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At Loggerheads—

The State of Maine and the Wabanaki

Final Report of the
Task Force on Tribal-State Relations

January 15, 1997

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Prologue

I am a Passamaquoddy and I am distinctively different. I need to be treated as such...I do not understand why I have to give up my right to who I am or what I am. Because the outside world says so? That's not enough for me. Why is the State of Maine so bent on making us do what the State of Maine wants? Even when it goes against everything we believe in? So we become like them?...I will never give up my right to be who I am; a Passamaquoddy woman who wants to live the ways of her people before all this outside interference. Would you give up the right to your identity or beliefs because of some outside force demanding it? I certainly would hope not!

It has been sixteen years since the Land Claims Settlement Act has been passed...I view the Settlement Act as a way to push us out of existence as Passamaquoddy people. I felt it then, I see it now. It was not an honorable act...I feel the invasion as I've never felt it before. It has to do with jurisdiction over our lives and who has the right to determine how we govern our people and take care of our lands and resources. It has to do with our right to fish the ocean without outside interference or how we conduct our business. It has to do with being sovereign. It has to do with being treated as a nation within a state. The State of Maine does not want to recognize this, but the bottom line is we are living proof of being a distinctively different people...When the State of Maine can recognize and accept us as such, then maybe we will have a fighting chance of working together to make it a better, safer, peaceful place for all to live.

Recommendations? Simple. Recognize us as different people with different views, different ways of doing things and understand we do it the way it seems, feels right for us. Understand that we are not trying to pull anything over on anyone. We just want to be able to conduct our affairs without outside interference. In every aspect of our lives we need to control our destiny if we are to continue to survive as Passamaquoddy people. Until the State of Maine can see and understand this there will be no peace, no harmony, no balance, no future. Understand that because we do things different does not mean it will be harmful. It just means that within the confines of our world we do what is natural/meaningful for us. The confines of our world will be determined by our land base and all who enter our lands do so with the knowledge that they abide by our laws and if they violate our laws then they pay the consequences under our jurisdiction. The same will be for our people who venture into the State of Maine. Is that so hard for the State of Maine to fathom? Can we really live, side by side like this? We can. We just have to make the effort...

I pray for all our peoples to find common ground in which to move forward.

Margaret Dana
Passamaquoddy Tribe
Pleasant Point

Task Force on Tribal-State Relations *

Members of the General Public

Roger Smith, Chairperson of Task Force on Tribal-State Relations and Member of Committee on Indian Relations, Episcopal Diocese of Maine

** Bennett Katz, Chairperson of Maine Indian Tribal-State Commission

Representatives of the Passamaquoddy Tribe

The Honorable Victoria Boston, Tribal Council Member, Indian Township

The Honorable Margaret "Dolly" Dana, Tribal Council Member, Pleasant Point

The Honorable Linda Meader, Tribal Council Member, Indian Township

Representatives of the Penobscot Nation

The Honorable Paul Bisulca, Tribal Representative to 117th Maine Legislature

** Mark Chavaree, Esq., Tribal Counsel

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* This list includes the positions of people at the time of appointment to the Task Force.

** Also a member of the Maine Indian Tribal-State Commission.

Executive Summary

Learning how an Indian thinks is difficult for a non-Indian and learning how to walk in an Indian's shoes is impossible. When things look the darkest, that is not the time to throw in the towel. We all must keep making the effort. We will never be the same, but we can work together. Bennett Katz, Chair, Maine Indian Tribal-State Commission

The 5,500 Wabanaki people in Maine are from four federally recognized Tribes: the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs, and the Houlton Band of Maliseets. There are contacts between the State of Maine and the Tribes in all arenas affected by government, including natural resources, environmental protection, land use regulation, health and human services, law enforcement, transportation, taxation, and the courts.

As a result of the 1980 Maine Indian Claims Settlement Act, the Passamaquoddy Tribe and the Penobscot Nation have a special relationship with the State of Maine. The relationship between the State and these two Tribes, in particular, is an uneasy one and is growing more so every day. Some people believe that the Act is clear and resolved many tribal-state conflicts; others heartily disagree. The State of Maine and the Wabanaki are at loggerheads.

One of the places where this uneasy relationship plays out is before the Maine Indian Tribal-State Commission (MITSC), created as part of the Settlement. Among other things, the MITSC is required to review the effectiveness of the Act and the social, economic, and legal relationship between the State, Passamaquoddy Tribe, and Penobscot Nation. In recent years, the MITSC has informed both the State and the Tribes about its difficulty in fulfilling its responsibilities, given its meager budget and the fact that its recommendations often are not taken seriously.

The Task Force on Tribal-State Relations was created by the 117th Maine Legislature. It worked from June 1996 through early January 1997 to explore ways of improving the tribal-state relationship and the effectiveness of the MITSC, as well as to determine the appropriate role of the Aroostook Band of Micmacs and the Houlton Band of Maliseets in the MITSC.

The Task Force strongly encourages the State and the Tribes to build on the important dialogue and education which have begun during its short life. The Task Force offers several recommendations which can provide the foundation of mutual respect and trust, necessary to support a productive relationship between the State and the Tribes:

1. Round Table Discussions. The MITSC should facilitate "round table" or "talking circle" discussions involving representatives of the State and the Tribes to explore the issues of assimilation and sovereignty. This means *listening* to one another, not debating one another.
2. Annual Assembly. The MITSC should convene an annual Assembly of Governors and Chiefs, including the Governors of the State of Maine and the Passamaquoddy Tribe and the Chiefs of the Penobscot Nation, the Houlton Band of Maliseets, and the Aroostook Band of Micmacs. The desired outcomes of the Assembly include consensus about priority issues, issues to be addressed by the MITSC over the coming year, and any issues to be addressed outside the MITSC.
3. Advisory Committee. The State, the Passamaquoddy Tribe, and the Penobscot Nation should support the creation of an Advisory Committee on Tribal State Relations. Appointed and supported by the MITSC, the Advisory Committee should serve as a sounding board, bring

expertise not found among the MITSC members, and provide a forum for discussion of any aspect of tribal-state relations and concerns, whether or not they are related to the Settlement. The Advisory Committee should include at least the Passamaquoddy Tribal Representative, the Penobscot Tribal Representative, a representative of the Aroostook Band of Micmacs, a representative of the Houlton Band of Maliseets, and two members of the Maine Legislature.

4. Strengthening the Commission. The MITSC should develop a written conflict of interest policy to guide both appointments to the MITSC and the conduct of its members. The State, the Passamaquoddy Tribe, and the Penobscot Nation should support an amendment to the Settlement to change the quorum requirement for the MITSC from seven to six members, provided that at least one representative of each of the three parties is present. The MITSC should formulate an annual plan with long and short-term goals and distribute an annual report describing the priority issues it has addressed and the extent to which it has met its goals. The MITSC should propose a plan and budget for performing its public information function.
5. Protecting Tribal Fish and Wildlife. The MITSC should create a committee of the whole to undertake studies and make recommendations with respect fish and wildlife management policies on non-tribal lands, in order to protect fish and wildlife stocks on tribal lands. It should develop a long range plan for the regulation of tribal waters within its jurisdiction.
6. Consideration of Tribal Needs and Concerns. The Governor of Maine should consider issuing an Executive Order to require executive branch agencies to take into account tribal needs and concerns in the development of legislation, rules, policies, and programs. Legislative Leaders should consider instructing legislators to take into account tribal needs and concerns as they review and act upon the legislative proposals before them.
7. Workshops. The MITSC should develop and offer workshops about the Wabanaki, the racism they experience, the Settlement, and tribal-state relations to legislators and cabinet members on a bi-annual basis and to other state employees on an annual basis. Churches and other organizations should conduct prejudice reduction workshops for individuals involved in Indian/non-Indian relationships.
8. Tribal Representatives. The Micmacs and Maliseets each should have a non-voting representative in the Legislature.
9. MITSC's Need for Resources. State and tribal leaders should discuss and work toward agreement about the level of support for the MITSC and whether or not parity in cost sharing between the State and the Tribes should continue.
10. Legislation. The State, the Passamaquoddy Tribe, and the Penobscot Nation all should support legislation proposed by the Task Force to create the Advisory Committee on Tribal-State Relations (#3) and to change the MITSC's quorum requirement (#4). The Task Force has submitted this proposed legislation separately from this report.

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A. Overview

1. The Tribes in Maine

The Wabanaki – the People of the Dawn Land – and their ancestors have lived in what is now Maine and the Maritime Canada for over 11,000 years. Today, there are approximately 5,500 Wabanaki People living in Maine. They are from four Tribes: the Passamaquoddy Tribe, based in Washington County at Sipayak (Pleasant Point) and Motahkokmikuk (Indian Township); the Penobscot Nation, based at Indian Island on the Penobscot River; the Houlton Band of Maliseets; and the Aroostook Band of Micmacs.

2. Arenas of Tribal-State Relations

There are contacts between the State and the Tribes in all arenas affected by government, including natural resources, environmental protection, land use regulation, health and human services, law enforcement, transportation, taxation, and the courts. There are communications between tribal and state employees and Governor-to-Governor interactions, though these typically do not occur on a regular basis. In addition, with Maine's unique-in-the-Nation arrangement of non-voting Passamaquoddy and Penobscot Tribal Representatives, two of Maine's Tribes have an official connection to the Maine Legislature.

3. Uneasy Relationship

As a result of the Maine Indian Claims Settlement Act of 1980, the Passamaquoddy Tribe and the Penobscot Nation have a special relationship with the State of Maine. The relationship between the State and the Tribes is an uneasy one and seems to be growing more so every day. Some people believe that the Act is clear and resolved many conflicts between the State and the Tribes. Others heartily disagree. Several key concepts, described in Appendix #1, underlie the tribal-state relationship and help explain why it is uneasy.

Many tribal members believe the State interprets the Settlement's terms too narrowly and ignores its spirit and intent. They view the State as encroaching on their sovereignty and way of life. Some perceive the Settlement as a "fraudulent" document designed to assimilate the Wabanaki. Many state policymakers believe that the Tribes are always "pushing the envelope" and seeking more resources and rights. They question why the Tribes continue to raise issues when, in their view, everything was supposed to have been settled back in 1980.

One of the places where this uneasy relationship between the State and the Tribes plays out is before the Maine Indian Tribal-State Commission (MITSC), created as part of the Settlement Act. Among other things, the intergovernmental MITSC is required to review the effectiveness of the Act and the social, economic, and legal relationship between the State, Passamaquoddy Tribe, and Penobscot Nation.

4. Legislation to Improve Tribal-State Relations

In recent years, the MITSC has informed both the State and the Tribes about its difficulty in fulfilling its responsibilities, given its small and static budget. The MITSC also has expressed frustration about spending considerable time developing positions, only to find that its recommendations often are not taken seriously by those beyond the MITSC.

As a result of these concerns, Penobscot Tribal Representative Paul Bisulca and MITSC Chairperson Bennett Katz asked House Democratic Leader Paul Jacques if he would introduce legislation to improve tribal-state relations and make the MITSC more effective. During the Second Regular Session of the 117th Legislature, Representative Jacques sponsored LD 1667, which sought to strengthen the MITSC by increasing its annual state appropriation from \$15,000 to \$22,500 and by the addition of four legislators to its membership.

