MAINE MUNICIPAL ASSOCIATION SINCE 1936

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To: MMA's Legislative Policy Committee

Fr: Kate Dufour, Advocacy & Communication Director

Re: Information on LD 2007, *An Act to Advance Self-determination for Wabanaki Nations*

Date: January 11, 2024

The materials that follow are being provided at the request of Dave Cota, Carrabassett Valley town manager, and Rick Bronson, Lincoln town manager and LPC member, for your consideration. On January 18, the LPC will debate the merits of and MMA's involvement in the proceedings on LD 2007, *An Act to Advance Self-determination for Wabanaki Nations*.

The materials include:

- A letter to MMA's Legislative Policy from the Town of Carrabassett Valley dated November 8, 2023.
- A Bigelow Preserve Public Land map.
- An excerpt from draft legislation dated August 6, 2008.
- A letter to Kate Dufour from the Town of Carrabassett dated January 18, 2021.
- Testimony from the Town of Carrabassett Select Board on LD 2094, *An Act to Implement the Recommendations of the Tax Force on Changes to the Maine Indian Claims Settlement Implementing Act*, dated July 2020.
- A memo from the Coalition for the Future of Maine regarding LD 2004.
- Letters from Governor Janet Mills and U.S. Senator Angus King as well as op-eds written by Orlando Delogu, all of which are referenced in the LD 2004 memo listed above.

For: Maine Municipal Association Legislative Policy Committee Consideration
From: Town of Carrabassett Valley
Re: Potential Concerns with L.D. 2007 'An Act to Advance Self-Determination for Wabanaki Nations'
Date: November 8th, 2023

L.D. 2007 is a "Concept Legislative Document" that was developed very late in the recent legislative session. In fact, legislation that was proposed at the very end of the session was rushed through with very little notice of a Public Hearing and the legislation was vetoed by Governor Mills. We do not know what the exact L.D. 2007 legislation will look like but we must assume it will entail a complete revision of the 'Maine Indian Claims Settlement Implementing Act' (MIA).

While L.D. 2007 may have many adverse effects for the State of Maine, we wish to focus on what the effects of this legislation may have on municipalities and why we believe the Maine Municipal Association should be involved in this discussion. While complete Sovereignty is important to Maine Indian Tribes, it may come with serious implications and unintended consequences for some Maine Towns and Cities. In the case of our community of Carrabassett Valley, twenty-four thousand acres or roughly one-half of our Town's land base (see attached map) is owned by the Penobscot Indian Nation. This land was acquired as the result of the landmark Federal Indian Lands Claim Settlement Act.

Recent legislative attempts to change the MIA included eliminating that section of Title 30 Chapter 601 that currently requires the vote of the legislative body of an Organized "City, Town, Village or Plantation" for lands within that entity to be acquired by or placed in trust for the Tribes by the Federal government. It is hugely important for our and potentially other communities to retain this right. We have hundreds of homeowners that abut Penobscot Indian Nation land. Aside from the loss of property taxes, the potential loss of zoning on these lands is very concerning. Some of the recent proposed legislation even provided that land within the Federal Tribal Trust land could even be taxed by the Tribes. We would essentially have a "Nation within a Town". Who will provide services for these lands, pay educational costs, etc.? Recent past legislation even included political expediency by eliminating all southern Maine Counties from some of the effects of Sovereignty legislation.

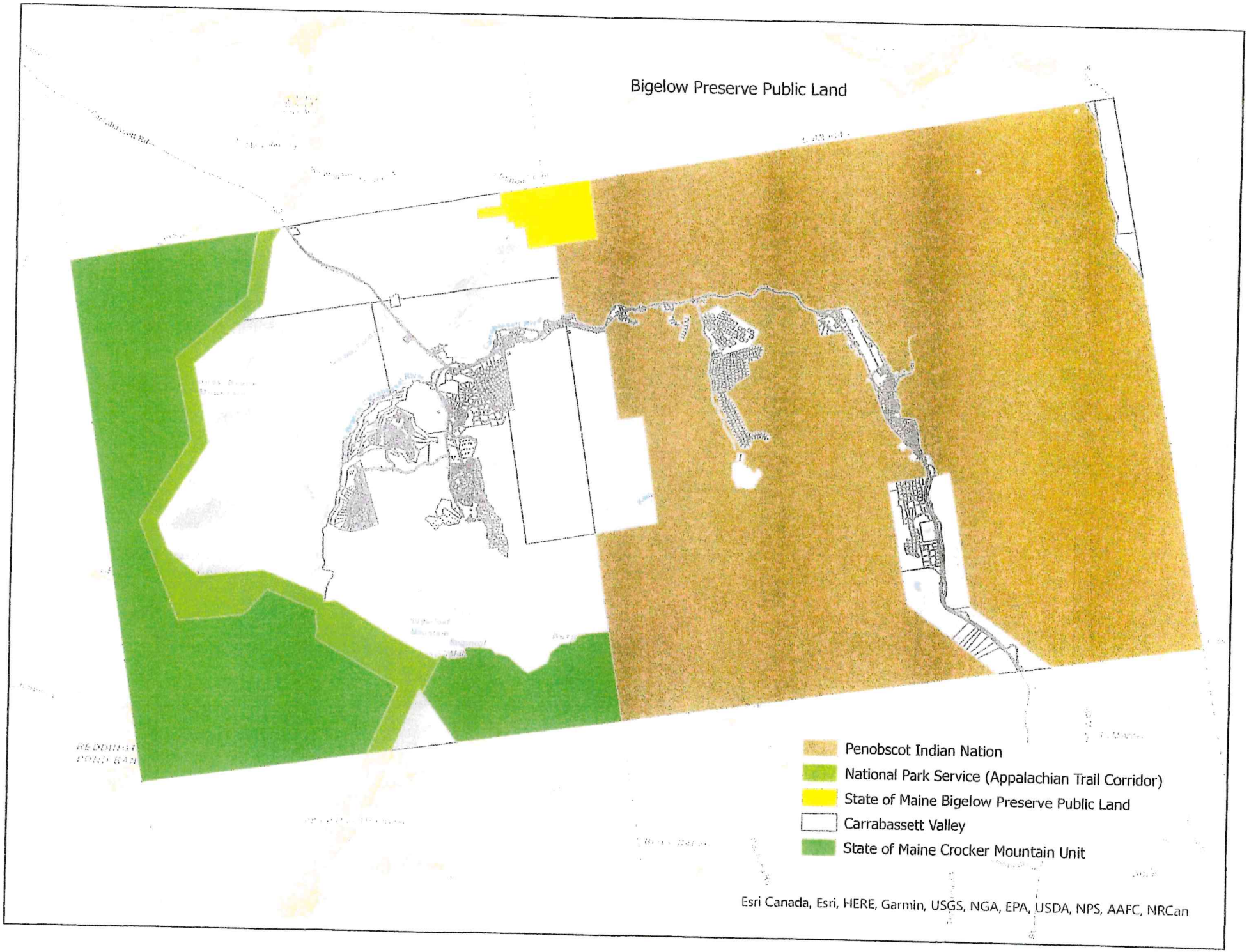
Other communities you will hear from are very concerned about Tribal Sovereignty legislation that could allow for Tribal governments setting water quality standards (now governed by the State Department of Environmental Protection) for up and downstream waters from Tribal lands. This could have devastating consequences for these communities.

All of the recent related legislation refers to the recommendations of the Legislative 'Task Force on Changes to the Indian Claims Settlement Implementing Act'. This so-called Task Force consisted of two State Senators, two State Representatives and five Tribal Government Chiefs. Seemingly indefensible, there was absolutely no municipal representation on this Task Force.

