Use Regulation Commission "General Management" zone which prohibits commercial development. The Settlement Act also required that to qualify as "Indian Territory" the land had to have been deeded in trust to the federal government by January 31, 1991.

By that time, the Tribe was formulating plans for a full blown casino. According to Passamaquoddy Tribal Governor Cliv Dore, the Tribe was considering two possible casino sites: Albany and Calais. After making Calais its first choice, the Tribe embarked on a multi-year battle to establish a casino there. In 1993, at the Tribe's request, the Legislature again amended the Settlement Act to make up to 100 acres in Calais eligible for "Indian Territory" status, which would permit "Class II" (high-stakes bingo) gambling there. The Calais plan failed in 1994 when the Legislature

refused to expand the gambling laws to permit "Class III" (casino) gambling. The Tribe sued the State to force it to accede to the casino, but again the courts held against the Tribe, declaring that under the Settlement Act, the Tribe *agreed* to be subject to State law, and State law prohibited Class III gambling completely (Passamaquoddy Tribe v. State of Maine, 75 F.3d 784 (1st Cir. 1996)). The Tribe then, in October of 1994, deeded the Albany land to the federal government in trust and purported to make it "Indian Territory", setting the stage for the Albany bingo hall proposal.

In 1997, Passamaquoddy Representative to the Legislature Fred Moore submitted a bill, co-sponsored by Penobscot Representative Paul Bisulca, to increase the number of permitted high-stakes bingo weekends to fifty-two. Ultimately the bill emerged from Committee and went to the floor with a 40-weekend limit. The bill failed when Governor King vetoed it, leaving the 27-weekend limit in place.

Immediately after the failure of that bill, the Tribe submitted applications to the Land Use Regulation Commission ("under protest" of the Commission's jurisdiction) to rezone the 18-acre Albany land to permit commercial development in a zone that theretofore prohibited such use, and for a special exception permit to build a high-stakes bingo hall, pursuant to its financing contract with Tamir Sapir. Under that contract, Mr. Sapir has financed the entire application process, which unfortunately became another battleground for the Tribe. In its applications, the Tribe says that of all its off-reservation "Indian Territory", only Albany Township is close enough to a population base to support a commercially successful gambling operation. In November of 1997, the Commission granted the Tribe's applications; but the State Superior Court vacated the Commission's decisions in December of last year, and prohibited the bingo hall on the ground that the Albany land was not "Indian Territory". Because the Settlement Act requires that all Indian Territory must have been

deeded in trust to the federal government by January 31, 1991, and because the Albany land was not deeded in trust to the federal government until October of 1994, the court said that the land did not qualify as a site for high-stakes bingo games. The Tribe has appealed that ruling, and the appeal is now pending before the Maine Supreme Court sitting as the Law Court.

We are confident that the Law Court will uphold the Superior Court ruling; but we cannot guarantee that outcome, and the land's status as "Indian Territory" remains in doubt for now. There is no reason to leave the bingo hall question in doubt, though. If it were not for the 1991 amendment to the gambling laws, none of this would have occurred; there would have been no possibility for an off-reservation gambling hall in Albany. There should be no such possibility in the future, and the passage of L.D. 793 should help to achieve that.

The passage of this bill will not affect the Penobscot Nation at all, and its game will continue as it always has, on the Penobscot reservation. The Passamaquoddy Tribe has also apparently been running high-stakes bingo games on its reservation in Indian Township. The State Police interrupted the games on the evening of October 1 of last year and at least temporarily shut them down because they were not currently licensed (see *Bangor Daily News* article enclosed); however, as reported last month by *The Quoddy Tides* newspaper of Eastport (see article enclosed), Tribal Legislative Representative Donald Soctomah says the closure of the Indian Township bingo games "concerned the payment of the licensing fee, and Soctomah mentions that he is working to get the facility reopened." In other words, the passage of L.D. 793 will leave intact the existing high-stakes bingo games on both the Penobscot and Passamaquoddy reservations.

In summary, the passage of this bill will not affect the status quo at all; the tribes can continue to run high-stakes bingo games on their reservations. Since the Penobscot Nation has shown no

desire to move their game, and since the Passamaquoddy Tribe has stated that there currently is no Indian Territory outside of Albany that would reasonably support the games and that it intends to relicense it on-reservation games, the tribes should suffer no current detriment from the passage of this bill. In fact, if the Law Court upholds the superior court ruling that the 18-acre Albany land is not Indian Territory, the bill can not possibly affect the Passamaquoddy Tribe *at all*. The bingo law will return to its pre-1991 state and prohibit off-reservation high-stakes gambling.

The Tribe is of course free to introduce a bill to allow its game to occur at any specific location, whether or not Indian Territory, and it has now done exactly that with L.D. 966, "**An Act to Allow Indian Gaming at Established Race Tracks**", a bill co-sponsored by Representatives Soctomah and Loring, representing the Tribe and the Nation respectively. Since the law restricts the Tribe to only one licensed game, a race-track based game would eliminate not only the need for, but also the legal possibility of, any Indian Territory gambling site.