The Legislature, with the support of the King Administration, enacted the increased appropriation. However, there was a constitutional separation of powers question about the proposal to include legislators as members, since the MITSC has regulatory authority over fishing on certain bodies of water in Penobscot and Passamaquoddy Territory. As a result, in April 1996, the 117th Legislature passed a Resolve (Chapter 84), included in Appendix #2, which created a Task Force on Tribal-State Relations to find other ways to improve tribal-state relations and the effectiveness of the MITSC.

5. Task Force on Tribal-State Relations

The resolve required the MITSC to establish, finance, staff, and convene the first meeting of the Task Force. It also specified that the membership must consist of MITSC members and other persons determined by the MITSC, including "representatives of the Passamaquoddy Tribe, the Penobscot Nation, Legislators serving in the 117th Legislature, the Attorney General or a representative of the Attorney General; and the Governor or a representative of the Governor." The resolve required the Task Force to:

- ◆ Explore ways to improve the relationship between the State and the MITSC and between the State and the Tribes;
- ◆ Determine the appropriate role of the Micmacs and Maliseets in the MITSC, consulting with them and inviting their participation;
- ◆ Evaluate the effectiveness of MITSC, engage in other activities to improve tribal-state relations, and develop recommendations; and
- ◆ Submit a report, including draft recommendations for legislation, to the Legislature and the Tribal Councils by December 15, 1996. The deadline was extended until January 15, 1997.

6. Task Force Members and Staff

The MITSC appointed fourteen members to serve on the Task Force on Tribal-State Relations. They are listed on page ii of this report. Included were three members of the Passamaquoddy Joint Tribal Council; three representatives of the Penobscot Nation; six representatives of the State, including a State Senator and a State Representative; and two public members. The Task Force Chair was Roger Smith, one of the public members and a member of the Committee on Indian Relations of the Episcopal Diocese of Maine. Five members were also members of the MITSC and the staff person was the MITSC's Executive Director.

7. Task Force Process

The Task Force held six business meetings and five hearings from June 1996 through January 1997. Two hearings were held at Indian Island (the Penobscot reservation), one at Motahkokmikuk and one at Sipayak (the Passamaquoddy reservations), and one in Houlton for the Houlton Band of Maliseets and Aroostook Band of Micmacs. The Task Force also analyzed the

minutes of the MITSC's meetings since its earliest days in 1983, in order to assess the topics addressed by the MITSC, as well as its operations.

One of the Task Force members voiced concern about the evaluation of the MITSC, indicating that the MITSC's heavy involvement in the Task Force created a conflict of interest. In response, it was noted that the majority of the Task Force members were not MITSC members and that the resolve requires the Task Force to report directly to the Maine Legislature and the Tribal Councils.

The Task Force members discussed whether they should address specific substantive areas of concern or focus on process issues. There was some sentiment that since some matters have not been resolved during all the years since the Settlement, the Task Force should tackle and resolve at least one of these. Alternatively, it was felt that the Task Force at least should establish a timetable for their resolution or identify the roadblocks to their resolution. The majority of members agreed that the emphasis should be on how to make the tribal-state relations process work so that the substantive concerns can be resolved. They also agreed that they should examine both the MITSC and tribal-state relations in arenas beyond the MITSC. (Appendix #3 is a summary of specific substantive areas of concern identified during the Task Force hearings.)

8. Dialogue and Education

A few of the Task Force members felt that the Task Force did not contribute to the resolution of the underlying disagreements between the State and the Tribes. However, several members felt strongly that important dialogue and education began during their meetings and hearings and that the State and the Tribes should build on this progress. The Task Force urges the State and Tribes to make a commitment to listen to and understand each other's views. It is possible to repair and strengthen tribal-state relations, if there is mutual respect. The willingness to listen and the demonstration of mutual respect can lead to trust.

9. This Report

Early in the life of the Task Force, one member stated that the Task Force, the MITSC, and the Settlement all should be abolished. Perhaps because of such strongly held feelings, the Pasamaquoddy members originally appointed to the Task Force did not participate in its later meetings. Eleven of the fourteen Task Force members have indicated their support for the findings and recommendations presented in this report. Any differences of opinion about the details of the findings and recommendations are discussed in the report.

Section B of the report includes the recommendations of the Task Force. Sections C and D provide background information about the Maine Indian Claims Settlement and the MITSC. Section E offers findings and analysis of the issues considered by the Task Force. Appendices to the report describe concepts involved in tribal-state relations, include the resolve creating the Task Force, list specific substantive issues brought to the attention of the Task Force during its hearings, list the MITSC's members over the years, and summarize the highlights of the MITSC's meetings since its creation.

B. Recommendations

Unless otherwise indicated, the following recommendations represent a consensus of the eleven Task Force members described in Section A (9). *Italics* highlight the entity or entities responsible for carrying out each recommendation.

1. Framework for Tribal-State Relations

By design, the Settlement Act is intended to be reviewed over time by the MITSC. *The MITSC* should facilitate discussions between state and tribal representatives to explore openly the issues of assimilation and sovereignty. These discussions should be in addition to the Annual Assembly of Governors and Chiefs described in Section B (2). For at least some of these discussions, the MITSC should use the “round table” or “talking circle” approach, which assumes that all participants are equal and emphasizes listening rather than debating.

The State, the Tribes, and the MITSC all should view the Settlement Act as an organic and living document. This means that interpretations about how to implement or whether to amend the Act, as well as the relationship between the State and the Tribes could change with the times, while preserving the basic intent and spirit of the Settlement. If the State, the Tribes, or the MITSC believe that the words and legal relationships in the Settlement should be changed, amendments could be recommended jointly to the Legislature and for final ratification by the Tribal Councils.

2. Annual Assembly of Governors and Chiefs

The MITSC should convene an annual Assembly of Governors and Chiefs, including the Governors of the State of Maine and the Passamaquoddy Tribe and the Chiefs of the Penobscot Nation, Houlton Band of Maliseets and Aroostook Band of Micmacs. In preparation for the assembly, MITSC representatives should be responsible for articulating their respective government’s priority issues, summarizing the priority issues identified by the Aroostook Band of Micmacs and Houlton Band of Maliseets, and forwarding all identified priority issues to the Governors and Chiefs. During the Assembly, the issues may be modified, consolidated, or withdrawn by the sponsoring government, and a sense of relative priority for all the issues should be developed.

The desired outcomes of the Assembly include consensus about the priority issues, the particular issues to be tackled and resolved over the coming year, the issues to be addressed by the MITSC over the coming year, and any issues to be addressed outside the MITSC. (For example, the Assembly might create a Task Force with representatives from the Maine Department of Education, the Tribes, and the public assigned to examine and make recommendations concerning the issue of racism in public schools.)

The process for identifying the issues for consideration by the Assembly of Governors and Chiefs should include the following steps:

- ◆ Issues paper. *The MITSC* should prepare a paper on the priority issues of the respective governments. In developing this paper, the MITSC should ask the state and tribal governors, the tribal chiefs, legislators, and tribal council members to identify their priority issues of concern.
- ◆ Concrete examples. In describing priority issues, *state and tribal officials* should offer concrete examples of the problems involved with the issues.

- ♦ **Scope of issues.** Issues identified should include anything involving tribal-state relations, both within and beyond the Settlement Act.
- ♦ **Timing.** *The MITSC* should prepare the issues paper each summer. The Assembly of Governors and Chiefs should follow each fall.

3. Advisory Committee on Tribal-State Relations

The State, the Passamaquoddy Tribe, and the Penobscot Nation should support the creation of an Advisory Committee on Tribal-State Relations, appointed by the MITSC, to serve as a sounding board, bring expertise not found among the MITSC members, and provide a forum for discussion of any aspect of tribal-state relations and concerns, whether or not they are related to the Settlement. Members should not exceed fifteen and should include at least the Passamaquoddy Tribal Representative, the Penobscot Tribal Representative, a representative of the Aroostook Band of Micmacs, a representative of the Houlton Band of Maliseets, and two members of the Maine Legislature.

4. Supporting and Strengthening the MITSC

The State, the Passamaquoddy Tribe, and the Penobscot Nation all should support the MITSC. If the three parties determine that this is not working after four years, then they should identify other strategies for attempting to resolve tribal-state issues.

The MITSC should develop and propose a conflict of interest/code of ethics policy or legislation for adoption by the State, the Passamaquoddy Tribe, and the Penobscot Nation. The purpose of the policy or legislation is to guide appointments to the MITSC and the conduct of MITSC members.

The MITSC should meet more frequently to enable its members to check in with and show proper respect to their appointing authorities on priority issues under consideration. The MITSC's quorum requirement should be less stringent, while preserving balance among the parties. *The State, the Passamaquoddy Tribe, and the Penobscot Nation* should support an amendment to the Settlement Act which provides that rather than seven members, as currently required, a quorum should be six members, with a requirement that at least one representative of each of the three parties must be present.

To ensure accountability, *the MITSC* should formulate an annual plan with short and long-term goals, subsequent to and based on the priority issues established during the annual Assembly of Governors and Chiefs; evaluate its success in achieving short and long-term goals; and prepare and distribute an annual report describing the priority issues addressed, its long and short-term goals, and the extent to which it has met these goals.

Since the Settlement eliminated the Maine's Department of Indian Affairs, the MITSC has been the only place in the State Capital available to respond to general questions about Native Americans. The MITSC handles telephone and written responses to questions asked almost daily by members of the public. *The MITSC* should propose a plan and associated budget for performing this public information function.

5. Protecting Fish and Wildlife

The MITSC should take two actions to protect fish and wildlife on tribal lands. First, in order to carry out its responsibilities under 30 MRSA §6702(8), it should create a standing committee of the whole. This provision requires the MITSC to "undertake appropriate studies, consult with the

Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner [of the Maine Department of Inland Fisheries and Wildlife] and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation, and the [MITSC.]” Second, the MITSC should develop a long range plan for the regulation of Passamaquoddy and Penobscot waters within its jurisdiction.

6. Consideration of Tribal Needs and Concerns

The Governor of Maine should consider issuing an Executive Order to require Executive Branch agencies to consider tribal needs and concerns in the development of legislation, rules, policies, and programs. *Legislative Leaders* should consider instructing legislators to take into account tribal needs and concerns as they review and act upon the legislative proposals before them.

7. Workshops

The MITSC should develop and offer workshops about the Wabanaki, the racism they experience, the Settlement, and tribal-state relations on a bi-annual basis to cabinet members and legislators and should offer the program to other state employees on an annual basis. To facilitate the success of the workshops, the *Governor and Legislature of Maine* should provide support and encourage participation.

The State, the Tribes, and the MITSC should urge and support churches and other organizations to conduct prejudice reduction workshops for individuals involved in Indian/non-Indian relationships. The Maine Council of Churches, the Committee against Racism and the Committee on Indian Relations of the Episcopal Diocese of Maine, NAACP, the Equity Institute of Maine, and the National Coalition Building Institute are potential resources available to assist with this.

8. Tribal Representatives

By tradition, the Passamaquoddy Tribe and the Penobscot Nation each have had a non-voting Tribal Representative in the Maine Legislature. For the Penobscot Nation the earliest record of representation in the State Capital is 1823 and for the Passamaquoddy Tribe it is 1842. Neither the Micmacs nor Maliseets ever has had a Tribal Representative. A majority of the Task Force members recommend that the *Maine Legislature* offer and fund the opportunity for the Aroostook Band of Micmacs and the Houlton Band of Maliseets to each have a non-voting Tribal Representative in Augusta.

