



August 5, 2019

*Via Email*

Hon. Michael Carpenter

Hon. Donna Bailey

Co-Chairpersons

Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

Maine State Legislature

Augusta, ME

Dear Senate Chair Carpenter and House Chair Bailey:

At the first meeting of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act (“Task Force”) on July 22, 2019, you asked the Tribal Nations’ representatives to provide the Task Force with suggested redline revisions to the Maine Act to Implement the Indian Land Claims Settlement (“Maine Implementing Act”) to reflect changes that the Tribes would like to see.

As counsel for the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians, we are authorized to submit the attached redline revisions as you requested.

We want to emphasize that these revisions are submitted to you in furtherance of the Maine Legislature’s June 10, 2019 *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising From the Interpretation of an Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980* (“Joint Resolution”), which states:

We, the Members of the One Hundred and Twenty-ninth Legislature now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity to recognize that the Maine tribes should enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States

These revisions are also submitted to you in furtherance of the request made by House Speaker Gideon and Senate President Jackson that the Tribes’ leaders articulate the

goals that should drive the Task Force. After significant deliberations, by letter dated May 9, 2019, the Tribal leaders wrote to Speaker Gideon and President Jackson as follows:

[F]or this process to work there must be a commitment to accomplish the following as to all Tribes:

1. Amendments to section 6204 of the MIA and section 7203 of the MSA (and other sections of the Acts as necessary) to establish that the laws of the State shall not apply to the Tribes or their respective lands, except as agreed by the State and the Tribes or as provided by federal law;
2. Amendments to sections 6206 and 6206-A of the MIA and section 7205 of the MSA (and other sections of the Acts as necessary) to confirm that the Tribes shall exercise and enjoy the same rights, powers, privileges, and immunities as other federally-recognized Indian tribes, except as agreed by the State and the Tribes; and
3. Amendments to section 6206 and 6206-A of the MIA and section 7205 of the MSA (and other sections of the Acts as necessary) to confirm that Acts of Congress intended to benefit federally-recognized Indian tribes in general apply to the Tribes and their lands, except as agreed by the State and the Tribes.

The Tribal leaders have devoted considerable time and effort to preparing the attached proposed revisions consistent with both the Joint Resolution and their May 9, 2019 letter. We are delighted to provide them to you for discussion on August 9, 2019.

What follows is a summary of the revisions with some discussion of the rationale.

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As Chairperson Carpenter requested, and as the Tribal leadership agrees, the starting point for these revisions is confirmation that land claims issues are fully put to rest. As he further suggested, these revisions are designed to accomplish the above-referenced mutual goals of the Tribes and the Legislature to restore the self-governing, sovereign authority of the Tribes for the betterment of all persons in their communities.

The revisions accomplish these goals by:

- Confirming transfers of land that occurred prior to October 1980 to ensure that no claims for lands may be brought by the Tribes.
- Deleting the imposition of State law upon Tribes and their lands, contrary to well-established principles of tribal sovereignty under the United States Constitution and the decisions of the Supreme Court.
- Deleting provisions that granted Maine the authority to take trust lands from the tribes, contrary to the prohibition of such takings as a matter of federal law.

- Deleting provisions that restricted the *civil* jurisdiction of the tribal governments and courts and granted *civil* jurisdiction over the Tribes' lands to the State, contrary to well-established principles of federal Indian law designed to protect tribal self-government. (Under those principles, there may be instances where it is justifiable for the State to exercise civil jurisdiction over non-Indians on tribal lands, but the extreme provisions that currently exist in the Maine Implementing Act discourage investment and economic development on the Tribes' lands.)
- Deleting the provisions that restricted the *criminal* jurisdiction of the tribal governments and courts and granted a greater level of *criminal* jurisdiction to the state government on tribally-owned lands. (The safety of people located on tribally-owned lands has been significantly compromised due the existing provisions in the Maine Implementing Act. Tribal law enforcement and courts are regularly challenged as to their jurisdiction to arrest and prosecute. Additionally, the tribal governments are unable to access federal funds to support tribal courts, and are unable to benefit from the assignment of federal law enforcement officers, such as Special Assistant United States Attorneys who can help adequately prosecute those who commit crimes on tribally-owned lands. The existing provisions of the Maine Implementing Act have incentivized non-Indians to come onto tribal lands for purposes of violating state and federal law. We are open to discussions with the Task Force about the nature and extent of State criminal jurisdiction over tribally-owned lands, but the existing provisions of the Maine Implementing Act need to be modernized. Additionally, to the extent that the State does continue to exercise criminal jurisdiction over tribally-owned lands, provisions ensuring accountability and coordination with the tribal governments need to be included. The safety of people should be the priority.)
- Adding provisions authorizing the cross deputization of State and Tribal law enforcement officers to better protect all citizens of Maine.
- Adding provisions authorizing the State, county and local governments to enter into cooperative or mutual aid agreements with the tribal governments so that there is better coordination between the governments and more effective delivery of services and use of resources.
- Deleting provisions that restated what is already well-established as a matter of federal Indian law: that the tribal governments have inherent sovereign authority to regulate fish and wildlife resources within their tribal lands.
- Adding provisions to confirm that that federal laws and regulations enacted for the general benefit of federally-recognized tribal governments also apply to the Maine tribes and tribal lands.
- Revising taxation provisions to eliminate the grant of state tax authority over the Tribes, their members, and tribal lands inconsistent with well-established principles of federal Indian law.
- Adding provisions regarding consultation between the State and tribal governments on matters that affect tribal interests that are consistent with the federal government's consultation with tribal governments, and with the United Nations Declaration on the Rights of Indigenous People, which was endorsed in 2008 by the 123<sup>rd</sup> Maine State Legislature during a special session.

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The Tribal leaders, all copied here, asked us to convey their gratitude to you for asking the Tribes to take the laboring oar on these revisions to commence the Task Force's process, and they look forward to discussing those issues that may be of particular interest or concern to the State.

Sincerely

*/s Mark A. Chavaree*  
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cc: Hon. Sara Gideon  
Hon. Troy Jackson  
Hon. Kirk Francis, Chief, Penobscot Nation  
Hon. Marla Dana, Chief, Passamaquoddy Tribe  
Hon. William Nicolas, Chief, Passamaquoddy Tribe  
Hon. Clarissa Sabattis, Chief Houlton Band of Maliseet Indians  
Hon. Charles Peter Paul, Chief, Aroostook Band of Micmac Indians  
Tribal Council, Penobscot Nation  
Joint Tribal Council, Passamaquoddy Tribe  
Tribal Council, Houlton Band of Maliseet Indians  
Tribal Council, Aroostook Band of Micmac Indians  
Hon. Maulian Dana, Ambassador, Penobscot Nation  
Hon. Rena Newell, Legislative Representative, Passamaquoddy Tribe  
Paul Thibeault  
Hon. Marianne Moore  
Hon. Kathleen Dillingham  
Hon. Anne Perry  
Melanie Loyzim, Deputy Commissioner, Department of Environmental Protection  
Christopher Taub, Assistant Attorney General