This bill, L.D. 793, is in the best interest of the people of the State of Maine. Please vote in favor of L.D. 793.

I have sent copies of this memorandum to Representative Soctomah of the Passamaquoddy Tribe and to Representative Loring of the Penobscot Nation. I am confused about Ms. Loring's status, because the House website lists Ms. Loring as a member of the Judiciary Committee, while the Senate website does not. Can Ms. Loring or another committee member please clarify this for me?

Finally, I would very much appreciate it if I could receive copies of any memoranda submitted by or on behalf of the Tribe or the Nation in opposition to this bill, so that I may have the same opportunity to respond as I have provided them. Thank you very much for your consideration.

Testimony

LD 793

**“An Act to Confine Tribal Gaming to the Reservation of the  
Licensed Organizations”**

Presented By:

State Representative Arlan Jodrey

March 15, 1999

Good afternoon Senator Longley, Representative Thompson and distinguished members of the Joint Standing Committee on Judiciary.

I am State Representative Arlan Jodrey and I stand before you today in support of LD 793, “An Act to Confine Tribal Gaming to the Reservation of the Licensed Organizations.”

I will keep my comments very brief in order for those who are more knowledgeable on this issue to have ample time to speak. However, this is an important issue to many of my constituents and I would be remiss to not present their concerns before this committee.

The Unorganized Township of Albany is part of my House District. Many citizens from Albany and the surrounding communities have called me to express concerns about a proposed high stakes bingo facility in Albany and pledge their support for LD 793.

I have prepared a packet for your review. This packet includes letters from constituents, copies of a few of the phone messages I have received on this issue, results of a referendum vote taken by the Town of Bethel and a letter from the Oxford County Commissioners on this subject.

I encourage you to thoroughly review these materials. The items reflect the interests of citizens directly effected by the tribal gaming issue.

I look forward to the work session on this bill. I strongly encourage each of you to support this measure. Thank you for your time.



**MARGARET WILLE**  
Attorney at Law  
P.O. Box 146  
Hebron, Maine 04238

March 10, 1999

Representative Rosita Gagne  
70 North Hill Road  
Buckfield, ME 04220

**COPY**

Dear Representative Gagne,

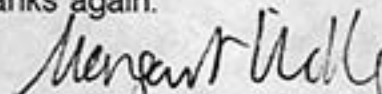
I am writing you concerning the two bills relating to High Stakes gaming operations by Indian Tribes. I understand they will be considered by the Legal Affairs <sup>Judiciary</sup> Committee on Monday, March 15, 1999.

As you are probably aware, many of us in Oxford County have been working diligently to prevent the Passamaquoddy Tribe's proposed 2000 seat high stakes gaming facility from being developed in Albany Township (next to the entrance to the White Mountain National Forest's recreation area, beside the homes of several elderly persons, and on the banks of the headwaters of the Crooked River in an area that is prone to flooding). It is not that we are opposed to the proposal in and of itself but rather opposed to it being permitted in a location that will destroy the rural way of life of the residents and harm the opportunities for primitive recreation now enjoyed in this area. Let me also say that based on our research in other states, it has become clear that these large scale high stakes gambling operations (big money gambling), have a generally negative effect on the local community and local economy -- especially in an area, such as Bethel, that relies on its image as a place for families to enjoy outdoor recreation.

I hope that you will support our effort to keep these facilities out of Albany Township and out of the rest of the Land Use Regulation Commission's jurisdiction. These operations should be limited to the Tribes' reservations or to locations where the zoning is compatible and the host community is amenable. There should not be a blanket approval on any parcel that is "Indian Territory". Thank you.

By the way congratulations on your win in this area. It seems as if Democratic representatives are not easily found here in Oxford County. Unfortunately when you canvassed the neighborhood, I was not home.

Thanks again.

  
Margaret Wille

*Roderick R. Rovzar*  
20 Williamsburg Lane  
Scarborough, ME 04074

March 16, 1999

House Judiciary Committee  
State House Station 2  
Augusta, ME 04330

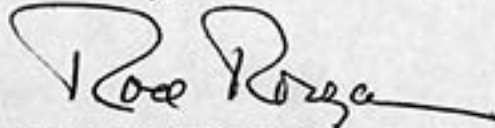
RE: High Stakes Gaming in Albany Township

Ladies and Gentlemen:

I am a property owner in East Stoneham which abuts Albany Township. This is a bucolic, peaceful section of the State of Maine. Much of the property, indeed large sections of Stoneham and East Stoneham, are in the White Mountain National Park. A gambling hall is certainly out of character and totally inappropriate for this part of Oxford County.

I register my strongest protest against this venture and urge you to take whatever steps as might be necessary to see to it that the rural and scenic nature of this section of Maine is preserved.

Sincerely,

A handwritten signature in black ink, appearing to read "Roderick R. Rovzar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Roderick R. Rovzar

MEMBER OF THE JUDICIARY COMMITTEE:  
MARCH 18, 1999  
L.D. 793

I am a resident of Albany Township who spoke at the public hearing in favor of L.D. 793 last Monday. I would like to take the opportunity to respond to comments made by opponents of this bill.