9. MITSC's Need for Resources

The MITSC's responsibilities under the Settlement cannot be fully discharged within the level of its annual budget. After eight years of being "flatlined" at \$30,000 or less, the MITSC's budget increased to \$41,250 for fiscal year 1997 (\$22,500 from the State, \$11,250 from the Penobscot Nation, and \$7,500 from the Passamaquoddy Tribe.) However, this amount still is not adequate.

The Task Force believes that within its current budget the MITSC can facilitate discussions about assimilation and sovereignty (Recommendation 1); coordinate the Annual Assembly of Governors and Chiefs, including the preparation of the issues paper (Recommendation 2); and formulate and write an annual plan and annual report (Recommendation 4). However, the Task Force also recognizes that the MITSC cannot carry out all of the recommended actions within its current budget. It is estimated that another \$15,000 is needed to: support the work of the Advisory Committee on Tribal-State Relations (Recommendation 3); respond to public inquiries about the

Wabanaki and Native American issues (Recommendation 4); play a stronger role in the protection of fish and wildlife (Recommendation 5); and develop and present workshops about the Wabanaki, racism, and the Settlement (Recommendation 7).

The Task Force recommends that:

- ◆ *State and tribal leaders* should discuss and work toward agreement about the level of support for the MITSC and whether or not parity in cost sharing between the State and the Tribes should continue.
- ◆ *The State* should be mindful of the Maine Implementing Act, which specifies that all state agencies must “cooperate with the [MITSC] and make available to it without charge information and data relevant to [its] responsibilities.” (30 MRSA §6212(5))

10. Legislation

The State, the Passamaquoddy Tribe, and the Penobscot Nation all should support legislation proposed by the Task Force to create the Advisory Committee on Tribal-State Relations (Recommendation 3) and to change the MITSC’s quorum requirement (Recommendation 4).

C. The Maine Indian Land Claims Settlement

1. Complex Case

The Maine Indian land claims case was exceedingly complex and had tremendous social, economic, and legal implications for the State of Maine and its citizens. The claim covered 60% of the State with 350,000 people living in the disputed area. After four years of negotiations, the Maine Indian Claims Settlement Agreement of 1980 was reached. The Penobscot Nation and the Passamaquoddy Tribe approved the Maine Implementing Act and a draft of the proposed federal legislation before Maine Governor Joseph Brennan signed the Maine Act on April 3, 1980 and President Jimmy Carter signed the federal Maine Indian Claims Settlement Act on October 10, 1980. This was the largest Settlement of its kind in the country at the time and the first to include provisions for the reacquisition of land. The Settlement affected the Wabanaki in three ways:

- ◆ Passamaquoddies and Penobscots. The Passamaquoddy Tribe and Penobscot Nation received \$80+ million. To receive this federal award, the Tribes gave up their claim to 12.5 million acres and gave back some of the powers of self-government that recently had been recognized in the courts. The Settlement established a special relationship between the State of Maine and these two Tribes. It also was agreed that these Tribes would have authority over their own internal matters on the reservations and would continue the trust relationship with the Federal Government that had been recognized during the 1970s. The State was not required to provide any land or money, even though it gained greater jurisdiction over the Tribes.
- ◆ Houlton Band of Maliseets. The Settlement provided \$900,000 and first-time federal recognition for the Houlton Band of Maliseets, but did not define a special relationship with the State of Maine.
- ◆ Micmacs and Other Maliseets. The Aroostook Band of Micmacs and Maliseet People who were not members of the Houlton Band also had claimed title to parts of what is now Maine. However, by the terms of the Settlement, under which they received no land or money, their claims were extinguished. The Maine Department of Indian Affairs, which had acted as an advocate and liaison with other state agencies, was abolished. Thus, those ignored by the Settlement also lost services that had been provided by the State. In late 1991, the Aroostook Band of Micmacs won federal recognition.

2. Basis for Claims

The basis for the land claims was simple. In 1790, the First Congress of the United States enacted the Nonintercourse Act, declaring that any transfer of land from Indians to non-Indians had to be approved by Congress. If such a transfer was not approved, it was not valid. This law was designed to protect Indians from unscrupulous and unfair transactions.

Between 1794 and 1833, the Passamaquoddy and Penobscot People transferred most of their land to what is now the State of Maine. Key treaties during this time included the treaty of September 19, 1794 between the Passamaquoddy Tribe and the Commonwealth of Massachusetts and the treaty of June 29, 1818 between the Penobscot Nation and the Commonwealth of Massachusetts. The land transfers were never approved by the U.S. Congress until the Maine Indian Claims Settlement of 1980.

The Houlton Band of Maliseets eventually became a party to the Settlement, too. Although not a part of the original land claims suit, the Maliseets also had aboriginal territory in Maine. The basis

of their claim was different from that of the Passamaquoddy Tribe and Penobscot Nation, because they never had signed treaties giving up their land in Maine.

3. Basic Elements

The Maine Indian Land Claims Settlement Agreement consisted of three basic elements:

- ◆ Maine Implementing Act. An agreement between the State and the Tribes, called the Maine Implementing Act, was enacted by the Maine Legislature. This specifies the laws that are applicable to Indians and Indian lands in Maine. (30 MRSA, c. 601)
- ◆ Federal Settlement Act. A bill called the Maine Indian Claims Settlement Act was enacted by the U.S. Congress extinguishing the land claims, compensating the Indians for their claim, and ratifying the Maine Implementing Act. (25 U.S.C. §§1721 et. seq.)
- ◆ Land Purchase Options. Purchase options ran from certain landowners to the Passamaquoddy Tribe and Penobscot Nation in which the landowners agreed to sell 300,000 acres of land at fair market value.

4. Tribal Powers and Applicability of State Laws

The Maine Implementing Act provides that "except as otherwise provided" in the Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian Territories, shall have, exercise, and enjoy the rights, privileges, powers and immunities of a municipality, including the power to enact ordinances and collect taxes; be subject to all the duties, obligations, liabilities, and limitations of a municipality; and be subject to the laws of the State, except that "internal tribal matters" are not subject to regulation by the State. Internal tribal matters include membership in the Tribe or Nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections, and the use or disposition of Settlement Fund income. (30 MRSA §6206(1)) The Maine Act states that the Tribes have exclusive jurisdiction within their respective Territory over violations of tribal ordinances by tribal members. (30 MRSA §6206(3)) At the same time, the Maine Act provides that "except as otherwise provided in this Act" the Tribes are "subject to the laws of the State...to the same extent as any other person or lands or other natural resources therein." (30 MRSA §6204)

The federal Settlement Act provides that "land or natural resources acquired...in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary [of Interior] in accordance with section 102 of the Indian Self-Determination and Education Assistance Act...or other existing law." (25 U.S.C. §1724(h)) The federal Act also provides that "in the event a conflict of interpretation between the provisions of the Maine Implementing Act and this Act should emerge, the provisions of this Act shall govern." (25 U.S.C. §1735(a))

The U.S. Congress described the compromise between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation, clarifying that the Settlement is not intended to lead to acculturation of the Indian people of Maine. (Senate Report 96-957, 96th Congress, Second Session, 1980):

While the Settlement represents a compromise in which state authority is extended over Indian Territory to the extent provided in the Maine Implementing Act, in keeping with these decisions the Settlement provides that henceforth the tribes will be free from state interference in the exercise of their internal affairs.

Thus, rather than destroying the sovereignty of the Tribes, by recognizing their power to control their internal affairs and by withdrawing the power which Maine previously claimed to interfere in such matters, the Settlement strengthens the sovereignty of the Maine Tribes.

The Settlement also protects the sovereignty of the Passamaquoddy Tribe and the Penobscot Nation in other ways, For example...the Maine Implementing Act provide[s] that these Tribes, as Indian tribes under the United States Constitution, may exclude non-Indians from tribal decision-making processes, even though non-Indians live within the jurisdiction of the tribes. Other examples of expressly retained sovereign activities include the hunting and fishing provisions...and...provisions...for the continuation and/or establishment of tribal courts by the Passamaquoddy Tribe and the Penobscot Nation with powers similar to those exercised by Indian courts in other parts of the country. Finally...all three Tribes [including the Maliseets] may organize for their common welfare and adopt an appropriate instrument to govern its [sic] affairs when acting in a governmental capacity. In addition, the Maine Implementing Act grants the Passamaquoddy Tribe and the Penobscot Nation the state constitutional status of municipalities under Maine law. In view of the "home rule" powers of municipalities in Maine, this also constitutes a significant grant of power to the Tribes...

Nothing in the Settlement provides for acculturation, nor is it the intent of Congress to disturb the cultural integrity of the Indian people of Maine. To the contrary, the Settlement offers protections against this result being imposed by outside entities by providing for tribal governments which are separate and apart from the towns and cities of the State of Maine and which control all such internal matters.

5. Areas of Law Specified

Among the areas of law specified in the Maine Implementing Act in relation to the Passamaquoddy Tribe and the Penobscot Nation are the following:

- ◆ Courts and Law Enforcement. The Tribes have their own courts and law enforcement officers with exclusive jurisdiction over certain minor crimes, minor juvenile offenses, minor civil disputes, domestic relations, and child custody matters for their members. The Tribes use the State's definition of crimes. They may sue and be sued, but are immune to suit to the same extent as a municipality when acting in their governmental capacity. (30 MRSA §§6206 and 6209)
- ◆ Hunting and Fishing. The Tribes have exclusive authority within their territories to promulgate and enforce ordinances regulating hunting and trapping in their Indian territories and fishing on any pond that is entirely within the territory and is less than 10 acres in area. The ordinances cannot discriminate against non-Indians allowed to hunt and fish in the territories. However, there may be special provisions allowing individual tribal members to hunt, trap, or fish for sustenance. If the Maine Commissioner of Inland Fisheries and Wildlife believes a tribal ordinance or MITSC rule (or absence thereof) adversely affects fish or wildlife outside their jurisdiction, s/he must inform them and develop remedial standards in consultation with them. If this fails, the Commissioner may call a public hearing. If, after the public hearing, the Commissioner determines that the ordinance or rule (or absence thereof) causes a significant

depletion of fish or wildlife stocks, then s/he may adopt remedial measures. (30 MRSA §§6206 and 6207)

- ◆ **Public Benefits.** The Tribes are entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities. Individual tribal members are eligible to receive any state grants, loans, assistance, and services to the same extent that these are provided to other persons in the State. Moneys received from the Federal Government for substantially the same period and purpose must be deducted from any payment by the State. The Tribes are eligible to apply for any discretionary state grants or loans available to municipalities. (30 MRSA §6211)
- ◆ **Taxes.** The Tribes and their members are liable for payment “in lieu of” real and personal property within their Indian territory and for all other taxes and fees to the same extent as any other person or entity in the State, except that property used predominantly for governmental purposes is exempt from taxation to the same extent that real or personal property owned by a municipality is exempt. (30 MRSA §6208)

6. Applicability of Federal Laws

As federally recognized Indian Tribes, the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseets, and the Aroostook Band of Micmacs are eligible for all federal Indian benefits. General federal laws and regulations affecting Indians are applicable in Maine. However, laws and regulations which relate to a special status or right to Indians and also which preempt the jurisdiction of the State are inapplicable in Maine. (25 U.S.C. §1725 (h)) Any federal law enacted after October 10, 1980, “for the benefit of Indians...which would affect or preempt the...laws of the State of Maine...shall not apply within the State of Maine, unless [it] is specifically made applicable within the State...” (25 U.S.C. §1735(b)) These special provisions for Maine have made a great many federal Indian laws inapplicable in the State. The recent conflict about the Passamaquoddy casino, including the applicability of the federal Indian Gaming Regulatory Act, involves these federal provisions.