We have enclosed 2020 testimony from our Town regarding proposed legislation at that time. We also have enclosed a January 2021 letter from Town Manager Dave Cota to MMA legislative Advocacy concerning proposed legislation effecting the MIA at that time. Although certainly an uncomfortable position to be in, the facts are that proposed Tribal Sovereignty legislation may have very serious implications for some municipalities in Maine and we believe the time has come for MMA to become involved. Thank you for your consideration.

Sincerely,

Lloyd Cuttler, Select Board Member
Dave Cota, Town Manager
On behalf of the Carrabassett Valley Select Board


Bigelow Preserve Public Land
Penobscot Indian Nation
National Park Service (Appalachian Trail Corridor)
State of Maine Bigelow Preserve Public Land
Carrabassett Valley
State of Maine Crocker Mountain Unit
Esri Canada, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS, AAFC, NRCan

affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the ~~moneys~~money received for such taking ~~shall~~must ~~be reinvested in accordance with the provisions of paragraph B.~~

~~B. If land within either the Passamaquoddy Indian Territory~~Tribal Lands ~~or the Penobscot Indian Territory~~Tribal Lands ~~but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State, the money received for said land shall~~must ~~be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys~~money ~~received are~~is ~~so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall~~must ~~be included within the respective Indian territory~~tribal lands ~~without further approval of the State. To the extent that any moneys~~money ~~received are~~is ~~so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall designate, within 30 days of such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall~~must ~~be included within the respective Indian territory~~tribal lands~~. No land acquired pursuant to this paragraph shall~~may ~~be included within either Indian Territory~~tribal lands ~~until the Secretary of Interior~~secretary ~~has certified, in writing, to the Secretary of State the location and boundaries of the land acquired~~.

~~4. Taking under the laws of the United States.~~ ~~In the event of a taking of land within the Passamaquoddy Indian territory~~Tribal Lands ~~or the Penobscot Indian territory~~Tribal Lands ~~for public uses in accordance with the laws of the United States and the reinvestment of the moneys~~money ~~received from such taking within 2 years of the date on which the moneys are~~money ~~is received, the status of the lands acquired by such reinvestment shall~~must ~~be determined in accordance with subsection 3, paragraph B.~~

~~5. Limitations.~~ ~~No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no 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.~~

~~Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.~~

6. Acquisition of additional trust land. Nothing in this chapter limits the ability of the Passamaquoddy Tribe and the Penobscot Nation to acquire trust land in accordance with applicable settlement acts and federal Indian law, including but not limited to the federal Indian Reorganization Act, Public Law 73-383, and their implementing regulations. Except as required

Town of
Carrabassett Valley
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Carrabassett Valley, ME 04947
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207-235-2645

To: Kate Dufour, MMA Legislative Policy Committee
From: Town of Carrabassett Valley, Maine
Re: Legislation to Amend the 1980 Indian Land Claims Settlement Implementing Act
Date: Jan 8th, 2021

Dear MMA Legislative Policy Committee:

Although at this time (Jan. 8th, 2021), we have not seen expected proposed legislation for the 130th Legislature to **amend the Indian Land Claims Settlement Implementing Act ('The Act')**, we anticipate that it will look very similar to L. D's 2094, 1394 and LD 2118 proposed last year to the 129th Legislature. This legislation was recommended by the Legislature Judiciary Committee. However, due to COVID 19 the 129th Legislature did not reconvene.

This is very long and somewhat complicated legislation that would dramatically change the 1980 Indian Land Claims Settlement Act that took years to develop which settled potential title claims to a significant part of the State of Maine. The effects of this proposed legislation would have a significant impact for the Town of Carrabassett Valley and could affect many communities in Maine. We urge the Legislative Policy Committee to take a position against this legislation at this time.

While there are many components of this legislation, first and foremost, the legislation will allow Maine Indian "Fee Lands" to be converted to "Indian Trust Lands" (lands owned and held by the Federal Government for the benefit of the Indian Tribes) <u>without a vote of the Town</u> in which the lands are located. This might be appropriate for Unorganized Territories with few people but not for Organized Towns. As part of this conversion, unless otherwise agreed upon, the affected Town will lose all property taxes on the land and, more importantly, would lose all land use authority on these lands. Not only would the Towns not be able to collect property taxes, this legislation would allow the Indian Nations to tax properties within these trust lands (again, within the Town in which the land is located in).

At the last hour last year, the proponents of this legislation provided an amendment that conveniently only allowed this conversion of fee lands to trust lands in seven counties (Penobscot, Franklin, Hancock, Piscataquis, Somerset, Washington and Aroostook). They also proposed some vague form of "payment in Lieu of taxes" and a provision "that allowed use of

land in a manner that is not contrary to local zoning at the time of purchase or is consistent with existing land uses". Conflicts would apparently be settled by third party arbitration.

This legislation could impact any municipality in these seven counties as, if approved, Maine Indian Tribes/Nations could buy lands in municipalities in any of these counties and convert them to "Trust Lands" without a vote of the Town involved. In our case, this involves almost 25,000 acres or one-half of our land base. This could lead to unwanted uses of the land (although perhaps unlikely, windmills even casinos).

It must be understood, that we are not necessarily opposed to the conversion of Indian Fee Lands to Trust Lands, but it should not be allowed without the vote of the affected municipality. If this legislation is approved without this existing provision to the Indian Lands Claim Settlement Implementing Act, this would take away all Home Rule Authority which is the foundation of the incorporation of all of the Cities and Towns in Maine. In our case, without a necessary vote of the Town, it would also eliminate our ability to negotiate with the Penobscot Indian Nation (PIN) on an agreed upon proposal to convert their lands to Trust Lands (should they wish to) that would be beneficial for both parties. We have recently had preliminary discussions with PIN as to their desires for their Carrabassett Valley lands and we are very hopeful to expand upon these discussions.

While we are opposed to the above provisions of potential legislation, we are respectful of the concerns and future of the Indian Tribes/Nations in Maine and our relationship with PIN. In our case, we hope to create a model partnership with PIN.

I have attached testimony we sent to the Legislative Judiciary Committee in July that digs deeper into the Legislative Task Force (with no municipal representation) that was created that led to last year's proposed legislation and the impacts that our Town may face. Some amendments were added to the legislation after we submitted this Testimony and, again, we have not yet seen the proposed legislation for the 130th Legislature. It's our understanding that MMA's Legislative Policy Committee is meeting this month (January 2021) and we were encouraged to submit our concerns in time for Committee consideration.

Please let me know if you have any questions and thank you for your consideration.

Sincerely,

Dave Cota

David Cota
Town Manager, Carrabassett Valley

Town of
Carrabassett Valley
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TESTIMONY FROM THE TOWN OF CARRABASSETT VALLEY BOARD OF SELECTMEN REGARDING L.D. 2094 'An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act'

July 2020

First and foremost, the Town of Carrabassett Valley values our relationship with the Penobscot Indian Nation (PIN) who own 24,000 acres in our community. We also wish to see the Nation succeed and have a bright future and we are always available to discuss any projects or initiatives they or tribal members may have. Our community leaders have worked hard over the past forty years to maintain this relationship. It's not always easy as communication can be difficult. With the exception of this year (due to COVID-19), we have met at least annually with representatives of the Nation. They have generously allowed access to their lands for snowmobile, ATV, mountain bike and Nordic ski trails in addition to providing access across 4.5 miles of the Carriage Road with annual use permits which we greatly appreciate. The Town has tried to reciprocate by annually giving funds to the Nation's youth programs, paying for maintenance of the Carriage Road and providing use to Town land for their water quality testing station. In addition, Sugarloaf Mountain Corp. has annually provided substantially reduced ski tickets for tribal members and youth. They have also provided daily golf passes which the Nation has auctioned off for their youth programs.