1. Regarding the "chilling message" approval of this bill would send future development prospects in the State:

All Maine communities create zoning laws to promote and regulate orderly growth of business, industry and private homes. For a community to decide against a particular business does not necessarily close the door to business in the state. Witness the decision by Waterford to deny a company the right to build a gas generating plant in its town in 1998. The company interviewed other towns and now has plans to build its plant in Rumford. With all due respect to the person who raised this issue at the hearing, these decisions do not threaten the business prospects of Maine. All development is not good for all communities. Good zoning practices attempt to fairly determine the best use of land.

2. Regarding comments made about the Penobscot Tribe's well-run bingo games and the benefits that Bangor and Orono derive from them.

I do not doubt the truth of the successful, safe bingo operation run by the Penobscot Tribe. However, a comparison with the Passamaquoddy Tribe's proposal for gambling in Albany is problematic. First, the Penobscot's operation takes place on their reservation, close to a town (Orono) and a major city (Bangor), all with the necessary support services for large numbers of people who attend these games. The Albany site does not have such an advantage. It is 260 miles from the Passamaquoddy reservation and therefore not as easily under the immediate review of the Tribe. The Town of Bethel was designated to be responsible for necessary support services but its Selectmen stated that they did not feel the town could adequately provide these services. Another contrast demonstrates the fact that while the towns of Orono and Bangor already have businesses, and this helps to facilitate the business of bingo that the Penobscots run, Albany has no businesses and the scale of the Passamaquoddy games would overwhelm this community's rural, residential lifestyle. A final difference between the two operations is that the Penobscot games run only 8 weekends a year; the Passamaquoddy bingo hall would open for 27 consecutive weekends - one half of the entire year and during the peak outdoor recreation appeal in this area.

3. Regarding comments made that support of this bill is an attempt to deny the Passamaquoddy Tribe its right to improve the lives of its people:

This and similar comments are perhaps the most frustrating and disappointing

ideas to address. How could I convince you and the Tribe that my opposition to a high stakes bingo hall in my community is not one born out of prejudice and disregard for the difficulties the Tribe faced historically and must still work continually to overcome? Unfortunately, many see opposition to the gambling hall as an opposition to the innate rights of the Tribe. This is not the reason behind my opposition to a gambling hall in Albany. My support of L.D. 793 comes from concern over the effects of a large gambling business which would overwhelm our town. I understand and respect the right of the Passamaquoddy Tribe to initiate business opportunities for its community, however, I am against this particular plan purely because it is wrong for Albany Township. I hope that you will support this bill.

Please let me know your thoughts on this issue. I thank you again for the opportunity to express my opinion.

Sincerely,

A handwritten signature in cursive script that reads "Allison Reichartinger".

Allison Reichartinger

**MARGARET WILLE**

Attorney at law  
P.O. Box 146  
Hebron, Maine 04238  
207-966-2370

TO: Judiciary Committee

Re: L.D. 793 Regarding the location of high stakes gaming by Indian Tribes

Date: March 22, 1999

There are two different questions this Committee must address. First, whether the Tribes' high stakes gaming operations should be limited to their own Reservations. Second, if one permits these facilities off-Reservation, then the question is whether they should be permitted on Tribal land with the special status of "Indian Territory"; or instead at locations that are not "Indian Territory".

I am not necessarily opposed to locating these large scale gambling facilities off of the Reservations. However, I am vehemently opposed to allowing them on so-called "Indian Territory".

Reasons:

1. The legal status of Indian Territory is still uncertain.
  - Representatives of the Tribes take the position that there is no local or state land use control over any Tribal development if it is located on "Indian Territory".
  - MITSC takes the position that Indian Territory is not under LURC's jurisdiction.
  - The Superior Court decision in which the Court held the Passamaquoddy Tribe's land in Albany is not "Indian Territory", gave some support to the Tribe's position that "Indian Territory" is not subject to LURC.
2. Locating large scale gaming facilities within LURC's jurisdiction is wrong.
  - The Tribes' "Indian Territories" are almost totally within LURC's jurisdiction.
  - Where successful in other states, these facilities have overwhelmed and destroyed the local rural communities where they are located. It is for this reason that the people of rural Albany Township have fought so hard to keep out the Passamaquoddy Tribe's proposed 2000 seat high stake bingo operation
  - Alternatively these facilities could be in a more remote area of LURC's jurisdiction -- so as to avoid the harm to the rural communities along the outer portion of LURC's jurisdiction. Presumably, however, the Tribes would oppose this because of the distance from their out of state patrons and LURC would be reluctant to allow these large scale commercial developments in the more remote areas of its jurisdiction.
3. The adverse effect of gaming facilities on the local community is well documented, and this should be a warning to the Maine Legislature to carefully evaluate any proposed off-Reservation site.
  - In New York and Connecticut, these states and the local municipalities are now in the midst of lawsuits regarding the expansion of Tribal Gaming onto

additional "Indian Territory". Both the casino facility at Verona New York, and that at Foxwoods, Connecticut started as 1000 to 2000 seat bingo gaming halls.