The Tribes have expressed concern that they never approved these provisions because Congress added them after the Tribes and the State of Maine approved the Settlement. The State has expressed the view that there were good faith negotiations, noting that the House Committee Report that accompanied these changes states that the relevant changes resulted from negotiations between representatives of the federal government, the State of Maine, and the Maine Tribes. (H.R. Rep. No. 96-1353 at 18, 1980 U.S.C.C.A.N. at 3793)

7. Sources of Tension and Conflict

In spite of its name, the Settlement Act did not settle everything. Tribal and state people of good will look at the same provisions of the Act and arrive at different conclusions about their meaning. Among the areas which produce tension and conflict are the following:

- ◆ **Treaties and Aboriginal Rights.** The State and the Tribes have differing views about the impact of the Settlement on past treaties and aboriginal rights, as well as the impact of past treaties and aboriginal rights on the Settlement.
- ◆ **Municipal Status.** Many concerns focus on the “municipal status” and “internal tribal matters” provisions in the Settlement. (30 MRSA §6206(1)) Many tribal members thought these were meant to expand the Tribes’ authority, but many state people have interpreted this to define the Tribes’ authority.

- ◆ Tribal Ordinances and State Laws. The provisions described in Section C (4) of this report result in varying interpretations about jurisdiction, which are a major source of disagreement between the State and the Tribes.
- ◆ Marine Issues. The Act is silent on marine issues. All provisions about hunting and fishing relate to inland lands and waters. The State's position is that under 30 MRSA §6204 State marine law applies to the Tribes and that they have no more rights to marine resources than any other person or entity. The position of the Passamaquoddy Tribe is that they continue to have aboriginal rights to hunt and fish.
- ◆ Sustenance Fishing. There is a basic disagreement between the State and the Tribes about the meaning of sustenance. In addition, with respect to jurisdiction over fishing, the Act simultaneously requires the MITSC to take into account sustenance rights of tribal members and to require that tribal members and non-tribal members must be treated the same. (30 MRSA §6207(3))
- ◆ Definition of Reservations. Even though the Settlement Act defines the reservations, the State and the Tribes continue to have differing views about the boundaries. (30 MRSA §6203(5) and (8))
- ◆ MITSC Responsibility. There has not been agreement about how broadly or narrowly to interpret the provision requiring the MITSC to review the social, economic, and legal relationship between the State and the Tribes. (30 MRSA §6212(3)) This has contributed to the MITSC's failure to carry out this major responsibility in an effective manner.

D. The Maine Indian Tribal-State Commission

1. Getting Started

The nine-member Maine Indian Tribal-State Commission is an inter-governmental entity created by the Settlement Act. The Settlement was approved by the Tribes and signed into state and federal law in 1980. The first appointments to the MITSC were made in 1981. However, the MITSC's first meeting was not held until early 1983. The Implementing Act originally specified that a retired judge must serve as chairperson. Since the MITSC was not able to find a retired judge willing to serve, the Act was amended to remove this requirement. The MITSC's first chairperson, was Alton "Chuck" Cianchette, a well known businessman, who first appeared in MITSC minutes for the meeting of June 7, 1984.

2. Members

The MITSC's members both today and over the years are listed in Appendix #4. Four members are appointed by the State, two by the Passamaquoddy Tribe, and two by the Penobscot Nation. The ninth, who is the chairperson, is selected by the eight appointees. By law, seven members constitute a quorum, the appointed members serve three-year terms, and the chairperson serves a four-year term.

3. Responsibilities

The Maine Implementing Act specifies five major responsibilities for the MITSC:

- ◆ Effectiveness. To continually review the effectiveness of the Act and the social, economic, and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State. (30 MRSA §6212(3))
- ◆ Land Acquisitions. To make recommendations about the acquisition of certain lands to be included in Passamaquoddy and Penobscot Indian Territory. (30 MRSA §6205(5))
- ◆ Fishing Rules. To promulgate fishing rules on certain bodies of fresh water (30 MRSA §6207(3)) including any:
 - Pond (other than those wholly within Indian Territory and less than 10 acres) with 50% or more of shoreline within Indian territory;
 - Section of river or stream, both sides of which are within Indian territory; and
 - Section of river or stream, one side of which is within Indian territory for a continuous length of 1/2 mile or more.
- ◆ Fish and Wildlife Studies. To study and make recommendations about fish and wildlife management policies on non-Indian lands, in order to protect fish and wildlife stocks subject to regulation by either Tribe or the MITSC. (30 MRSA §6207(8))
- ◆ Extended Reservations. To review petitions by the Tribes for designation as an "extended reservation" and – if the MITSC determines, after investigation, that the petitioning tribal members constitute an extended reservation – to establish the boundaries of the extended reservation and to recommend to the Legislature an extension the Tribe's jurisdiction to the extended reservation. (30 MRSA §6209(5))

4. Public Inquiries

In addition to its five required responsibilities, the MITSC performs an informal information and referral function. Since the Settlement eliminated the Maine Department of Indian Affairs, the MITSC is the only place in the State Capital available to respond to general questions about Native Americans. The MITSC handles telephone and written responses to questions asked almost daily by members of the public. Those asking questions include people interested in finding out about their Native American roots; Native Americans asking about educational and other benefits for which they might be eligible; teachers and students; people seeking contacts within the Tribes for business, cultural, and other purposes; and governmental organizations from beyond Maine with questions about the Maine Tribes.

5. Operations

The MITSC always has operated on a part-time basis. In the early 1980s, the MITSC was staffed by an employee of the Maine State Planning Office. Its funding was provided by a \$3,000 allowance from the Maine Department of Inland Fisheries and Wildlife. In the mid-1980s, the MITSC retained an independent consultant as Executive Director and was successful in requests to the State, the Passamaquoddy Tribe, and the Penobscot Nation for a budget of \$45,000, comprised of 50% tribal dollars and 50% state dollars. In 1988, the MITSC informed the State, the Tribe, and the Nation that it did not require \$45,000 after all, and the amount was reduced by one-third to \$30,000.

Today, there continues to be a part-time, independent consultant who serves as Executive Director at the pleasure of the MITSC. For the first time in eight years, there has been some growth in the MITSC's basic operating budget. The Maine Legislature appropriated an additional \$7,500 and the Penobscot Nation increased its annual payment by \$3,750 for the fiscal year beginning July 1, 1996.

6. Accomplishments

In its efforts to promote a relationship between the State and the Tribes that is based on open communications and mutual respect and trust, the MITSC has accomplished a number of things:

- ◆ Fish and Wildlife. In 1992, the MITSC promulgated fishing rules for three bodies of water under its jurisdiction in Penobscot Territory. It also has sponsored a number of workshops for State and Tribal biologists and wardens to discuss fishing regulation and enforcement issues. In the fall of 1995, as a result of these workshops, the MITSC published a pamphlet on fish and wildlife provisions under the Settlement. Section E (7) includes more information about the MITSC's fish and wildlife-related responsibilities and activities.
- ◆ Trust Lands. The MITSC has reviewed and made recommendations to the Legislature concerning the addition of several pieces of land to be placed in trust for the Passamaquoddy Tribe and Penobscot Nation. Section E (7) includes more information about the MITSC's responsibilities and activities in this area.
- ◆ Wabanaki Video. In 1995, after six years of fund-raising beyond its basic operating budget, the MITSC completed an educational video about the Wabanaki People of Maine entitled *Wabanaki: A New Dawn*. Section E (13) includes more information about the video.
- ◆ Access to Resources. The MITSC sought and secured financial support beyond its basic operating budget to carry out a project to help the Tribes in Maine gain greater access to public and other resources. With the financial support of the Maine Departments of Human Services

and Transportation, the Commission retained a Tribal Member as a consultant to identify funding and resources for which the Tribes in Maine are eligible and to open lines of communication between the Tribes and state agencies.

- ◆ **Educational Efforts.** In addition to the fish and wildlife workshops and the video, the Commission has been involved in numerous other educational activities. It has:
 - Presented testimony and information to the Legislature concerning Tribal-State issues on numerous occasions.
 - Led efforts to secure private foundation funding for a collaborative venture between the Passamaquoddy Tribe and the University of Maine at Machias.
 - Facilitated meetings to try to resolve differing views about the meaning and impact of various aspects of the Settlement.
 - Prepared a paper entitled *Maine Indian Claims Settlement: Concepts, Context, and Perspectives*.

7. Review of MITSC Minutes

In spite of the preceding accomplishments, many questions and concerns have been raised about the MITSC's track record. Thus, the Task Force examined the minutes for the MITSC's meetings from April 21, 1983, through September 25, 1996. At least one MITSC meeting was held prior to April 21, 1983 but the minutes are missing. The highlights of the MITSC's minutes are included as Appendix #5. This synopsis does not reflect the efforts of numerous MITSC subcommittees appointed over the years to address fishing issues, tribal access to public resources, and environmental issues; to plan workshops for tribal and state personnel; and to oversee the project to produce the educational video.

In addition to fifty-three regular meetings, the MITSC sponsored six workshops for state and tribal personnel, including three on state and tribal fish and wildlife issues (1988, 1994, and 1995), one on economic development (1987), one on municipal issues (1989), and one on human services issues (1992). The MITSC also helped to organize four meetings of state and tribal governors (1991-1994).

The MITSC discussed twenty-eight major topics on a recurring basis during sixty-three meetings (fifty-three regular meetings, six workshops, and four other meetings). Not included in this analysis were issues discussed only once or twice. Figure 1 on the next page summarizes this information. The MITSC's seven most frequently discussed topics over the years have included: legislation about a variety of topics, adding lands to Passamaquoddy and Penobscot Territory, hunting and fishing, the Wabanaki video project, tribal access to public resources, budget concerns, and concerns about tribal-state relations.

Figure 1. Topics Discussed by the MITSC: 1983-1996

# meetings during which topic discussed	# years during which topic discussed	Topic discussed by the MITSC
36	13	Legislation initiated mostly by Tribes
26	12	Tribal interest in adding land to Indian territory
26	11	Mostly tribal concerns about fishing/hunting; MITSC rules
26	9	Wabanaki video project
23	6	Tribal concerns about access to public resources
22	11	* MITSC's concerns about its budget
22	8	Tribal and MITSC concerns about tribal-state relations
17	10	* Discussion of MITSC's role
15	10	Tribal concerns about tribal court jurisdiction
15	7	* Discussion of MITSC's operations, not including budget
13	6	Tribal economic development efforts
12	6	Tribal concerns about public lands and land use regulation
12	6	* Selection of MITSC chairpersons
11	8	* Selection and review of MITSC Executive Directors
11	6	Tribal concerns about education funding; MAWIYANE
9	4	Need for maps of tribal lands and waters under MITSC
8	6	Tribal and state concerns about taxation
7	7	* Issues concerning MITSC members
7	5	Passamaquoddy concerns about marine issues
7	3	Penobscot and private interests in extent of reservation
7	2	Tribal concerns about environmental decisions by State
6	5	Tribal concerns about boundaries
6	4	Tribal concerns about high and low level nuclear waste
5	3	Involvement of Maliseets and Micmacs
4	3	Tribal interest in municipal rights, responsibilities, benefits
3	2	Tribal interest in gambling
3	2	* Clarification of MITSC jurisdiction

* These issues relate to the internal workings of the MITSC.