The Town of Carrabassett Valley is comprised of approximately 54,000 acres, of which, 24,000 acres are owned by the Nation. Without getting into a lot of specifics of the Indian Land Claim Settlement Act, this land was purchased as "Fee Land" from Dead River Co. in 1980. Alder Stream Township, an Unorganized Territory, approximately twenty miles north of Carrabassett Valley was part of the Dead River Lands transactions and this land was put into Federal Trust Lands. We believe the rationale at the time was that Trust Lands should not be located in Organized Towns and Cities (and Dead River Company would not sell the Alder Stream property without also selling the Carrabassett Valley land). The sole purpose of this distinction was not to subvert the Town and State standards of zoning, environmental protection agencies and land use ordinances. Thus, the land in Carrabassett Valley remained Fee Land.

L.D. 2094 entitled 'An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act' will dramatically change the Settlement Act that took several years to negotiate and which was approved by the Indian Tribes and the Federal Government in 1980. While very important to the Indian Tribes in Maine, L.D. 2094 has potentially serious implications for the Town of Carrabassett Valley and other organized Towns and Cities in Maine.

Among many parts of this legislation, if approved in its current form, the Tribes could and presumable would apply to the Federal Bureau of Indian Affairs to have their Fee Lands placed in "Federal Trust" without a vote of the Towns in which these lands are located. The implications of this are significant. If approved, the Tribes would not pay property taxes on these lands and, more importantly, municipalities will lose all land use regulation over these fee lands, in our case, almost one-half of the land within Carrabassett Valley. The Town would have no say over what happens on these 24,000 acres. In addition to a loss of State or Town wood harvesting regulations, a casino, a wind tower project or other projects could be built with absolutely no Town approval process. In our community, hundreds of our home owners whose properties abut PIN land would lose the protection of the Town's Zoning Ordinance which they now have.

The loss of property taxes and related Tree Growth Tax law reimbursement to our Town on these 24,000 acres is not huge but important. Section 12 (7) of the Act takes away the ability of municipalities to tax tribal lands and Section 12 (4) gives the Tribes the right to tax tribal members or tribal entities. A question has been raised as to who is responsible for paying education tuition costs for educating students who reside on Trust Lands? Who is going to pay for fire protection, ambulance service, and other municipal services? Is this the Town's responsibility with no ability to receive property taxes from these lands? Is the State going to reimburse the Towns for this loss of tax revenue?

Fifteen years ago, the Carrabassett Valley Board of Selectmen appointed a Town Committee who met several times with PIN representatives. After much deliberation, the Committee felt strongly that it was not in the Town's interest to allow Federal Trust Lands in the Town of Carrabassett Valley, an organized Town, with all the potential related implications at that time.

As part of the recent legislative process, a legislative Task Force was formed this past winter and their recommendations were incorporated in L.D. 2094 where it resides with the State Legislative Judicial Committee. This Task Force was comprised of two State Senators, two State Legislators and the Five Tribal Government Chiefs. Seemingly indefensible, there was absolutely no representation from municipalities in Maine on this Task Force. While the Judicial Committee held two public hearings, we were not aware of these. It would seem this committee should have at least reached out and asked for municipal representation especially in light of the potential impacts of this legislation on municipalities.

In addition to the loss of significant property taxes, the loss of land use regulation, serious concerns in some communities regarding the potential impacts of water quality standards controlled by the Tribes there are also serious legal questions concerning conflicts with the Municipal Home Rule provisions of the State of Maine Constitution.

This is a very complex issue and L.D. 2094 has appeared to have "flown under the radar" and may be on a fast track. The original Settlement Act took almost seven years of discussion, debate, and compromise to arrive at the final document that was signed in 1980 by all parties. The agreement has stood for over 40 years. It now seems that this Act is going to be completely rewritten in a matter of a few months without properly vetting this important issue. We ask that this process slow down to allow for additional input and consideration by all affected parties (including municipal representation). The implications of LD 2094 are far reaching with very serious potential impacts for our Town and communities throughout the State in addition to the State of Maine.

We believe there may be other alternatives to consider, and we would like the time and opportunity to explore them with the State and the Tribes. We and the municipalities in Maine need a chance to participate in this discussion. We appreciate your consideration in this matter.

Respectfully Submitted,

Board of Selectmen
Town of Carrabassett Valley

Coalition for the Future of Maine

Re LD 2004

Hello,

As you can read from the two attached letters, one from Mane Governor Mills and one from Maine US Senator Angus King, the proposed legislation contained in LD 2004 is problematic for most Mainers in multiple ways. It is the duty of all thinking Mainers to consider what is being asked in LD 2004 and other later bills that may follow it. After such fair, open and balanced consideration it will likely be the conclusion of most adults that while some features of LD 2004 can be alright for most Mainers that some features of the bill can only cause strong difficulties for those same Mainers, Maine businesses and Maine municipalities.

We all have sympathy for the members of the tribes in Maine based upon what happened to the current tribe members progenitors. Things that never should have happened. However, damaging all Mainers now, tribe members included, going forward solves nothing.

Our group, Mainers for Fair and Equal Treatment for All, seeks to cause the details in LD 2004 to be fully vetted, without emotion, by all Maine voters. Only through such an effort can voters and their legislative Representatives take fair and meaningful action on the issues raised in LD 2004.

Please read and then join us in our effort for fairness for all in regard to this legislation, which if it becomes law will be difficult to reverse once the real effects are seen.

Janet T. Mills
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

June 30, 2023

The 131st Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 131st Legislature:

By the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 2004, *An Act To Restore Access to Federal Laws Beneficial to the Wabanaki Nations*.

Like many Maine people, I do not want to see the Wabanaki Nations unfairly excluded from benefits that are generally available to Federally recognized Tribes. I believe the interest we share to do right by the Wabanaki Nations and Maine people must be accomplished through legislation that is clear, thoroughly vetted, and well understood by all parties. Unfortunately, I do not believe that LD 2004 achieves these important standards, and I fear it would result in years, if not decades, of new, painful litigation that would exacerbate our government-to-government relationship and only further divide the state and our people.

That said, I strongly believe that the stated goals of LD 2004 – to ensure the Wabanaki Nations are fairly benefitting from Federal law – can and should be achieved by other simple measures that do not cause confusion and litigation.

In considering the idea behind this legislation, I believe it is important to understand the underpinnings of the *Maine Indian Claims Settlement Act* (MICSA). The settlement – painstakingly negotiated – was mutually beneficial in many ways:

1. It provided $81.5 million (today's equivalent of more than $290 million) in Federal funds to the Tribes and the authority to acquire up to 300,000 acres of land around the state from willing private landowners, in addition to their existing reservation lands. Following the enactment of MICSA, the Tribes used this funding and authority to acquire land across the State of Maine and, today, the Passamaquoddy Tribe and Penobscot Nation have greater land holdings than almost any other Tribe east of the Mississippi, with the ability to continue to acquire more land.