- The Department of Interior is now acting to limit off-Reservation locations of gaming facilities in those states governed by the Indian Gaming Act. See, for example 25 U.S.C.A. § 2719 which generally will only allow gaming on land purchased after October 1988, if that land is contiguous with the Tribe's Reservation.
- The long term impact these facilities will have on the State as a whole is unknown.

5. If these high stakes gaming operations were located off of "Indian Territory", the state would have more control over the future development of these facilities.

- The Tribes may now say that they are not interested in future expansions of bingo gaming operations, however intentions change.
- The Passamaquoddy Tribe does not have full control over whether they pursue future legally available gaming opportunities. Snake River Ltd. purchased the right of first refusal to develop and operate any gaming opportunity that become legally available to the Tribe over the next twenty years.
- Currently, under Maine's laws the Tribes can not operate casino gambling facilities. A day may come when that is no longer the case.
- Maine can not collect property taxes on "Indian Territory". Likewise Maine does not have the same power to collect sales taxes on "Indian Territory".

6. There is no federal law that requires Maine to locate these gaming facilities on "Indian Territory".

- These facilities can be located where ever the Maine Legislature permits. Hopefully, if allowed off the Reservations, the Legislature would require that they be located where the zoning is compatible; whether that is at racetracks or in other compatibly zoned areas --possibly in Calais or Old Orchard Beach.
- What is important is that the State, the proposed "host municipality", and the Tribe negotiate the terms for such a facility in advance -- rather than later fighting over problems in court.

7. There was no real debate of this issue when the law was amended to allow high stakes gaming on "Indian Territory" and not just on "Reservations".

- This proposed change was not included in the originally proposed bill "An Act Concerning Beano or Bingo" L.D. 1522 of the 115th Maine Legislature, 1991.
- In fact, the section of the law at issue, 17 M.R.S.A. § 314-A (5) "Restrictions", was not part of the original L.D. 1522. There was no indication that a change in the permissible location for high stakes gaming would come up in the course of this legislation.
- The slight wording change from "Reservations" to "Indian Territory" was one of many modifications made to Committee Amendment "A" to L.D. 1522 during the course of the legislation. Apparently there was no public debate in a public hearing with regard to this major change and its potential impact on adjacent communities to parcels of land that have the status of "Indian Territory".

Margaret Wille  
Re: L.D. 793 3/22/99

L.D. 793: Reasonable options for the Judiciary Committee:

1. Prohibit all off-reservation gaming as proposed in **L.D. 793** . (Once the legal status of "Indian Territory" is settled this matter can be taken up again.)

OR

2. Limit off-reservation gaming to locations outside of "Indian Territory" subject to local or municipal approval of the facility (determined by way of a referendum of those eligible to vote in the municipality or Township-- in addition to approval of the local legislative body).

AND/OR

3. The legislature can approve always approve specific locations that are off-reservation and outside of Indian Territory ( e.g. as proposed in **L.D. 966**: commercial race tracks as defined in Title 8, section 275-A that conducted at least 100 live race days during each of the prior 2 calendar years).

**Under no circumstances however should the Tribes locate these facilities on so-called "Indian Territory" or where the local community is opposed.**

*Possible Redraft:*

**7 M.R.S.A. § 314-A sub § 5 Restrictions:** No license may be transferred or assigned. No more than one license may be issued under this section to any federally recognized Indian tribe for any one period. No more than one licensee may operate or conduct a beano game or high stakes beano game on the same premises on the same day.

All games must be conducted

a.) on the reservation of the licensed organization, or,

b.) at a commercial track as defined in Title 8, section 275-A that conducted at least 100 live race days during each of the prior 2 calendar years; or,

AND/OR

c.) at a location outside of "Indian Territory" which has been approved by both the legislative body and a majority vote in the municipality or Township where the facility is proposed.

**TO: JUDICIARY COMMITTEE**  
**RE: L.D. 793**

At the work session on March 22, the discussion centered on **the issue of fairness**: Would it be fair to the Tribe to “pull out the rug from under them” when they have relied on the existing state of the law and proceeded so far with their gambling hall plans for Albany. I would like to address that question, and ask you also to consider what would be fair for the people of Albany Township. I believe that if you objectively weigh these facts, you will agree that **passing L.D. 793 is the fairest course of action at this time.**

- 1. The Tribe bought the 18-acre Albany property in 1988.**
  
- 2. At the time the Tribe bought the land, it was in a “General Management” Zone, in which no commercial development of any kind is allowed, including, obviously, a gambling hall.**
  
- 3. At the time the Tribe bought the land, high-stakes bingo was not allowed off the reservation, and, obviously, not in Albany Township.**
  
- 4. The high-stakes bingo law was amended in 1991 to permit an off-reservation game on “Indian Territory”. The Albany land was not “Indian Territory”. The Legislative record shows that this amendment went through the *Legal Affairs Committee* and was passed without any discussion or debate.**



5. In 1992, the Indian Claims Settlement Act was amended to make the Albany land eligible for "Indian Territory" status. This amendment went through the *Judiciary Committee*, and again passed without discussion or debate, according to the record. There is no evidence that the two committees coordinated or consulted with each other or that the committees or the Legislature appreciated the potential problems created by the amendment.