E. Findings and Analysis

Because the Task Force held most of its meetings and hearings within the Wabanaki communities, the views of tribal members are more prominently reflected than the views of state personnel. The discussion of each key issue includes a finding or findings in *italics*, followed by analysis. The analysis is based on four principal sources of information – discussions by Task Force members, testimony from the five hearings conducted by the Task Force, the Settlement Act, and the MITSC's minutes.

1. Assimilation and Sovereignty

There is fear among tribal members that, through the Settlement Act, the State is trying to assimilate and acculturate the Tribes. Related to this fear are strong feelings about the sovereignty of the Tribes. Sovereignty is the biggest issue affecting the relationship between the State and the Tribes. Conversely, some state officials are concerned that sovereignty is being used to extend geographic and legal authority beyond the terms agreed upon in the Settlement.

In general, State officials are nervous about the “nation within a nation” implications raised by the concept of sovereignty. In general, Tribal members believe that the loss of sovereignty means the loss of their culture, their way of life, and their right to be Wabanaki. They believe that ultimately, it means assimilation.

At the time of the Settlement, a major objective of the State was not to have a nation within a nation and a major concern for the Tribes was to be protected against acculturation and assimilation. The State remains adamant in its position today, while the Tribes believe that the Settlement is being used to erode their culture, traditions, and independence.

The Maine Implementing Act provides that the laws of the State apply to the Tribes and their lands (30 MRSA §6204). At the same time, the Act provides that “internal tribal matters” are not subject to regulation by the State (30 MRSA §6206(1)) and that the Tribes have exclusive jurisdiction within Indian Territory over hunting and fishing ordinances (30 MRSA §6206(3)). The Tribes and the State have different views about the extent of their respective jurisdiction.

During the Task Force meetings and hearings, it became evident that there is profound fear that the State of Maine, through the Settlement, is attempting to acculturate and assimilate the Wabanaki people. This fear drives strongly held tribal convictions about sovereignty.

The State needs to treat the Tribes as sovereigns. There are big holes in the Settlement Act. Issues that mean a lot to the Tribes are not being addressed. The State is trying to assimilate the Tribes. Cliv Dore, Governor, Passamaquoddy Tribe at Pleasant Point

Our inherent sovereign rights have been thrown in the wastebasket. Linda Meader, Passamaquoddy Tribe at Indian Township

The State would like to see Indians disappear so they can get the land back. Ann Pardilla, Penobscot Indian Nation

Any time the Tribe wants to do something, the State uses the Settlement to stop them. The Tribe cannot be boxed in by State rules and guidelines if they are to live their own ways. Rick Doyle, Lt. Governor, Passamaquoddy Tribe at Pleasant Point

At the same time the Tribes agreed to adopt State laws as their own, another statement was made about acculturation. Under the Settlement Act the State has a responsibility not to acculturate the Tribes...Repression by the State has created an even stronger sense of a nation within a nation. The more you pick at a sore, the bigger it gets and the more it hurts...This has affected the Penobscots in the Basin Mills Project. The Board of Environmental Protection says that all of their laws apply, regardless of the Settlement. Paul Bisulca, Penobscot Tribal Representative

We lose our inherent rights, because we cannot afford to fight...The Penobscot People need to be heard. Debra Kondiles, Penobscot Nation.

Even though the State says there cannot be nations within the State, this does not change how tribal members feel in their hearts.

There are nations within nations in Maine. Legally, the State might say that this is not so, but it is. Paul Bisulca, Penobscot Tribal Representative

The Task Force heard testimony specifically about Section 6204 of the Implementing Act.

Section 6204 refers to the laws of the State applying to the Tribes. This is not self-determination...The most heated point of contention is the applicability of state law to native people, who had nothing to do with creating the laws. This is an erosion of sovereignty. It strikes at the heart of sovereignty and should be amended. Ed Bassett, Passamaquoddy Tribe at Pleasant Point

One recommendation proposed for consideration by the Task Force was the repeal of Section 6204. While the Task Force is not making this recommendation, it does recognize that sovereignty requires open discussion between the State and the Tribes:

People never want to talk about section 6204, but there must be an honest look at this, especially since this is a section the State relies on over and over again. This must be discussed, if one party does not agree with it. Thomas Harnett, Assistant Attorney General

Sovereignty stirs passion and fear on both sides. Before the State moves on this, it has to think through all of the implications. Sovereignty cuts across many ways and raises implications for others. For example, what are the implications for land and waters outside the reservations and what are the implications for the Federal Government with respect to Maine? I am willing to think these issues through. If it is assumed that there should be sovereignty, we need to know what this means. I'm not arguing whether sovereignty is good or bad. Evan Richert, Director, Maine State Planning Office

During the hearings, some tribal members noted that the discussions of sovereignty must not overlook the need to protect the rights of individual tribal members.

Tribal Members do not feel that they have many rights. They are not allowed to go to State Court for employment problems and they don't have a tribal constitution. Michele Attean, Penobscot Indian Nation

People are afraid of too much sovereignty, especially in human rights cases. Tribal members are oppressed and suppressed both externally and internally. Sonja Dana, Passamaquoddy Tribe at Indian Township

The Task Force urges the tribal and state governors, key staff, and representatives of the MITSC to discuss openly the issues of assimilation and sovereignty.

People must start talking about assimilation and sovereignty. They need to listen and try to understand each another. The round table model offers an approach and format in which all participants are equal and the purpose is to listen to what people say-not to convince anyone of anything. Roger Smith, Chairperson, Task Force on Tribal-State Relations

2. Effectiveness of the Settlement

Tribal members generally believe the Settlement has not been effective. Some believe the Settlement should be abolished, while others feel it should be made to work.

The Task Force learned that tribal members generally do not think the Settlement works.

We took a deal that was not to our benefit and now spend millions of dollars on lawyers. The Settlement is not working. Tribal Members want to know what is going on. Michele Attean, Penobscot Nation

The Settlement was an attempt to wipe away 500 years of injustice with a stroke of a pen. The Passamaquoddy People are much less tolerant of tribal-state relations today. They do not feel bound by a Settlement that is not working. Fred Moore, Passamaquoddy Tribal Representative

I opposed the Settlement because more was being given up than being given. The Tribe was herded into the Settlement...pushed by a large amount of money, but what about fishing rights and sovereign rights? Margaret Dana, Passamaquoddy Tribe at Pleasant Point

The Settlement Act needs a major overhaul. It is the 1980 Attorneys Employment Act. The only thing that will improve tribal-state relations are amendments to the Act. There is need for clarification in the areas of environmental protection and land use management. A major problem is that the Attorney General says the Settlement Act says the Penobscots cannot catch a salmon in the river as they have done for thousands of years. John Banks, Director of Natural Resources, Penobscot Nation

Some tribal members believe the Settlement should be abolished and want nothing further to do with tribal-state relations.

We'll never be comfortable with tribal-state relations. The Task Force, the Commission, and the Settlement Act all should be abolished. The Settlement is invalid and the Passamaquoddy Tribe should be treated as a federally recognized Tribe and should forget the State. It is a waste of time to try to save tribal-state relations. Linda Meader, Passamaquoddy Tribe at Indian Township

Some tribal members believe efforts to work within Settlement parameters should continue.

The people who were negotiating thought they were doing right by their people and now people are trying to work together. Tossing it out the window will not make things any better. Deanna Pherson, Penobscot Nation

Realistically, the Settlement Act will not be abolished. What has precipitated the current strain in tribal-state relations has been the current Administration. Perhaps we should talk about how the [King] Administration feels about sovereignty and fishing rights. Paul Bisulca, Penobscot Tribal Representative

At least one tribal member testified that he would not have agreed to the Settlement had he known then how it would be implemented.

After sixteen years, the Tribe needs to say that what has happened was not our intent...The Settlement got so complex. Its original intent got sidetracked, changed, and sometimes thrown out... I was part of the Settlement discussions. We thought we would be treated fairly, but injustices have not been addressed...If I had understood more, I would have recommended that there not be a Settlement. I would have supported federal recognition only. Other federally recognized Tribes have the privilege to do a lot of things. Gaming is the most recent example of this. The casino would have been a major boost for the Passamaquoddy Tribe. With respect to hunting and fishing rights, the Tribe's relationship with the State of Maine is almost like having a parent. Robert Newell, Passamaquoddy Tribe at Indian Township

3. Intent of the Settlement

The Tribes and the State have fundamentally different views about the basic intent of the Settlement. The tribal view is "unless we gave it up, we retain it." The State view is "unless we gave it to you, you don't have it." People who are interpreting the Act often are not grounded in it and often assume that only their interpretation is the correct interpretation.

Noting that back in 1980 the Settlement represented a spirit of reconciliation between the State and the Tribes, the Task Force identified several actions triggered by it: 1) provision of federal dollars to enable the Passamaquoddy Tribe and Penobscot Nation to reacquire land; 2) protection of a living Wabanaki culture; 3) recognition of sovereignty over internal tribal matters; 4) preservation of the hunting and fishing rights of tribal members; 5) recognition of reservations as entities with extraordinary municipal rights and responsibilities; 6) recognition of the applicability of state laws to the Tribes and to the Indian people, lands, and resources "except as otherwise provided" in the Settlement Act; and 7) establishment of an entity to monitor constantly the Settlement Act and the relationship between the State and the Tribes to make sure things are working.

The Tribal view that "unless we gave it up, we retain it" is based on rules of construction under federal Indian common law, which assume that there has been unequal power between the State and the Tribes. These rules provide that ambiguity in Indian law is to be interpreted in favor of the Tribes, courts are to interpret laws as Indians understand them, and the deprivation of tribal powers must be specifically enacted.

The State tends to focus on the actual words in the Settlement. The Tribes refer to the spirit and intent of the Settlement. The Task Force agrees with the observation that many of today's players in tribal-state relations have little awareness of the Act's original intent.

The intent of the Settlement, which was extensively talked about during the negotiations, has been lost. People want to interpret what is in the documents in a narrow way. On the Tribal side, many things were not so clear cut in the Settlement, because they would have caused a problem. It is important to take charge of what the intent was. Deanna Pherson, Penobscot Nation

The Task Force heard from many tribal members who are angry that the original intent is no longer remembered and who believe that the rights of the Tribes are shrinking and must be protected from "back-door" ways to amend the Act without the agreement of all the parties. Feeling that the State believes that it has the exclusive right to interpret the Settlement, many tribal members question why the State's interpretation should be any more "right" than their own.

The Tribes have hard feelings, because they thought things would come to pass which haven't. Many concerns focus on the "municipal status" provisions in the Settlement. We thought this meant to expand the Tribes' authority, but many have interpreted this to narrow the Tribes' authority. This creates tension. This is a philosophical problem. The Tribes say "we are first and foremost a Tribe." Others say the Tribes are the same as municipalities. Many of the problems between the State and the Tribes are based on different ideas brought by the parties about the Settlement Act. Mark Chavaree, Penobscot Nation

Why should the State rather than the Tribe interpret laws? There are things that have been in place for 16 years. There have been misinterpretations. The Tribe is being suppressed...and there are no people who help the Tribe interpret things to the benefit of Indians. Sonja Dana, Passamaquoddy Tribe at Indian Township

There has been an erosion of sustenance fishing rights. Dams have resulted in fewer fish and pollution has contaminated the fish that are left. Paul Bisulca, Penobscot Tribal Representative

After hearing the great dissatisfaction with the Settlement and its implementation, the Task Force considered whether there should be a rethinking of its components.