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2. In exchange for the ability to acquire land across Maine, the Tribes agreed that State law would apply in this Tribal Territory, in order to maintain a stable and consistent legal and regulatory framework, as opposed to a potentially confusing patchwork of "jurisdictional enclaves" across Maine. In this way, MICSA did something that had never been done anywhere in the country, and something that has never been replicated: it provided a way for the Tribes to reacquire extensive lands from non-tribal owners while avoiding the disruptive effects that would result from displacing State law on those parcels as they acquired them in disparate places across Maine in the decades to follow. This explains why State law applies to lands belonging to the Tribes in Maine. Maine also is not unique in this respect. State laws in Rhode Island and Massachusetts, for example, also apply to Federally recognized tribes in those states.

3. It guaranteed that the Tribes receive Federal benefits and services on the same terms as their counterparts around the country, except for only a handful of statutes that would conflict with State law. It also made the Tribes in Maine eligible for many streams of State funding, including education funding and revenue sharing, which is beneficial because other Federally recognized Tribes around the country generally do not receive such state funding.

LD 2004 focuses on the third provision addressed above. On that point, in December 2019, Suffolk University Boston prepared a report for the State of Maine Task Force on Changes to the Maine Indian Claims Settlement Act. The report identified 151 Federal laws that were enacted after the implementation of MICSA "related to or which may benefit Indians and Indian nations."

However, this does not mean that the Tribes do not receive the benefits of these 151 laws. In fact, importantly, the same report also notes that it "did not attempt to answer the question whether a law was 'for the benefit of Indians [or] Indian nations' and 'which would affect or preempt the application of the laws of the State of Maine."

In evaluating the 151 laws identified by the report at the request of the Judiciary Committee, my Office has determined that *nearly all these Federal laws do apply to the Tribes in Maine*. Only a handful of Federal laws – such as the Stafford Act, the Indian Healthcare Improvement Act, and the Clean Water Act – do not apply.

Therefore, the Wabanaki Nations benefit from nearly every Federal law from which every other Federally recognized Tribe benefits. This is why the Wabanaki Nations have collectively received $423.6 million in Federal funding since 2019, according to public records.

I will now turn to LD 2004 and the serious substantive flaws with this legislation:

State Law Cannot Override Federal Law

The bill attempts to override a Federal law in MICSA that governs how Federal legislation applies in Maine. As a matter of Constitutional law, State laws cannot override – or preempt – Federal laws. This means that, while LD 2004 purports to make those few Federal laws that are not

applicable to Tribes in Maine applicable, in actuality, it would not. As Attorney General Aaron Frey noted in his testimony, "the bill may not be effective at achieving its stated intent."

Imprecise Language Would Lead to Litigation

While the bill cannot override Federal law, the language in LD 2004 would impact State law – and it would impact it in serious ways that would result in widespread confusion about how and where Maine law applied.

This is because LD 2004 "modifies", or would effectively repeal, a broad swath of Maine laws governing public health, safety, and welfare in all Wabanaki Nations Territory, presently held and later acquired – territory that is scattered across the state and that was acquired pursuant to the agreement that they would remain subject to State laws in perpetuity to avoid the very problem that LD 2004 would create. Those laws could cover fish and game regulations, water quality and land use regulations, Forest Practices Act provisions, air quality standards, labor laws, fire safety and building standards, nondiscrimination laws, school funding and education requirements, subdivision laws, health care regulations, and the probate code, among others. The bill does not identify exactly which State laws would be "modified", which is a serious problem.

This would create great uncertainty. How are Maine people, businesses, and municipalities to know what laws are in effect where and under what circumstances? And when these inevitable questions arise, I fear they would only be solved through contentious lawsuits decided over the course of years, if not decades. After all, we have to acknowledge that the Tribes and the State have been on opposing sides in court over much clearer legal language – let alone the repeal of a host of unspecified laws – and some of those lawsuits took the better part of a decade for multiple courts to decide.

As the Town Manager for Lincoln put it:

> "This bill is of significant concern to us because of the lack of clarity with respect to what it may mean in terms of state and municipal jurisdiction. It's impossible to evaluate the practical impact of this bill as drafted, particularly with so little time. We may not be opposed to having additional federal laws apply in Maine, but we want to know what they are, so that we can understand the consequences."

These same concerns were also expressed by the Towns of Baileyville, Carrabasset Valley, Dover-Foxcroft, East Millinocket, Howland, Mattawamkeag, and Millinocket, as well as the City of Calais, and the Guilford-Sangerville Sanitary District and the Veazie Sewer District.

I know that during the work session on this bill, lawmakers attempted to address some of these concerns through an amendment, which some have referred to as "environmental carve-out" provisions. These carve outs were apparently intended to exempt several Federal environmental laws from the scope of the bill, but LD 2004's actual language does not accomplish that result. This is because the carve-outs only apply to statutes that "directly or indirectly extend the jurisdiction" of the Wabanaki Nations beyond their Indian Territory. But no Federal statute directly

or indirectly extends tribal jurisdiction beyond Indian Territory – they only apply within Indian Territory. So, the carve outs do not actually apply to any Federal statutes.

Maine's Fight with the Federal Government Over Our Lobster Fishery is a Cautionary Tale

I believe it is also important to keep in mind that there are other potentially serious ramifications to removing the nearly 300,000 acres of land now held in Trust by the Tribes, and any new lands acquired by the Tribes in the future, from any State or local regulation. LD 2004 would transfer the State's regulatory authority in that area to the Federal government. Federal law also invites Federal involvement which can lead to Federal meddling. The turmoil that the Federal government just put Maine lobstermen through with its vast overreach, scientifically baseless, and tremendously burdensome Right Whale regulations should give us pause and serve as a cautionary tale of the unintended consequences that Maine people could suffer under such an agreement.

Unintended Consequences Are Effectively Irreversible

To make this worse, these unintended consequences would be very difficult to fix.

If the language of this bill leads to unintended consequences (as I believe it would), then the Maine Legislature, under the terms of the *Maine Implementing Act* (MIA), would be powerless to solve the problems created by the bill without the express agreement of each of the four Wabanaki Nations.

This means that this bill would operate like a binding contract, and these changes would be effectively irreversible.

This is an incredibly high stakes proposition for the 1.3 million citizens of Maine, as well as for future generations, which is why I continue to emphasize the need for a well-vetted bill that includes specific and detailed language that is well-understood and agreed upon by all parties involved.

Lack of Public Process

I believe the problems I have outlined with this bill are in part the direct result of a lack of a comprehensive public process.

LD 2004 was printed and referred to the Legislature's Judiciary Committee on May 30, the same day legislative committees were expected to conclude their regular work for the session. The bill was then scheduled for a public hearing at nine o'clock the following morning, which did not allow the public a meaningful opportunity to be heard on this highly consequential legislation.

The Judiciary Committee held a work session on June 6, during which proponents offered a complex, substantially rewritten draft of the bill that had not previously been made public.

Following a second work session on June 15, a divided Committee voted to approve that re-written draft, with an oral amendment intended to address two of the errors that had been identified within it. The final language of this bill was not printed and available to the public – or the even the Legislature itself – until June 20, the same day it was voted on in both the House and Senate.

It does not have to be this way.

State-Tribal Collaboration Produces Positive Results

When the State and Tribes work together deliberately and respectfully, we can make significant progress. For example, last year, after constructive dialogue, I signed into law LD 906 to address drinking water issues at Pleasant Point Reservation. And following months of negotiations between my Administration and the Tribes, I signed into law LD 585 – a law that: 1) delivers important tax benefits to Tribal communities, and, among other things; 2) gives the Tribes the opportunity to benefit from online sports wagering, an industry from which they have historically been excluded.