6. No one notified Albany residents about the 1992 legislation before it passed. This is in part our own responsibility, but we were completely ignorant of the process in general or of the pending legislation. In part, this is due to an anomaly in the language of Section 6205(5) of the Settlement Act. That section states in relevant part: "[N]o lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State." When the Settlement Act passed in 1980, there were specifically designated parcels of land in "remote" parts of the Unorganized Territory, well away from any existing population, which were eligible for Indian Territory status. Clearly the Legislature intended that established local populations should have a say in whether land in their jurisdiction could in the future become Indian Territory. Although Albany has a significant local population and a well established pattern of land use, because it is not an organized Plantation, Albany Township's local population had no say at all in the purported addition of Albany land to Indian Territory. The evidence is clear and irrefutable that there is *unanimous opposition* in Albany to the inclusion of the land in Indian Territory.

7. **Indian Territory is not subject to property tax.** This fact has added significance in the case of the Albany land, because the Tribe intends to build a major commercial development there. At the work session on March 22, there was a discussion of the financial burden on the local population. **There will be a substantial financial burden on the local residents imposed by the Tribe's development.** According to the State Tax Assessor, local property taxes, which in the Unorganized Territory are paid directly to the State, are based in large part on the cost of needed local services. The County of Oxford currently contracts with various providers for all local services to Albany, including road maintenance and solid waste disposal. Police and traffic services are provided by the Oxford County Sheriff. **The Oxford County Sheriff has testified under oath that the Sheriff's Department currently has insufficient personnel, equipment, and budget to provide the traffic, safety and police services that the gambling hall will require.** The County contracts with the Town of Bethel for fire and rescue services. **The Bethel Town Manager has testified under oath that Bethel currently has insufficient personnel, equipment, and budget to provide the fire and rescue services that the gambling hall will require.** There will also be additional demand for road maintenance, when thousands of vehicles, including hundreds of tour busses, pound what are now mostly sparsely traveled back roads. **The Tribe takes the position that it is not required to make any payments "in lieu of taxes" and that it will not do so.** Because the Tribe's Indian Territory is property tax free, the Tribe's commercial development will contribute nothing to the tax base of Albany, and the taxes will increase on all other Albany property owners to pay for the services required by the Tribe's commercial development in Albany. Any increased demand for public services will have to

be funded by increasing the financial burden on everyone *except* the developers.

8. In 1994, the Tribe deeded the land in trust to the federal government. At that time it was still in a "General Management" zone in which commercial development is prohibited.

9. In 1997, the Tribe submitted an application to LURC to rezone the 18-acre parcel of land to "General Development", in which zone limited commercial development is permitted. LURC granted that application, and also granted a development permit by special exception for the Tribe to sponsor the development with Tamir Sapir of a 2,000-seat gambling hall. The LURC process was unfair and its outcome was unfair. The Superior Court has now reversed LURC's rulings and ordered that the permits be vacated. We are confident that the Supreme Court will uphold that verdict. The brief I submitted to the Superior Court is fully 80 pages long, and contains a complete description the legal errors committed by LURC. I have given a copy of that brief to Deb Friedman, and of course I will gladly send it to anyone who would like a copy.

By way of example of issues raised in the brief, here are just two of the many illegal decisions made by LURC:

(a). Statutes governing LURC regulations require proof that the public's safety and welfare are protected before a development permit can issue. 12 M.R.S.A. §685-b(4)(e). In spite of the irrefutable testimony of the Oxford County

Sheriff and the Bethel Town Manager, as described in paragraph 7 above, LURC found that “police and rescue services will be provided by the Oxford County Sheriff’s Department and the Town of Bethel, respectively”, and that “fire protection will be provided by the Bethel Fire Department.” These findings were not just unfounded, but were completely contrary to the evidence presented to LURC. In addition, LURC’s decision on this issue was completely unprecedented. For example, you may recall that at the work session Senator Benoit discussed LURC’s *denial* of a development permit application for a facility in Rangeley Plantation, just a few months before deciding to grant the Tribe’s Albany development permit. In that case, LURC found specifically that *“the applicant has not demonstrated by substantial evidence that public health, safety and general welfare will be adequately protected. Although basic services appear to be theoretically available from the Town of Rangeley, with police protection provided by Franklin County and the State, Rangeley officials have expressed serious reservations about their ability to adequately provide those services for the proposed facility.”* Denial of Development Permit D.P.4330 (Application of Madore), June 19, 1997. In the case of the Tribe’s Albany applications, although basic services may have appeared to be theoretically available from the Town of Bethel, with police protection provided by Oxford County and the State, Bethel officials expressed serious reservations about their ability to adequately provide those services for the proposed facility; *and* Oxford County officials expressed serious reservations about their ability to adequately provide those services for the proposed facility. LURC granted the applications anyway. How can you possibly reconcile these decisions and find that Albany was treated fairly?