We can either maintain the status quo of the hostile relationship or we go back and rethink the Settlement. Paul Bisulca, Penobscot Tribal Representative

During discussion of about whether and the extent to which the Settlement should be amended there was a note of caution about major changes.

I hear some people refer to tweaking the Settlement and others talking about major change. There will be a great ruckus in both the Legislature and the Tribes if a major overhaul is attempted. Bennett Katz, MITSC Chair

The Task Force believes that the State, the Tribes, and the MITSC all should view the Settlement Act as an "organic and living" document. Decisions about how to implement the Act may change over time, as evidenced by the development of cooperative law enforcement, fish and game, and environmental agreements executed by the Tribes and the State, while preserving the basic intent and spirit of the Settlement. If, upon reflection, the Tribes, the State, or the MITSC believe that those concepts or relationships are not working and should change, the fact that that the Act is organic means that it can be amended. Congress has specifically authorized the State and the Tribes to so amend the Act in a mutually agreeable manner.

4. Reference Points for Tribal-State Relations

The State tends to view the Settlement as the central defining document for its relationship with the Tribes. The Tribes often cite traditional values, aboriginal rights, Indian common law, and treaties that existed prior to the Settlement as areas shaping their relationship with the State.

The Task Force learned that the State and the Tribes generally have different reference points for tribal-state relations.

The Tribes were not given anything but money under the Settlement. The rights we have exercised over time were already ours long before the Settlement. When someone says things were "given" to the Tribes under the Settlement Act, this inflames tribal members.
Deanna Pherson, Penobscot Nation

Many of us now are looking toward our elders. We also are looking at border and free trade issues, which are inherited rights. Indians were here long before 1980 and when we sit down with our elders, we have an oral history being passed down to us. The elders do not talk about 1980; they talk about what the creator did. Anthony "Mike" Best, Passamaquoddy Tribe at Indian Township

The Passamaquoddy Tribe has different treaties. The only treaty with Maine is the Settlement. The Tribe has rights that have nothing to do with the Settlement. Robert Newell, Passamaquoddy Tribe at Indian Township

A big problem is that people do not understand the concept of inherent tribal sovereignty. The Tribes are sovereign entities and approval of the Settlement was an expression of that sovereignty.
John Banks, Penobscot Nation

The Task Force is concerned that the State seems to relate to the Tribes only through the Settlement.

It is obvious that there has been a real lack of communication between the Tribes and the State which is ongoing...It seems that after the Indian Affairs office was abolished as part of the Settlement Act, the State basically stopped being interested in Indian concerns except to the extent that these concerns related to the Settlement Act. Sharon Treat, House Chair, Judiciary Committee, 117th Legislature

5. Status of Tribal-State Relations

Tribal-state relations are extremely strained.

The Task Force discussed the uneasy condition of tribal-state relations.

Everything is hair trigger now. There is constant suspicion that the other side is trying to contract or expand the Settlement Act...The fundamental problems in tribal-state relations include the lack of communication, MITSC's need to dance around big policy issues, and the need for some issues to be dealt with on a governor-to-governor basis. Evan Richert, Director of Maine State Planning Office

I am concerned by the actions of the State of Maine through various departments and individuals that appear to align the State with corporate interests over tribal interests, sometimes apparently contradicting the plain meaning or at least the intent of the Settlement Act. Surely, it is not the proper role for the State to use its immense moral and legal authority to help corporations in their disputes with the Tribes. I believe these actions are at the heart of the increasing distrust between the State and the Tribes. Sharon Treat, House Chairperson, Judiciary Committee, 117th Legislature.

Many people think the State does not take the Tribes seriously.

There is a real lack of attention by non-Indians to issues involving Indians. Maybe things should be done beyond the Settlement where there are strong feelings one way or the other. Sharon Treat, House Chairperson, Judiciary Committee, 117th Legislature

It is the responsibility of both tribal and state governments to live up to the Settlement and the State should stop things that work against it. The Tribes get frustrated when the State stands idly by and lets these things happen...People do not take the Tribes seriously and tell them to go to court, but when the Tribes become more empowered, the State then wants more negotiation. The Tribes should be dealt with seriously and with respect. Paul Bisulca, Penobscot Tribal Representative

The State is interested in Indians when it benefits the State, but not when it benefits the Tribes. Clair Sabattis, Tribal Chief, Houlton Band of Maliseets

The Task Force discussed the difficulty the Tribes have in dealing with the State because the State is not a single place or thing.

Who is the State anyway? It is more complicated than sitting down with Governors, since the State has three branches of government. Sharon Treat, House Chair, Judiciary Committee, 117th Maine Legislature

The Task Force learned that since many tribal members believe the State does not listen to them, they are increasingly going their own way without regard to what the State may think.

The Tribe does not get results in resolving problems, because the State of Maine does not have to listen to them. The Passamaquoddy Tribe had to take a stand. I've heard people from the State ask, "What right do they have?" Anthony "Mike" Best, Passamaquoddy Tribe at Indian Township

In the Settlement, the Passamaquoddy Tribe never gave up its fishing rights. The Tribe is adopting its own ordinances to deal with these. Fred Moore, Passamaquoddy Tribal Representative

When the Passamaquoddy Tribe enacted ordinances, this created an uproar. State people asked, "How can they do this unilaterally?" But the State does this to the Tribes and does not even recognize it. Paul Bisulca, Penobscot Tribal Representative

The Penobscots are not that far behind the Passamaquoddies in terms of how they view relations with the State. I'm talking about the possibility of bloodshed and people getting hurt if something isn't done. John Banks, Director of Natural Resources, Penobscot Nation

Some tribal members still hold on to the hope that the State and the Tribes can work together.

Government to government discussions would be a good idea. This would give an opportunity to the Indian communities to listen and would help the State to understand more about what is happening in the communities. Ed Bassett, Passamaquoddy Tribe at Pleasant Point

6. Is the MITSC Neutral?

The State tends to perceive the MITSC as biased in favor of the Tribes. The Tribes tend to perceive the MITSC as biased in favor of the State. In adversarial situations neutrality can be perceived as bias toward the other side.

The members of the MITSC are evenly balanced between the State (four appointees) and the Tribes (two Passamaquoddy appointees and two Penobscot appointees.) These eight appointees select their chairperson. Thus, the structure of the MITSC provides for balanced representation. Nevertheless, each "side" (the Indians and the non-Indians) seems to think that the MITSC favors the other.

The Commission is viewed as Indians to non-Indians, rather than government to government. Each side worries about who has more votes. Paul Bisulca, Penobscot Tribal Representative

During the public hearing on LD 1667 before the Judiciary Committee, the MITSC testified that one of the criticisms against the MITSC is its perceived bias in favor of the Tribes. The analysis of the MITSC's minutes since 1983 indicates that the Tribes use the MITSC as a forum for the resolution of problems, but the State generally does not. The Tribes have initiated virtually all of the issues brought before the MITSC, other than the internal workings of the MITSC itself. For the most part, sometimes after discussion over a long period of time, the MITSC has agreed on a course of action to tackle the problem at hand.

During Task Force meetings and hearings, it became evident that many tribal members believe that the MITSC is biased toward the State. There were several discussions about the balance of members on the MITSC.

The Micmacs and Maliseets should be included in the Commission. I would add 4 people from each group, including 16 Indians and 4 State representatives. Dolly Dana, Passamaquoddy Tribe at Pleasant Point

The Commission should be re-established to have more control by its Tribal members. Clair Sabattis, Tribal Chief, Houlton Band of Maliseets

Concerns also were expressed about having non-Indian people voting on matters pertaining to the Tribes.

There should be a consortium of just the Tribes. It is not fair for state people to vote on tribal issues. Indian and non-Indian values and views are different. Joyce Thompkins, Tribal Council Member, Houlton Band of Maliseets

7. Has the MITSC Met Its Responsibilities?

The MITSC has met some but not all of its responsibilities.

Many perceive that the MITSC has not carried out its responsibilities.

The Commission has met none of its...responsibilities in sixteen years. Linda Meader, Passamaquoddy Tribe at Indian Township

As described in Section D (3) of this report, the Maine Implementing Act specifies five responsibilities for the MITSC. Here is a look at the extent to which the MITSC has met each of these responsibilities.

- ◆ **Effectiveness of the Act.** The MITSC is required to review the effectiveness of the Maine Implementing Act and the social, economic, and legal relationship between the State and the Tribes. To many, this is the MITSC's most important overall responsibility. For a number of reasons discussed in Section E (9), this has been the most difficult responsibility for the MITSC to carry out. It is the area in which the MITSC has been the least effective.
- ◆ **Land Acquisitions.** The MITSC has met its responsibility to make recommendations about the addition of lands to Indian Territory. The analysis of the MITSC's minutes indicates that the topic of trust lands was discussed during half (twenty-six) of the MITSC's regular meetings. This was the MITSC's second most frequently discussed topic. Over the years since the Settlement, the Passamaquoddy Tribe and the Penobscot Indian Nation each have asked the MITSC to recommend the addition of five parcels of land to Indian Territory. The MITSC has recommended that the Maine Legislature support the inclusion of all ten parcels, including the 1985 Penobscot/Old Town Industrial Park proposal and the 1993 Passamaquoddy casino proposal. The most recent example of this was a 1996 Penobscot bill to place additional Penobscot land in trust, which was recommended and supported by the MITSC.
- ◆ **Fishing Rules.** The MITSC has exclusive jurisdiction over fishing on certain bodies of fresh water within Indian Territory. It has met this responsibility in part, though it has not been as active in this area as originally anticipated. For a number of years, there was agreement between the State and the Tribes that state rules would continue to apply to these waters. It was not until 1991 that the Penobscot Nation asked the MITSC to adopt a rule affecting three bodies of water in Penobscot Territory, which it did. At its most recent meeting, again at the request of the Penobscot Nation, the MITSC agreed to proceed with the full exercise of its authority over the waters in Penobscot Territory. To date, the Passamaquoddy Tribe has not requested rulemaking by the MITSC on waters in Passamaquoddy Territory. The Tribe questions the jurisdiction of the MITSC and the State over the waters at Motahkokmikuk (the Indian Township Reservation). The MITSC has prepared maps of waters believed to be under its jurisdiction, as well as a pamphlet of the fishing provisions of the Maine Implementing Act. The Task Force urges the MITSC to exercise fully its authority to regulate fishing when requested to do so by the respective Tribes.
- ◆ **Fish and Wildlife Studies.** The topic of fishing and hunting has been addressed during nineteen MITSC meetings, including three special workshops involving state and tribal biologists and enforcement personnel, as well as by ad hoc MITSC subcommittees. MITSC members have included state and tribal representatives who are knowledgeable in these areas. In part, as a result of MITSC efforts, the Penobscot Nation and the Maine Department of Inland Fisheries and Wildlife have entered into an agreement about cooperative management of fisheries in the Penobscot River. However, the MITSC has not met its responsibility to study and make recommendations about fish and wildlife management in order to protect fish and wildlife

stocks. This is because the State has not taken the responsibility to ensure that a mechanism is in place to notify the MITSC of contemplated management decisions so that the terms of the Settlement agreement are honored. As a result, the MITSC is unable to ensure that this responsibility is met.