This year, my Administration worked closely with the Mi'kmaq Nation and the Attorney General's Office to draft LD 1620, *An Act to Amend Laws Relating to the Mi'kmaq Nation and to Provide Parity to the Wabanaki Nations*. This important, 30-page bill amends both MIA as well as the Mi'kmaq and Maliseet Settlement Acts, and it will result in significant, beneficial reform for the Mi'kmaq Nation. I am truly looking forward to signing this historic legislation into law.

I continue to strongly believe that these bills are examples of how a collaborative process – consisting of respectful negotiation, careful drafting, and thorough review – can produce good legislation, benefit the Tribes, and improve the State-Tribal relationship. To me, these bills and the process that led to them are a model for how we can and should make continued progress. Unfortunately, that is the exact opposite of what happened with LD 2004.

Ready to Negotiate to Make Progress

I do not believe that MICSA is sacrosanct and should not be changed. In fact, I recognize that it is a 40-year-old document, and I believe that, working together, we should consider amendments to address unanticipated circumstances or identified problems. To that end, I strongly believe that the stated goals of LD 2004 – to ensure the Wabanaki Nations are fairly benefitting from Federal law – can and should be achieved through clear and direct legislation that creates no confusion or risk of litigation.

As I noted above, there are only a limited handful of Federal laws that do not apply to Tribes in Maine. Proponents of LD 2004, both in the Judiciary Committee and on the House floor, have often cited two of these laws as potentially offering real and meaningful benefits: the Stafford Act and the Indian Healthcare Improvement Act.

I stand ready to work with the Tribes and with Maine's Congressional Delegation today to develop and support Federal legislation to make those laws apply to the Wabanaki Nations immediately – and I know that U.S. Senator Angus King stands ready to assist.

Conclusion: Collaboration, Not Litigation

My overarching goal is to foster a relationship between the State and the Tribes that is defined by collaboration, not conflict and litigation.

When we have worked together over the last four years, we have accomplished great things – amending Maine law to allow Tribal prosecutions of certain domestic violence offenses; putting in place the strictest water quality standards in the country to protect sustenance fishing; enacting a first-in-the-nation statute requiring Tribal collaboration in State agency decision-making; delivering tax benefits for Tribal members and their businesses; providing the exclusive opportunity to engage in mobile sports wagering operations; adopting a state Indian Child Welfare Act; and – now – reforming our laws to dramatically expand the authorities of the Mi'kmaq Nation and Houlton Band of Maliseet Indians, among many others.

This is more progress in four years than any governor has made in the past 40 years. None of these achievements were easy. They were the result of deliberate and respectful dialogue and negotiation. I truly believe we can accomplish the intended goals of LD 2004 by following this same collaborative, respectful approach that led to these successes and ultimately deliver on the promise of greater benefits for Tribal communities while avoiding the confusion and litigation that would clearly result from LD 2004.

I care for the health, welfare, opportunity, prosperity, and future of the Wabanaki people, just as I care for every Maine person. We all call this beautiful place that we know as Maine home, and I remain committed to collaborating with the Tribes, the Legislature, the Attorney General, and Maine's Congressional Delegation to improve the lives and livelihoods of all people in Maine, tribal and non-tribal alike.

Sincerely,

Janet T. Mills
Governor

PHONE: (207) 287-3531 (Voice)
TTY USERS CALL 711
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FAX: (207) 287-1034

Tribal bill

Angus King <bensdad1990@gmail.com>
To: Lloyd Cutler <papalod@gmail.com>

Wed, Feb 22, 2023 at 10:53 AM

Here is the letter I have sent to those who have contacted my office on this issue. Feel free to forward to anyone you feel might be interested.

Angus

I have been seeking pathways to consensus improvements on this issue and I am grateful for the opportunity to share more of my thinking with you. Here are some of the questions I have been hearing most from Maine people and how I view the way forward.

First, some background on the issue for historical context.

In the 1970's, the Passamaquoddy Tribe and the Penobscot Nation claimed large areas of Maine as having been unlawfully conveyed away under federal law. The lawsuits by the Tribes never came to a final decision, but led to lengthy negotiations between the State and the Tribes with the intention of reaching a resolution of the claims acceptable to all parties. Those negotiations successfully concluded in 1980 with an agreed-upon settlement between the parties, and two laws were enacted to implement the agreement, one by the State (the "Maine Implementing Act") and the other by Congress (the "Maine Indian Claims Settlement Act" or "MICSA").

So what did the Tribes get from the agreement?

In the negotiations, the Tribes' basic goals were rebuilding their land base and achieving self-governing rights. The State's primary interest was in maintaining its statewide jurisdiction in areas such as environmental and land-use laws to avoid a patchwork where state law would apply in most areas but not on tribal lands. The Tribes received $81.5 million (about $275 million in today's dollars), $54.5 million to buy 300,000 acres of land and a $27 million trust fund to be expended by the Tribes as they saw fit; they were also granted unfettered self-government powers over "internal tribal matters" including the right to establish their own governance structures, determine tribal membership, and enact and enforce laws on their reservations. The Tribes were also provided the rights of municipalities which would entitle them to education and other financial support from the state (which is not true of most other tribes across the country).

Several years before the Settlement, the Tribes were granted federal recognition which entitled them all the benefits (financial and otherwise) available to other federally recognized tribes, as long as these benefits don't override existing Maine state law.

At the enactment of MICSA, the Native American Rights Fund, which assisted the Tribes in the negotiations, characterized the Settlement as "far and away the greatest Indian victory of its kind in the history of the United States."

I thought the heart of the present controversy was that Maine Tribes are excluded from federal laws that benefited tribes generally; is that not the case?

Fortunately, that's not true and in fact, the agreement (and the law) is just the opposite. Section 6(i) of MICSA explicitly says that our Tribes "shall be eligible to receive all financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians".

This boils down to our Tribes being entitled to "all financial benefits" available to other tribes across the country, including access to federal economic development programs and a broad range of other assistance in areas such as healthcare, education, and housing, and they have received such funding over the years and continue to do so today. I have always supported the funding of these programs as well as specific allocations to our Tribes under the recent pandemic relief and infrastructure bills.

Further, Section 6(h) makes general federal Indian laws passed after MICSA applicable to our Tribes - "Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine..." The exception is that any laws enacted after MICSA's effective date do not apply in Maine if they would "affect or preempt the application of the laws of the state of Maine".

And that's the heart of the matter that we're working through.

So what does the bill that was introduced in Congress actually do?

It repeals the exception which protects Maine's jurisdiction, which means all future tribal-related federal laws would apply in Maine even though they could compromise the statewide applicability of Maine's laws. (There is an escape clause in the exception, however; Congress can explicitly direct a new tribal law to apply in Maine if it chooses to do so).

It's important to emphasize that the proposed legislation would have no impact at all on the eligibility of our Tribes for federal financial benefits since they have always had such eligibility under the original MICSA.

The Tribes say this deprives them of their sovereignty and disadvantages them in relation to other non-Maine tribes; what about that?

Sovereignty—the power to govern yourself—is a term with a variety of meanings. For example, we refer to our states as "sovereign" and yet they are clearly limited by federal law. Another example is current law which provides for federal oversight of "sovereign" Tribal governments—a provision covering many tribes out west but which does not apply in Maine. In this case, our Tribes have the principal attributes of sovereignty in that they have full power over their internal affairs (actually, greater than many federally recognized tribes which are subject to supervision by the federal Bureau of Indian Affairs), and all the rights of other Tribes, with the exception noted above.

I have heard there have been over 150 Indian laws passed since 1980 which didn't apply in Maine; is that true?