(b). State law (12 M.R.S.A. §685-A(8)) provides that land in the Unorganized Territory *cannot* be rezoned “*unless there is substantial evidence that ... the change in districting satisfies demonstrated need in the community or area.*”

In the case of the Tribe’s zoning applications, there was *no* evidence of any need in the Albany community or the Albany area for a large scale commercial development, and certainly not a property tax free gambling development. In another complete departure from precedent, as well as from reason and fairness, LURC again ignored the total absence of supporting evidence and the plain words of the statute. Instead, LURC found that the Tribe’s Zoning Petition “requires a different type of analysis, in that the community need is largely that of the Passamaquoddy Tribe which resides primarily outside of the Albany area.”

Commission Decision in the Matter of Zoning Petition ZP 616 (Application of Passamaquoddy Tribe), November 20, 1977. The Passamaquoddy reservation is actually 260 miles from Albany and no Tribe member resides in Albany or the Albany area. In its Decision, LURC expressly acknowledged that under the statutory “need” criterion, LURC has *always* required an applicant to prove that the proposed development will “provide goods, services, jobs, residential lots, or other economic activities which are in demand in the general vicinity where the proposal is located.” But in this one case LURC abandoned that requirement, and decided that the statutory “need” requirement was satisfied because “a need exists within the Passamaquoddy community for revenue that can be raised from the proposed high stakes bingo facility.” *Id.* Where is the fairness in this decision?

**10. The Tribe has no permits in hand that would allow it to begin construction of the development. This is the fairest possible time to amend the**

law, because the LURC permits are *vacated*, and the Tribe has not even applied for all the other necessary permits, including those that will have to be issued by the State Police, the D.O.T., the D.E.P., the Army Corps of engineers, the Fire Marshall, and the D.H.S.

**11. The Tribe has spent little or no money in the application process to date. That is because all the money spent is Tamir Sapir's, and he will forfeit that money if the project does not go through. In fact, Tamir Sapir gave the Tribe a non-refundable \$200,000 payment to secure the development contract, and according to the language of the contract as I understand it, if the Legislature now changes the statute to prohibit high-stakes bingo on the Albany land, the Tribe simply keeps the money.**

**12. The Tribe is currently or has recently been running a high-stakes bingo game on its reservation. We agree with Senator Benoit: The burdens of the commercial development should fairly run with the benefits. On the reservation, that will be the case; in Albany, there will be only burdens on the local people, while all the benefits go to the reservation or to Tamir Sapir in New York.**

**13. The passage of this bill will not affect the Penobscot Nation at all. The Penobscot game is running where it has always run, before and since the passage of the Settlement Act, before and since the passage of the high-stakes bingo law, and that is on the Penobscot reservation.**

14. **Neither the Tribe nor the Nation will necessarily be restricted only to the reservations, because the Legislature has the power to permit them to operate at *any* given location, not just on Indian Territory.** Anywhere that is appropriately zoned for commercial development is a potential site for an Indian sponsored high-stakes game. That would include, for example, “commercial race tracks” as provided in L.D. 966, now pending before the Legal Affairs Committee. Any Legislator can introduce a bill to permit the Tribe to sponsor its game at any compatible location. In short, there is no reasonable opportunity that cannot be accommodated through appropriate legislation. Further, a facility on *other* than Indian Territory would be unequivocally under State government control, and would be subject to property tax and thus would pay at least part of its own way in the community.

15. **Pursuant to the recent ruling by the Superior Court, the current legal status of the Albany land is that it is *not* “Indian Territory”, and it won’t be unless that ruling is overturned in the Supreme Court. The court appeal is not likely to be decided before the year 2000.**

16. **There is no constitutional issue raised by passing the bill.** As Deb Friedman explained to you at the work session, extensive legal research shows clearly that the Legislature is completely within its rights to exercise its “police power” over gambling and withdraw the privilege it granted the tribes in 1991. There are many cases in which landowners objected to a change in zoning, for example, which put an end to their development plans, some of which were much

farther along than the bingo hall plan is, and in *every* case, the courts have upheld the government's right to change the scope of activities permitted on land within its jurisdiction. **Eliminating Indian Territory from the list of possible gambling sites is completely within the legal power of the Legislature.**

### **FAIRNESS: SUMMARY AND CONCLUSION**

In debating the "fairness" of passing L.D. 793, I believe you should consider what is fair to the Tribe *and* what is fair to the people of Albany Township and the Western Mountain region. While it may be something of a setback for the Tribe to eliminate Albany as a site for the gambling hall, **it is much less unfair to the Tribe to pass this bill than it is unfair to Albany not to pass it.**

Because the project is in its infancy, because the land is not Indian Territory, because the Tribe has spent no money and has no permits to proceed with the project, because the Tribe purchased the land with no expectation and no possibility of building a gambling hall, because the Tribe is currently running its game on the reservation, and because the Tribe is still free to work with another local community and the Legislature to locate the game at a reasonable and acceptable place, it is fair to repeal the 1991 amendment to the bingo law and reinstate the law as it was originally passed in 1987.