- ♦ Extended Reservation. The MITSC fulfilled its responsibility in this area the one time it received a request to support a petition for designation as an extended reservation. When the Penobscots proposed this in legislation in 1987, the MITSC did not take a position. However, in 1988, the MITSC voted to recommend that the Legislature support legislation (LD 2248) regarding an extended Penobscot Reservation.

8. Is the MITSC Effective?

The MITSC is not living up to its potential to be an effective forum for the discussion of tribal-state relations.

The MITSC is dissatisfied with itself. This is why the MITSC's Chairperson advocated for the submission of legislation (LD 1667) to strengthen the MITSC.

Members themselves are dissatisfied with the MITSC...There is a great lack of clarity about what the MITSC is supposed to do. Looking at the terms of the Settlement and raising issues are very vague in two respects. First, there is a huge difference in interpretation in many key areas. Second, the Commission has not been comfortable in addressing areas outside of the Settlement. When these big issues come up, everyone end-runs the Commission. The Commission feels like it is poison to get into interpretive activities. Evan Richert, Director Maine State Planning Office

The Task Force heard and shared a variety of additional perspectives about the MITSC's ineffectiveness.

The MITSC has not done anything. It deals with fish and wildlife and nothing else. Ann Pardilla, Penobscot Nation

I had hoped the Commission could articulate the State's position to the Tribes and the Tribes' position to the State, but it has not done a very good job of this...The Tribes are all dealing with a common entity-the State of Maine. The Tribes have an advantage in maintaining the Commission, because it provides a common entity through which the Tribes can deal with the State of Maine. Paul Bisulca, Penobscot Tribal Representative

The Commission has had a lack of authority and this is more the issue than its performance. Deanna Pherson, Penobscot Nation

A lot of issues have been raised that have not been dealt with by the Commission either by design or otherwise. Sharon Treat, House Chairperson, Judiciary Committee, 117th Legislature

Typically, state agencies are given a great deal of deference in interpretations, but the MITSC does not feel empowered to say what it thinks. Thomas Hamnett, Maine Department of Attorney General

Many issues before the MITSC have been discussed over and over again without resolution.

I have brought issues to the table at the MITSC, but they still have not been taken care of. Anthony "Mike" Best, Passamaquoddy Tribe at Indian Township

I have been disappointed time and time again by tribal members not bringing specific cases forward for action. I prefer to make things work, rather than rehashing what has not worked. Bennett Katz, MITSC Chairperson

Here are two examples of recurring, unresolved issues appearing in the MITSC's minutes:

- ◆ Marine Issues. The Passamaquoddy Tribe at Pleasant Point first brought concerns about marine issues to the MITSC's attention in 1984 and has raised the issue at least half a dozen times since then. While the MITSC has facilitated a meeting or two between officials of the Passamaquoddy Tribe and the Maine Department of Marine Resources and has endorsed the Passamaquoddy efforts to amend federal legislation, major issues remain unresolved. The MITSC discussed preparing a policy paper on this topic, but lacked the resources to do so. Some argued that the MITSC should not get into this area, because marine issues are not specifically mentioned in the Settlement. Others felt the MITSC should be involved because this is a key area which affects the legal and economic relationship between the State and the Passamaquoddy Tribe.
- ◆ Boundaries. The marking of boundaries appeared in MITSC minutes between 1988 and 1992. The uncertainty of the boundaries of Indian Territory was causing enforcement problems for wildlife personnel. The MITSC wrote in December 1989 to urge the federal Bureau of Indian Affairs (BIA) to complete the survey work required to mark the boundaries. BIA responded in March 1990, stating that they needed information quantified by tract, acreage, and date of purchase in order to determine the need for additional survey services. The MITSC received this information from the Penobscot Nation, but not from the Passamaquoddy Tribe. In 1992, the MITSC decided it had no further role in this matter, even though the boundaries still had not been marked. The Passamaquoddy Tribe recently renewed the request to the federal government to mark boundaries and is expected to ask for the MITSC's support.

The Task Force believes to promote accountability in the eyes of both the State and the Tribes, the MITSC should formulate an annual plan, evaluate its success in meeting goals, and prepare an annual report describing the extent to which it has met its goals.

9. Roadblocks to the MITSC's Effectiveness

There are seven roadblocks to the MITSC's effectiveness. These include the absence of consensus about the MITSC, the MITSC's lack of connection to its constituents, its lack of a unified voice, its meager budget, its lack of access to legal counsel, its difficulty in getting quorums, and concerns about conflict of interest.

9 (a) Absence of Consensus about the MITSC

There is no consensus about the MITSC's role and scope. There is not even agreement about whether or not the MITSC should exist.

The MITSC's role and scope have not been clearly articulated and agreed upon by the leaders of the State, the Passamaquoddy Tribe, and the Penobscot Nation. For example:

- ◆ When the Maine Implementing Act requires the MITSC to continually review the effectiveness of the Act and the social, economic, and legal relationship between the State and the Tribes, what does this mean? Should the MITSC interpret this narrowly or broadly?
- ◆ When there is a dispute between private industry and the Tribes, what is the role of the MITSC?
- ◆ To what extent should the MITSC be involved in issues involving the Federal Government?

Not everyone is persuaded that the MITSC should exist. The review of the MITSC's minutes reveal that as far back as March 1988, the MITSC itself questioned the continued need for its existence.

Any issue the Commission becomes involved in is a matter to be settled by the respective governments and the Commission's effort involves duplication. The Commission should consider disbanding.
Alton "Chuck" Cianchette, MITSC Chairperson

Some tribal members also question whether the MITSC should exist, while the State has demonstrated a reluctance to have the MITSC involved in policy discussions.

Should the Commission be strengthened or should other ways be developed to deal with things? The Commission involves the State and the Tribes. The Tribes should meet outside this forum. When there are votes in the Commission, non-Tribal members are voting about what happens on tribal land and they do not have ties to the tribal land. The Tribes do not vote on issues relating to state land. Anthony "Mike" Best, Passamaquoddy Tribe at Indian Township

It is frustrating for the MITSC to walk a line between the State and the Tribes...When the MITSC has tried to intervene, it has been told to mind its own business...To the extent that the Commission is just a paper tiger, the Tribes do not support it. If the Commission gets influential, people at the State House get nervous, especially in light of the influence of private industry.
Bennett Katz, MITSC Chairperson

By participating in hearings before the Legislature I learned that the Commission gets no respect. I also learned that the Governor's Office does not want the MITSC involved in certain issues. Paul Bisulca, Penobscot Tribal Representative

In order for the MITSC to be effective, there needs to be agreement by state and tribal leaders that it should exist and that it has an important role to play in tribal-state relations:

The MITSC needs the leadership and sanction of the State and Tribal Governments to work on specific issues under the Settlement's provision for the MITSC to review the social, economic, and legal relationship between the State and the Tribes.
Evan Richert, Director of Maine State Planning Office

9 (b) MITSC's Lack of Connection

There is a lack of connection between the MITSC and its constituents.

The Task Force spent considerable time discussing the lack of connection between the MITSC and its constituents. It was suggested that the MITSC should communicate more with three constituencies – the Tribes, the State, and the public.

For years, the MITSC has sent both announcements and detailed minutes of all regular meetings to state and tribal leaders, as well as to other interested persons. The mailing list includes the Governor of Maine, the Passamaquoddy and Penobscot Governors, the Maliseet and Micmac Tribal Chiefs, the Maine Department of Attorney General, several tribal members, and many others who have asked to be on the mailing list. From 1983 through 1989, an average of 5.5 interested persons sat in on the MITSC's meetings and from 1990 to the present, the average was 8.2 persons.

In 1995, in an effort to improve communications with the Tribes, MITSC Chairperson Bennett Katz invited the Penobscot and Passamaquoddy Tribal Representatives to sit as non-voting members of the MITSC. However, the minutes indicate that the MITSC has spent very little time in the Wabanaki communities. Only 28% of the MITSC's meetings have been at the reservations. From 1983 to 1989, four meetings were held at the reservations (three at the Penobscot Reservation at Indian Island and one at the Passamaquoddy Reservation at Pleasant Point.) Since 1990, eleven meetings have been held at the reservations, (six at Indian Island, three at Pleasant Point, and two at the Passamaquoddy Reservation at Indian Township.) Most of the MITSC's other regular meetings have been held in the Augusta area.

If the MITSC had more meetings at the Indian communities, this would help keep the link with the people. Without this, people think it is just another bureaucratic entity. Meeting in the communities gets to people's hearts. Ed Bassett, Passamaquoddy Tribe at Pleasant Point

With respect to its connection to the State, the minutes reveal that the MITSC has appeared before the Legislature every year since 1985 to testify and provide information about legislation (relating to trust lands, tribal courts, radioactive waste, taxation of tribal enterprises, use of gill nets, financing for tribal schools, LURC jurisdiction, state environmental decisions, the MITSC's budget, and the sunset review process.) In addition, the MITSC was involved in organizing annual meetings of State and Tribal Governors from 1991-1994.

However, the MITSC's members often have been frustrated that state policymakers do not listen to them, as illustrated by the following two examples:

- ♦ Land Use Regulation. Beginning in 1987, the MITSC began discussions about jurisdiction of the State's Land Use Regulation Commission (LURC) in relation to Indian Territory. Over the next few years, the MITSC facilitated meetings of LURC and tribal representatives to try to arrive at an agreement. It was felt that statutory change would be required for the Tribes to be exempt from LURC jurisdiction. The MITSC supported a Penobscot bill and a Passamaquoddy bill to do so. In 1992, after attempts between the Tribes and the Maine Legislature to arrive at a compromise, the Governor vetoed the legislation.
- ♦ Environmental Decisions. In 1994, the MITSC formed a subcommittee to explore tribal questions about the impacts of the State's environmental decisions on tribal fish and wildlife stocks. Staff of the Maine Department of Environmental Protection (DEP) said they did not know how to balance the Settlement with the Maine rivers law and the hydro relicensing law and said legislation would be needed to change their existing process. When the MITSC drafted legislation, the DEP said it raised more questions than it answered. When the bill appeared at the Legislature, the DEP and the Legislature opposed it.

Concerned that there is no substantive annual report, the Task Force urged the MITSC to prepare such a report and present it in person to the Tribal Councils and the Legislature (including the Judiciary and Natural Resources Committees).

The Task Force also felt that involving both tribal and state legislators on the MITSC would be an opportunity for education and visibility. In early Task Force discussions, there was agreement that a State Representative, a State Senator, and the two Tribal Representatives should be invited to participate in MITSC meetings. One suggestion was that the legislators should serve in a non-voting capacity. Another suggestion was that they should be voting members "within constitutional constraints."

Given the constitutional question about having legislators serve on a rule-making body, the three Legislators serving on the Task Force asked the Maine Attorney General for an opinion. The Task Force was interested in answers to the following questions: Can Tribal Representatives serve in a voting capacity on the MITSC, since they do not vote at the Legislature? Can other Legislators serve on the MITSC as non-voting members or can they serve on the MITSC and vote only on non-regulatory issues? The Attorney General's response to these questions was "no." After receiving this answer, the Task Force reached consensus that the two Tribal Representatives and two other Legislators should serve as members of an Advisory Committee on Tribal-State Relations to be appointed by the MITSC.