This is not true. The vast majority of those laws have nothing to do with our Tribes or do apply here because they don't conflict with the State's jurisdiction. In a meeting with Tribal Leadership late last summer, I asked for a list of those post-1980 laws that would have benefited them but for the exception in MICSA. In response, they identified three specific federal laws—one of which, the Violence Against Women Act was recently amended in Congress to include them with my full support. The other two (involving disaster aid and certification of nurses serving tribal members) seem resolvable.

To that end, I have reached out to Tribal Leadership and the Governor to organize a meeting to address these specific concerns and to improve consultation around federal issues that would improve tribal welfare and economic opportunity.

I have enjoyed a positive relationship with the Tribes and have met with them regularly since I've been in Washington. I am always ready to work with them to address their concerns with specific issues as they arise, just as I have in the past on legislation such as the Violence Against Women Act.

Even if Tribes get federal funding and general tribal benefits but still have that exception for laws that could conflict with State jurisdiction, why not just drop the exception and be done with it?

Three reasons. First, having our state laws applicable in half of town A and not in the other half (owned by the Tribes) is a recipe for confusion and conflict and clearly would compromise the State's interest in consistent, comprehensive, and broadly applicable law (a situation inevitably leading to litigation). This is particularly problematic in Maine because, unlike in most other states, our tribal lands are in separate lots scattered across the central and northern sections of the state rather than in large contiguous parcels. And the Tribes still have the authority under MICSA to acquire more land, so the location of Indian Territory in Maine is not fixed and is subject to expansion.

Second, this would essentially negate the fundamental position of the State in the negotiation leading to MICSA while leaving the provisions beneficial to the Tribes intact—which undermines the whole concept of an agreed-upon settlement.

Finally, one of the underlying principles of MICSA was that it was simply the codification of the agreement of the parties and that therefore, it should only be substantively amended by agreement of the parties. Since the State objects to this proposed change, if the bill passed, it would establish the precedent that the agreement of all parties to future changes isn't necessary, a precedent the Tribes could come to regret.

I should add that if the shoe was on the other foot and the State asked me to support a unilateral change in MICSA over the objection of the Tribes, I would refuse to do so.

So where do you come out on all of this?

As you can tell, I think preserving the integrity of the State's legal and regulatory system is important and that the current law offers a path to resolving specific problems as they arise. I am committed to working with the Tribes (and the State) on the examples they cited and any future cases where a conflict between a proposed Indian law and State jurisdiction might exist to find a mutually agreeable resolution. The full impacts of entirely scrapping the state jurisdiction provision are impossible to predict, while in my view, the benefits the Tribes may seek can be achieved by a more targeted case-by-case process.

I deeply respect the Tribes and their interests, but also have an obligation to the interests of all the citizens of Maine; fortunately, in this case, I believe that what now appear to be serious differences can, indeed, be reconciled, and I will do all I can to make that happen.

Angus King
15 Potter Street

Item #4

This item consists of 4 op-eds written by myself (O. E. Delogu) over the last several months; three were published in/on the dates/outlets shown. The fourth remains unpublished. Collectively they lay out a wide range of arguments asserting that LD 2004 is unwise and unworkable.

Mr. Branson:

Good luck in your efforts to roll back support for LD 2004

O.E. Delogu

PORTLAND PHOENIX

28 JUNE 2023

ANOTHER VIEWPOINT

Granting the tribes full sovereignty is a mistake

By Orlando Delogu

In our zeal to expiate the sins of the past with respect to Maine's treatment of indigenous people/tribes, we are a step away from doing more harm than good. Apart from abandoning "regular order" in scheduling hearings on LD 2004 with little notice, little or no time for serious Committee debate, no time for consideration of amendments, we are on the cusp of nullifying on all tribal lands Maine's highly protective environmental laws and a large number of Maine laws protecting the safety and rights of individuals, e.g., minimum wage, occupational safety, laws protecting children, abortion and relationships. Except for certain crimes (mostly juvenile) and state gaming laws indigenous and non-indigenous people on tribal land will be protected only by federal laws and laws passed by elected tribal leaders.

Absent the existing panoply of state environmental laws and laws protecting the safety and rights of individuals, it must be recognized that federal laws are unlikely to address environmental problems unique to Maine. And tribal leaders (though well-intentioned) will be burdened to the breaking point to fashion and enforce (on tribal lands) a body of environmental law and laws protecting the safety and rights of individuals comparable to Maine laws presently in place.

Further, LD 2004's assertion of "full tribal sovereignty" (the power to make laws) ignores the fact that tribal land in Maine (unlike tribal land in other parts of the country) is highly fragmented. Over 25 separate parcels (of varying size) exist today; more will exist in the future as tribal leaders exercise rights to acquire additional land granted by the 1980 Maine Indian Claims Settlement Act. Today indigenous and non-indigenous people alike (in pursuit of countless business and personal interests) travel back and forth between tribal and non-tribal land protected/benefited by a uniform body of Maine law; passage of LD 2004 will subject these travelers to federal/tribal law when they are on tribal land, and Maine law when they are on non-tribal land. The potential for chaos and conflict is obvious, but LD 2004 does not address how these problems/conflicts can or will be resolved, much less how the costs will be borne.

Additionally, there are essential infrastructure needs, roads, bridges, power lines, water lines that seamlessly run through and between tribal and non-tribal lands. Today, they are built and maintained by a uniform body of Maine law; LD 2004 does not address how these facilities will be built, maintained, or paid for going forward. Similarly, there are natural phenomena, e.g., air masses, ground water, navigable waters that now are protected by a uniform body of Maine law. LD 2004 does not address how these natural phenomena will be protected as they move through non-tribal land (subject to Maine law) at one point, and then through tribal land (subject to federal/tribal law) at another. In short, LD 2004 leaves these natural phenomena at great risk.

Finally, there is language in Maine's Constitution (Article 1 and Article 4) suggesting that LD 2004 is barred, that the power to legislate (with respect to a type of land, i.e., tribal land) may not be ceded to an internal governing body. In my view questions of constitutionality must be asked and answered before LD 2004 is enacted. In sum, for any/all of the reasons stated above, enacting LD 2004 is a mistake.

Orlando Delogu is a retired Constitutional law professor at the University of Maine School of Law, and a former Portland City Councilor.

Opinion: Sovereignty, The Prerogatives of Indigenous Tribal Groups — The Need for Principled Compromises

by Orlando E. Delogu

Leading speakers at a recent conference sponsored by the student-run *Maine Law Review* of the University of Maine School of Law argued it is long past due for the State of Maine to accord Maine's indigenous tribal groups "full sovereignty." More recently, on March 26, 2023, Jerry Reid, attorney for Governor Mills laid out in the *Maine Sunday Telegram* the argument for expanding the autonomous decision-making prerogatives (and benefits) of these tribal groups beyond those stated in the widely acclaimed and federally approved 1980 Maine Indian Claims Settlement Act.

The Governor's position, however, stopped short of according these tribal groups full (unfettered) sovereignty. What seems to be called for is principled compromise between the powers of the state and the autonomous decision-making powers of indigenous individuals/ tribal groups.

It is universally acknowledged that the historic treatment of indigenous individuals / tribal groups by successive Massachusetts and Maine inexcusable. These discriminatory practices were too slowly ended in the early-mid-1900's culminating in the 1980 Act. The Act, however, though it significantly expanded the autonomous decision-making prerogatives of indigenous individuals / tribal groups did not grant "full tribal sovereignty." That status is now being sought, circa 2023, by Maine's indigenous tribal leaders. But the term "full sovereignty" begs a critical question -- what does it mean? How should "full sovereignty" be interpreted?