Because Albany had no notice and no say about including this land in Indian Territory, because LURC has failed to enforce the zoning and planning laws,



because there are no adequate local services or infrastructure to support the development, because the Tribe pays no property taxes on the land, because the property is adjacent to a pristine part of the White Mountain National Forest and on the banks of the "Class AA" protected Crooked River, because Albany is an extremely rural backwoods residential community with no existing commercial development, because there is universal local opposition to the project, because the project will harm the community and the region, and because an unknown foreign businessman with questionable sources of money and an Indian Tribe which claims to be a sovereign nation intend to set up their tax-free gambling shop on an 18-acre parcel smack dab in the middle of our Township completely against our will, it would be unfair *not* to pass L.D. 793.

We have so far been essentially powerless to stop this well funded professional juggernaut from proceeding with its ill-advised plan to profit from the gambling hall at our extreme expense. The "political incorrectness" of our position is easily taken advantage of and even distorted, while the "plight of the Tribe" and its history of oppression is so impossible to resist that our struggle against this development is made doubly hard. We ask you please to help us now, and vote in favor of L.D. 793, when it would be the fairest thing to do.

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TO: Judiciary Committee Members

Re: L.D. 793 to limit high stakes gaming to Indian Reservations

Date: March 25, 1999

**These are my responses to the questions raised at the March 22,1999 work session on L.D. 793**

**A. What is the status of "Indian Territory" ?**

1. The legal status of Tribal lands that qualify as "Indian Territory" is uncertain. This is a key reason that allowing these large scale gaming facilities on Indian Territory is ill advised.

- Up until now the State has taken the position that Indian Territory is under LURC's jurisdiction. That position is however vehemently opposed by the Tribes. The Tribes take the position that LURC has no jurisdiction over these parcels of land, that Tribal law governs -- not any local or state land use laws.
- The Superior Court decision in the Albany Township case gave support to the Tribe's position that LURC has no jurisdiction over Indian Territory.
- MITSC (Maine Indian Tribal State Commission) unanimously agrees with this assertion and is in the process of submitting legislation on this point. (L.R. 1615 not yet available as an L.D. )
- Given that in the future, municipal and state land use authorities may have limited -- if any -- control over "Indian Territory", that is precisely where Tribal gaming should NOT be permitted.

2. Anyone doing business with the Tribe on "Indian Territory" will be at a serious disadvantage. It may be that contracts relating to Indian Territory must be approved in advance by the Department of Interior to be enforceable. See Forrest Associates v. Passamaquoddy Tribe 1998 ME 240. By comparison, lands held in fee by the Tribe are clearly not subject to review by the Department of the Interior.

3. No real estate taxes are paid on Indian Territory. (state sales taxes?)

4. If the Judiciary Committee wants to allow Indian Gaming off of the Reservations but avoid the legal quagmire of "Indian Territory", it could do so by simply designating locations outside of "Indian Territory" where these facilities Could be located. A useful question for the Committee is: just where should these facilities be allowed in the state if not just on the Reservation? On Indian fee lands where approved by the legislature and the local community? At racetracks even though not owned by the Tribes?

**B. Is it unfair or illegal to amend this provision of the High Stakes Bingo Law, considering that the legislature amended this law in 1991, among other things, to allow high stakes gaming on Indian Territory”?**

This question requires a balancing of a number of factors. Certainly every time the Legislature changes a law to the disfavor of some segment of the population, it is regrettable. Given the sad history of Native Americans this is especially true. It is however the Legislature's responsibility to make such changes when justified. For the following reasons amending this legislation now so that these large scale gambling facilities are only located on the Tribes reservations is justified:

1. In 1987, when the Tribes' "High Stakes Beano" law was before the Maine legislature -- the proponents argued the Tribes needed these gaming facilities because of the specific need for economic development on the reservations.

2. Maine Indian Tribes do not have any federal right to operate these high stake gambling facilities. Passamaquoddy Tribe v. State of Maine 75 F.3d 784 (1st Cir. 1996). The "High Stakes Bingo Law" is not part of the federal Indian Land Claims Settlement but is instead a section of the "Games of Chance" statutes that are exceptions to the state's general prohibition against high stakes gaming.

3. Now may be the State's last chance to make this correction.

- None of these facilities are currently located off Reservation.
- The Passamaquoddy Tribe does not have either a rezoning or a development permit for Albany Township. The LURC permits were vacated by the Superior Court. The Tribe has appealed this Superior Court decision. At this time, however, the Tribe does not have a vested right to use that parcel for commercial gaming. See e.g. Thomas v. Zoning Board of Appeals of the City of Bangor 381 A.2d 643 (1978) (preparation costs such as surveying and engineers does not amount to vested rights even where the developer believes his position will be vindicated on appeal).
- The Penobscot Tribe maintains that its on Reservation facility is working well.

4. With respect to these large scale commercial gaming facilities, the Tribe is acting in the capacity of a developer, not a governmental entity. See Penobscot Nation v. Stilphen 461 A.2d 478, 486-489 (Me. 1983) Thwarting the Tribes' development prospects for high stakes gambling should not be considered politically "undoable".