"Sovereignty" is the power to govern. "Full sovereignty" as defined by Maine's tribal leaders (and their spokespersons) means that Maine laws (with some few exceptions) will no longer apply on tribal lands. People / visitors / businesses on tribal lands will only be governed by applicable federal laws and by laws passed by elected tribal leaders. Maine laws would continue to exist in all other areas of the state.

However, unlike tribal land in all other states, tribal land in Maine is highly fragmented and widely dispersed over central and northern Maine. It now encompasses close to 250,000 acres and approximately 25 separate parcels. The 1980 Act authorized the expansion of tribal land holdings to 300,000 acres.

As the additional 50,000 acres are acquired, it is highly likely that the number of separate parcels and their geographic distribution will increase. The back and forth of those subject to tribal law (on tribal land) and to Maine law (on non-tribal land) portends an unprecedented level of chaos. Given this patchwork of tribal land, "full sovereignty," seems untenable. Principled compromise seems necessary.

Further, the logical consequences of "full sovereignty" as defined by Maine's tribal leaders is that those living, working, or visiting on tribal lands would no longer be bound by or have the benefit of Maine's environmental laws, e.g., pollution control laws, the Site Law, shoreland zoning, well drilling laws, etc. Nor would they be bound by or have the benefit of laws protecting the rights of individuals, e.g., minimum wage laws, occupational safety laws, child protection laws, human rights laws, including laws protecting relationships and abortion rights. This too seems untenable. Of course, the tribes could enact (and enforce) laws as, or more, stringent than the Maine laws presently in place, but this course of conduct seems problematic at

Beyond the flow of people and business activities (between tribal and non-tribal lands) there are infrastructure needs, e.g., roads, bridges, power lines, water lines, etc. that must be met. There are also natural phenomena, e.g., air masses, ground water, navigable waters (things not bound by artificially fashioned borders) that pass onto and out of lands subject at one point to tribal laws and at another point to State of Maine laws.

What body of law (state or tribal) coordinates meeting infrastructure needs? Whose law regulates natural phenomena as the borders between tribal lands and State of Maine lands are crossed and recrossed thousands of times each day? Again, the potential for chaos seems obvious. "Full sovereignty" puts infrastructure needs and natural phenomena at risk. Principled compromises seem necessary.

Interestingly, the term "full sovereignty" is never used to reference the governmental powers of the United States. At the same time individual states are said to be "sovereign." But again, the term "full sovereignty" is never used to reference the governmental powers of individual states. The founders of the nation and leaders in the thirteen original states (and states that

subsequently joined the Union) realized that "full sovereignty" could not be exercised by both the national government and state governments. Principled compromises have been fashioned.

In some settings, e.g., protecting constitutionally guaranteed rights (due process, equal protection, free speech), or protecting the interstate flow of goods and people, *e.g.*, by fashioning a uniform railroad track width, allowing access to navigable waters, or today, by creating a single air traffic control system, federal law / national interests largely prevail over state sovereign prerogatives.

On the other hand, infrastructure (roads, pipelines, bridges) and natural phenomena link or pass through (and benefit) many states, but these constructs cannot be controlled by any one state. Principled compromises have always been deemed essential. Infrastructure must be built and maintained; natural phenomena must be protected and regulated.

The national level of government often takes the lead and bears a large share of the costs incurred, but the role of state governments in planning, building, and maintaining needed structures and enforcing federal air and water pollution control laws is large. Here federal sovereign interests and state sovereign interests are more evenly balanced. The principled compromises needed are painstakingly hammered out. There is no room for "full sovereignty."

At the local level, Maine (and most other states) accord people in defined geographic regions, i.e., cities, towns, municipalities, a range of autonomous decision-making prerogatives, so-called "home rule" or "local control" powers. These powers historically have not been characterized as sovereign powers -- we are not a nation of city-states. States, as sovereign entities, define the scope and limits of "home rule" powers and programs.

But "home rule" recognizes that a sovereign state is not always in the best position to deal with physical and social differences existing in different regions within a state. Principled compromises between the state and local governments are continuously created.

A similar relinquishing of state sovereign powers to Maine's tribal groups and lands is appropriate and long overdue, but here too a balancing of competing interests between a sovereign state and tribal governments / lands located within the state must be fashioned and refashioned.

Turning to current discussions: It seems accurate to note that today, the prerogatives of Maine's indigenous people / tribes are greater than the "home rule" powers of any municipality in Maine. The 1980 Settlement Act and its amendments (agreed to by tribal leaders) confirms this fact. Nothing in the Act precludes further expansion of the decision-making prerogatives of indigenous people/tribes. The Act is more than 40 years old; conditions and needs change.

To this end Maine's tribal leaders, rather than seeking to legislate an ill-defined status, "full sovereignty," will almost certainly be better served by putting a series of concrete proposals on the table -- proposals that expand the existing powers of Maine's indigenous people / tribes without harm to larger public interests. It's worth remembering, "full sovereignty" has not been defined by any governmental body in the U.S. It arguably does not exist. It is seemingly unworkable in Maine given the fragmentation of tribal lands.

Legislation (LD 2004) said to grant "full sovereignty" to Maine's four tribal groups, puts a vague abstraction, an illusion, in place. LD 2004 does not provide any direct or immediate benefit to indigenous people or to the state. Indeed, its repeal of an undefined (but a wide swath) of Maine laws that benefit in countless ways all Maine people and land areas including Maine's indigenous people and tribal lands, in favor of federal legislation that is not focused on Maine and that does not afford us protections that we now enjoy, harms both the tribes and the state. That is why LD 2004 was vetoed by the Governor and why the veto was sustained.

In sum, pursuing "full sovereignty" is a mistake. Tribal leaders should advance concrete proposals to expand the prerogatives of Maine's indigenous people; this will allow a dialogue between the Governor's office, legislative and tribal leaders. In the same manner that state sovereignty must (at times) give way to the sovereign powers of the nation and that "home rule" powers give way to the sovereign powers of the state, concrete proposals open the door to the fashioning of principled compromises that will benefit indigenous people and lands, and the state as a whole.

This approach recognizes a fundamental reality -- Maine's indigenous people are an integral part of the United States and the State of Maine. They have the constitutional benefits of being citizens of both; they have the benefits of the 1980 Act ceding a wide range of decision-making powers to them. These powers should be expanded. Tribal leaders can begin the process by putting proposals expanding the 1980 Act on the table. The door is open. The time to act is now.

Orlando Delogu, one of the founders of the Maine Civil Liberties Union is professor emeritus at Maine Law, where he has taught for more than 50 years. He has been involved in policy issues, from local to the international level. In 2013, he was awarded the Justice Louis Scolnik Award by the ACLU of Maine.

Dispersed tribal land makes 'full sovereignty' untenable

Rather than seeking to legislate this ill-defined status, Maine tribal leaders should present concrete proposals expanding tribal rights.

Speakers at a recent conference sponsored by the student-run Law Review of the Maine School of Law argued that it is long past due for the state of Maine to accord tribes in Maine "full sovereignty." More recently, in the March 26 Maine Sunday Telegram, Jerry Reid, attorney for Gov. Mills, laid out the argument for expanding the autonomous decision-making prerogatives (and benefits) of these tribal groups beyond those stated in the federally approved 1980 Maine Indian Claims Settlement Act. Mr. Reid's/the governor's position, however, stopped short of granting these tribal groups "full sovereignty." What they call for is principled compromise between the powers of the state and the autonomous decision-making powers of Indigenous individuals and tribes.

It is universally acknowledged that the historical treatment of Indigenous individuals and tribes by successive Massachusetts and Maine governments was deplorable. These discriminatory practices were slowly (too slowly) ended in the early to mid-1900s, culminating in the 1980 Settlement Act. The Settlement Act, though it significantly expanded the autonomous decision-making prerogatives of Indigenous individuals and tribes, did not grant "full sovereignty." That status is now being sought by Maine tribal leaders. But the term "full sovereignty" raises a critical question – what does it mean? How should it be interpreted?

"Sovereignty" is the power to govern. "Full sovereignty," as defined by Maine tribal leaders, means that Maine laws will no longer apply on tribal lands. Visitors to and people and businesses on tribal lands will be governed by applicable federal laws and by laws passed by elected tribal leaders. Maine laws would continue to exist in all other areas of the state. However, unlike tribal land in all other states, tribal land in Maine is widely dispersed. It now encompasses nearly 250,000 acres and about 25 separate parcels. The 1980 Settlement Act permitted an expansion of tribal land to 300,000 acres. As the additional 50,000 acres are acquired, it is likely that the number of separate parcels and their geographic distribution will increase. The back and forth of people, visitors and businesses subject to tribal law (on tribal land) and to Maine law (on non-tribal land) portends an unprecedented level of chaos. Given Maine's patchwork of tribal land, "full sovereignty" seems untenable. Principled compromises seem necessary.

The logical consequences of "full sovereignty" as defined by Maine tribal leaders is that those visiting and living and working on tribal lands would no longer be bound by or have the benefits of Maine's environmental laws, e.g., pollution control laws, the site law, shoreland zoning, well drilling laws, etc. Nor would they be bound by or have the benefits of Maine laws protecting the rights of individuals, e.g., minimum-wage, occupational safety, child protection and human rights laws, including laws protecting relationships and abortion rights. This too seems untenable.

Beyond the cross-border flow of people and business activities, infrastructure needs – e.g., roads, bridges, power lines, water lines, etc. – must be met. As well, natural phenomena – e.g., air masses, ground water, navigable waters – pass onto and out of lands subject at one point to tribal laws and at another point to Maine laws. What body of law (state or tribal) coordinates meeting infrastructure needs? Whose law (state or tribal) regulates natural phenomena? Again, the potential for chaos seems obvious. "Full sovereignty" puts infrastructure needs and natural phenomena at risk.

Rather than seeking to legislate an ill-defined status, "full sovereignty," Maine tribal leaders will almost certainly be better served by putting a series of concrete proposals expanding tribal rights on the table – proposals that enlarge powers granted by the 1980 Settlement Act, but that leave the larger body of Maine laws in place statewide. Remember, "full sovereignty" is seemingly unworkable in Maine, given the fragmentation of tribal lands. The benefits it seems to offer do not outweigh the harms it will give rise to. In short, legislation granting "full sovereignty" is fraught with harms and risks (noted above); its asserted benefits for Indigenous individuals and tribes and the state are illusory. Indeed, "full sovereignty" arguably harms both.

In sum, the 1980 Settlement Act ceded a wide range of autonomous decision-making powers to Indigenous Maine individuals and tribes. Today, these powers and benefits can and should be expanded. Concrete proposals to expand the prerogatives of Indigenous people and tribes will sharpen the dialogue between the governor's office and legislative and tribal leaders. They open the door to the fashioning of principled compromises and real benefits that will serve the interests of both the tribes and the state. Maine tribal leaders can begin the process by putting such proposals on the table. The door is open. The time to act is now.

— Special to the Press Herald

ABOUT THE AUTHOR

Orlando E. Delogu is an emeritus professor at the University of Maine School of Law and a resident of Portland.

Match Tribal "Sovereignty" Rhetoric With Common Sense

Orlando E. Delogu

A recent piece in the Maine Sunday Telegram called for matching sovereignty rhetoric with reality. I'd agree if reality includes truth telling and common sense. I'd begin by noting that the MST author accepts the proposition (repeated over and over by LD 2004 proponents) that this is: "A bill to allow the four Wabanaki tribes of Maine to access the same benefits available to every other federally recognized tribe in the United States…" The implied assertion is that Maine tribes do not have access to federal programs that benefit Indians—that they are being, treated unfairly—that LD 2004 is needed to correct this longstanding unfairness. This is simply untrue.

Sec. 6, (i) of the Maine Indian Claims Settlement Act of 1980, 25 USC §1725 (i), clearly states that the Maine tribes "… shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations, or tribes or bands of Indians". This provision was extended to the Micmac Nation in the "Aroostook Band of Micmacs Settlement Act of 1991".

In short, LD 2004 was not needed for the reason asserted; Maine's Wabanaki tribes have not been treated unfairly. They have for years participated in many of the same programs that tribal groups in other parts of the country have participated in. The fact that they have collectively received $423.6 million since 2019 from a variety of Federal programs that benefit indigenous people and tribal groups attests to the Wabanaki tribe's active participation in these programs.

Having failed to recognize that a major justification for LD 2004 was built on a falsehood, the MST author nonetheless acknowledged that "… LD 2004 would indeed have augmented Wabanaki sovereignty…." But he then proceeds to lay out his real agenda—the legislation didn't go far enough. He characterized LD 2004 as "sovereignty lite." It didn't open the door to tribal "gaming" activities, and it didn't fully absolve the tribes from compliance with Maine laws.

The author implies that these shortcomings were forced on the tribes by a Governor opposed to expanding tribal sovereignty. This too is not true. LD 2004 was the tribe's bill. They wrote it. They chose to move forward with what the MST author calls "sovereignty lite." If the author is unhappy with the tribe's approach in

LD 2004 he needs to take the matter up with tribal leaders, not imply that the Governor is opposed to any/all expansion of tribal rights.

The Governor's veto message makes her position clear: "I believe the interest we share to do right by the Wabanaki Nations and Maine people must be accomplished through legislation that is clear, thoroughly vetted, and well understood by all parties. Unfortunately, I do not believe that LD 2004 achieves these important standards..."

For example, LD 2004 calls for "...modifying the jurisdiction of and the application of the laws of this state..." replacing them with "...the statutes and regulations of the United States that are generally applicable to Indians ...." The gaps/imprecision in these two passages are staggering. Modified? how? to what extent? What is repealed? what federal laws will be put in place? What do they cover?

Many Maine environmental issues/laws, e.g., our Site Selection Act, well-drilling and shoreland zoning laws, our mining and forest protection legislation are not addressed at all by federal legislation "...generally applicable to Indians." The same is true for many of Maine's health, safety, and human rights laws. Our minimum wage law, workplace safety laws, laws protecting children, marriage, abortion, the elderly are far more protective than counter-part provisions in federal legislation "...generally applicable to Indians."

In sum LD 2004 was vetoed by the Governor because it was badly drafted legislation. The fact that its final passage was sought in the waning days of the legislative session, when there was little opportunity to clarify the loose ends, the ambiguities, the uncertainties that LD 2004 as written created, did not help. These realties are not acknowledged by the author of the MST piece.

Last word—the MST piece argued for more than the tribes sought in LD 2004. The author wants an undefined concept of "full sovereignty" that would throw out a substantial body of Maine laws that benefit all Maine people and land areas, including Maine's indigenous people and tribal lands. He would put in place federal legislation that is not focused on Maine and that does not afford us protections that we now enjoy. This was/is an unwise trade-off thankfully blocked by the Governor's veto. That's why many who initially supported LD 2004 voted to sustain the veto. We can do better.