5. This is not just an Albany Township issue. Take a look at the map showing the locations of Indian Territory. There are other communities adjacent or proximate to each of the Tribes' parcels of land that qualify as "Indian Territory". In each case those communities will be saddled with providing the public services -- including volunteer fire protection -- for these high occupancy facilities. The Tribes may contribute towards these services but any contribution will do little to lighten the burden placed on the local communities. It was primarily for this reason that the Oxford County Commissioners and the Bethel Board of Selectmen opposed approval of the Passamaquoddy's proposed 2000 seat gaming facility in Albany Township.

6. The Department of Interior is now acting to limit off-Reservation locations of high stakes gaming facilities in those states governed by the Indian Gaming Regulation Act. See, for example 25 U.S.C.A. § 2719 which generally will only allow gaming on land purchased after October 1988, if that land is contiguous with the Tribe Reservation.

7. Under Maine law, Indian Tribes have the singular privilege of operating these high stakes gambling facilities. Anyone else who conducts such operations is subject to criminal penalties. To allow these facilities to overwhelm and destroy local communities is wrong. The Tribe should have full responsibility for providing the public services such as police, fire, ambulance.

**C. There was also a question about the Albany Township parcel and whether LURC would have rezoned this parcel for anyone else to build a large scale commercial facility.**

The answer is categorically NO. The Tribe repeatedly argued that its rezoning and development permit application was a special case deserving of special consideration. The Commission, in its rezoning decision, acknowledged that it gave the Tribe special consideration in granting the permits.

**D. What is the history of the 1987 High Stakes Bingo legislation and the 1991 amendment expanding the permissible site locations to "Indian Territory"?**

1. The 1980 Land Claims Settlement included no right to high stakes bingo for the Tribes. When the High Stakes bingo legislation was subsequently proposed as an exception to the general prohibition against high stakes gambling, Governor Brennan vehemently objected. He did so, in part, because the Indian Land Claims Settlement Treaty was meant to settle the Tribes' claims and put all Mainers on equal footing under the laws.

2. One of the key arguments of the proponents of the 1987 legislation was the Tribes' high unemployment and need for economic development on their reservations. The original legislation provided "All games shall be conducted on the reservation of the licensed organization." 17 M.R.S.A § 314-A (5) (1987)

3. In 1991 there was no real debate when the High Stakes Bingo Law was amended to allow high stakes gaming on "Indian Territory" and not just on "Reservations".

- This proposed change was not included in the originally proposed bill "An Act Concerning Beano or Bingo" L.D. 1522 of the 115th Maine Legislature, 1991.
- In fact, the section of the law at issue, 17 M.R.S.A. § 314-A (5) "Restrictions", was not even mentioned in the original bill. There was no indication that a change in that section of the law would come up in the course of this legislation.
- The slight wording change from "Reservations" to "Indian Territory" was one of many modifications made to Committee Amendment "A" to L.D. 1522 during the course of the legislation. There was no public debate in a public hearing with regard to this major change and its impact on adjacent communities.

4. The State and adjacent municipalities will have to deal not just with the Tribes themselves but also with their current or future development partners, such as Snake River Financing, Ltd. and its affiliates, in the case of the Passamaquoddy Tribe.

- The Passamaquoddy Tribe does not have full control over whether they pursue future legally available gaming opportunities. Snake River Financing, Ltd. purchased the right of first refusal to develop and operate any gaming opportunity that become legally available to the Passamaquoddy Tribe over the next twenty years.
- It would seem that the High Stakes Bingo Law sought to prohibit such contracts as that of the Passamaquoddy Tribe and Snake River, but that issue has not been addressed. Specifically the statute provides that only the Tribes may be licensed to operate high stakes bingo. 17 M.R.S.A § 314-A(1). The statute further provides that the Tribe may only pay the persons operating the games up to 200% of the minimum wage. There is an exception to this payment limitation for professional legal, advertising, accounting and auditing services (but not for those operating the facility). 314 M.R.S.A. § 314-A(7). In the case of the Passamaquoddy Tribe's contract, Snake River, Financing, Ltd. , and its affiliates, will be entitled to a high percentage of the profits, in addition to full repayment of monies spent plus 10% interest.

**E. Representative Loring made the point that some community may actually want this type of facility in their area.**

If the Judiciary Committee agrees that the Tribes should be able to locate these facilities where the "host community" is amenable , L.D. 793 could be redrafted as follows:

**7 M.R.S.A. § 314-A sub § 5 Restrictions:** No license may be transferred or assigned. No more than one license may be issued under this section to any federally recognized Indian tribe for any one period. No more than one licensee may operate or conduct a beano game or high stakes beano game on the same premises on the same day.

All games must be conducted

- a.) on the reservation of the licensed organization, or,**
- b.) at a location outside of "Indian Territory" which has been approved by both the legislative body and a majority vote in the municipality or Township where the facility is proposed.**

In conclusion, if allowed off Reservation, what is important is that the State, the proposed "host municipality", and the Tribe negotiate the location and conditions for these high impact gambling facility in advance -- rather than later fighting over problems in court.

**I submit these responses on behalf of myself and my family – and not as representative of any other individual or of any organization.**