As indicated in Section D (4) of this report, the MITSC carries out an informal information and referral function for the general public. As described in Section E (13), the MITSC also has been involved over several years in a major public education project. Some of the Task Force members suggested that the MITSC should engage in greater outreach to the general public, including giving public notice of its meetings.

9 (c) Lack of a Unified MITSC Voice

The MITSC does not always speak with a unified voice.

There are three different perspectives on the MITSC. The three parties have different models of decision-making and endorsement of actions. At times, MITSC members who represent the Tribes do not feel comfortable taking a position before they have a chance to take issues back to their Tribal Councils. These different perspectives and models have contributed to the MITSC's failure to respond quickly to developments at the Legislature and often have made it difficult for the MITSC to speak with one voice. For example:

- ◆ Strengthening the MITSC. When the MITSC appeared before the Judiciary Committee to testify on LD 1667, the State, the Penobscot Nation, and the Passamaquoddy Tribe all had different views about the extent to which and how to strengthen the MITSC.
- ◆ Environmental Decisions by the State. When the MITSC proposed LD 99, the bill to require the State to take into account the Settlement Act in its environmental decisions, the Tribes supported it and the State, along with industry, opposed it.

The Task Force encourages the MITSC to meet more frequently to enable its members to check in with and show proper respect to their appointing authorities on key issues under consideration.

9 (d) Meager MITSC Budget

Reflecting the ambivalence about the MITSC's role, scope and existence is its meager budget.

The MITSC's budget has supported only a part-time, low visibility operation. The MITSC minutes reveal that discussion about the adequacy and stability of its budget is one of the MITSC's most frequently discussed topics. In the mid-1980s the MITSC's budget was \$45,000 a year. After the MITSC itself recommended a 50% reduction, the MITSC's budget remained "flatlined" at \$30,000 or less for eight years. As a result of LD 1667, the State has added another \$7,500 to the annual funding base for the MITSC, beginning with the current fiscal year. The Penobscot Nation has added an additional \$3,750. However, the fact remains that the MITSC is only staffed on a part-time basis.

Since the mid-1980s, the MITSC's budget has been split between the State (50%), the Passamaquoddy Tribe (25%), and the Penobscot Nation (25%). The Task Force discerned a growing interest in having the State pick up a larger share of the cost. One reason for this appears to be disgruntlement. For example, the Passamaquoddy Tribe, which is upset with the State of Maine and the MITSC about a number of matters, has indicated that it does not intend to match the State's increased appropriation. In addition, the Tribes are questioning why they should pay the same as the State, given Maine's population of over one million and the Wabanaki population of around 5,500. The Task Force members were not able to reach agreement about the parity issue.

If you look at financing the Commission based on the number of Indian and non-Indian taxpayers, the State would cover a much larger portion of the budget. Clair Sabattis, Tribal Chief, Houlton Band of Maliseets

9 (e) Lack of Access to Legal Counsel

The MITSC deals with exceedingly complex legal issues, but has not had access to independent legal counsel.

The Task Force was concerned that the MITSC is "hamstrung", because it does not have its own legal counsel. There was considerable discussion, but no consensus about whether the MITSC should have independent legal counsel to help unravel the complex and contentious issues involved in the Settlement and tribal-state relations. There is nothing, other than finances, which precludes the MITSC from retaining independent legal counsel.

9 (f) Quorum Requirement

At times, it has been difficult for the MITSC to get a quorum.

The quorum requirement for the MITSC is quite stringent. Seven members constitute a quorum, whether or not all nine positions are filled. A look at the MITSC's minutes indicates that in 1985 the MITSC considered but decided against allowing alternates and in 1988 considered but decided against lowering the quorum requirement to six members present.

During its 13.5 years of operation, there have been fifty-three regular meetings of the MITSC, including eight for which there was no quorum. An additional ten meetings were postponed, usually because the quorum evaporated, but at least a few times because of inclement weather.

An analysis of attendance reveals that State of Maine appointees missed meetings 10.3% of the time, Passamaquoddy appointees missed meetings 3.1% of the time, and Penobscot appointees missed meetings 2.5% of the time. The State's appointees missed meetings almost twice as often as those appointed by the Tribes. The average attendance was 7.3 persons per meeting.

The Task Force discussed the need for a quick appointment process for the MITSC and the possibility of having a different quorum requirement, if MITSC has vacancies in its membership. The members felt that any quorum requirement should take into account the need for balance

between state and tribal members and should facilitate the MITSC's ability to conduct its business. The Task Force arrived at the conclusion that the MITSC's quorum requirement should be reduced from seven to six members, provided that at least one representative of each of the three parties (the State, the Passamaquoddy Tribe, and the Penobscot Nation) is present at the meeting.

9 (g) Conflict of Interest

Trust among MITSC members has been eroded by a conflict of interest of one of its members. There are no criteria to define a conflict of interest.

The Task Force heard testimony about a conflict of interest involving one of the MITSC's members. The Tribes expressed the sentiment that it is difficult to come to the MITSC's table when the Governor of the State appointed a lawyer who also represents private parties on the opposite side from the Tribes on important issues.

There are problems with the Commission, especially when the State puts paper company representatives on it. They are planted on the Commission to see what is happening and report back. Recently, the State tried to appoint another person who believes that the Tribes do not have sovereign rights. Mike Best, Passamaquoddy Tribe at Indian Township

Some Task Force members felt that rather than amending the Settlement Act to address this issue, the MITSC should use moral suasion with the appointing authorities to take care not to appoint people with a conflict of interest. Others felt that moral suasion is not sufficient. "Conflict of interest" was defined as a financial conflict, meaning a person outside government with a monetary interest or representing clients with a monetary interest in issues under consideration by the MITSC. The question also was raised about whether the MITSC should include just members representing government or whether other interests such as landowners also should be included.

After considerable discussion, the Task Force reached consensus that the MITSC should develop and propose a conflict of interest/code of ethics policy or legislation for adoption by the State, the Passamaquoddy Tribe, and the Penobscot Nation. The purpose of the policy or legislation is to guide appointments to the MITSC and the conduct of MITSC members.

10. Determining Priority Issues

There is no formal process for charting the MITSC's course.

The Task Force felt that the MITSC's effectiveness would be improved if top state and tribal leaders meet at least annually to determine which issues the MITSC should address and which issues should be addressed in other forums. This would set MITSC's work plan for the year and would legitimize what MITSC does. Each year, the MITSC would report back on its progress and present an updated list of issues for consideration by state and tribal leaders. The issues would be identified in two directions – by the MITSC to state and tribal governments and by the tribal and state governments to the MITSC. During both Task Force meetings and hearings, there was a lot of agreement that this would be a good idea.

Maybe endorsements of Commission actions could be once earlier in the year and the Governor could be involved individually with Tribal Leaders later in the year. Susan Bell, Office of Governor Angus King

This is a good idea. Meet three times! Mary Philbrook, Tribal Chief, Aroostook Band of Micmacs

11. Involvement of Micmacs and Maliseets

The Maliseets and Micmacs have an interest in participating in a tribal-state forum, but want to make it clear that the Settlement Act does not apply to them.

According to the MITSC's minutes, the MITSC has discussed issues of concern to the Maliseets and Micmacs during only five of its regular meetings over the years. In 1992, the Maliseets informed the MITSC that they and the Micmacs were interested in becoming members, but needed to discuss this first with the other Tribes. In addition, the Micmacs and Maliseets were very much involved in the MITSC's Wabanaki video project.

The Task Force discussed whether Congress would have to amend the Maine Indian Claims Settlement Act in order to add the Maliseets and Micmacs to the MITSC. It was determined that this would not be required if the parties agree to change the Maine Implementing Act. The Task Force learned that what the State does and what the MITSC does affects all of the Tribes in Maine, not just those represented on the MITSC.

I have a concern about anything to do with Indian issues. In the State Legislature, legislation is often about all of the Tribes, without specifying them by name. The Legislature should not enact laws with "blanket coverage." For example, I was concerned about the...casino bill. It would have restricted the Maliseets from ever getting involved in gaming, because it said only one Tribe would get a casino. Clair Sabattis, Tribal Chief, Houlton Band of Maliseets

Both Passamaquoddy and Penobscot tribal members expressed support for the Micmacs and Maliseets to join the MITSC.

The Passamaquoddy Tribe feels strongly that tribal-state relations must include other Wabanaki People and the only way to accomplish this currently is through the Commission. Fred Moore, Passamaquoddy Tribal Representative

Because the Micmacs and Maliseets are affected by the Settlement, there is a need to sit down and discuss bringing them on board with the Commission. There should be an effort to prevent misunderstanding later on by discussing the ramifications of their participation. Deanna Pherson, Penobscot Nation

The Commission needs to include representatives of all the Indian communities. Vera Francis, Passamaquoddy Tribe at Pleasant Point

There are other Native People in Maine affected by the land claims -the Micmacs and Maliseets. They should be included in some way on the Commission. Ed Bassett, Passamaquoddy Tribe at Pleasant Point

The Task Force reached consensus that the Maliseets and Micmacs should be involved in a tribal-state forum.

Communication has been raised as an issue...and the Maliseets and Micmacs cannot communicate if they are not there. Until everyone is sitting down, there cannot be communication. Thomas Harnett, Maine Department of Attorney General

The Task Force members explored various options for the possible structure of a forum involving all four Tribes. Some thought there could be a single entity with all four Tribes, while others were

not so sure. Some felt that the Maliseets and Micmacs should be on the MITSC, while others thought they should be invited to attend MITSC meetings, but not as members.

Having the Maliseets and Micmacs be part of a group to deal with the Settlement may not make sense. Having another forum involving all Tribes may make sense. Susan Bell, Office of Governor Angus King

The State will have to deal one on one with each of the four Tribes, but it is also possible to work together jointly...At the legal level, the Commission is responsible for overseeing the implementation of the Settlement Act, which includes participation by the State, the Passamaquoddy Tribe, and the Penobscot Nation. At the public policy level, issues that are common among or unique to the Tribes should be folded in some way. I am not sure whether the public policy level should be part of the Commission or part of something else. Evan Richert, Director of Maine State Planning Office

It would be difficult to have two separate bodies. There should be one entity structured to deal with the Settlement and more. Paul Bisulca, Penobscot Tribal Representative

Perhaps the answer is to create a consortium with a public link and a bridge to the Commission. Membership on the Commission is not the solution to all Tribal problems. Bennett Katz, MITSC Chairperson

The Maliseet and Micmac tribal leaders expressed an interest in participating on the MITSC, but with the caveat that the Settlement in no way will apply to them.

Whether we should become members of the Commission depends on whether we would have to make concessions. Would we have to accept the Settlement Act as written? We would not accept any concessions, since the Maliseets were not part of the negotiation of the Settlement. Clair Sabattis, Tribal Chief, Houlton Band of Maliseets

I like the idea of this opportunity and my Tribal Council supports it, too...but we do not want to make any concessions to do so. Mary Philbrook, Aroostook Band of Micmacs

The Task Force asked the Maliseet and Micmac tribal leaders whether paying dues to the MITSC would be a barrier to their participation. Different views were expressed about this.

If a few Tribes pay and others do not, there may be bad feelings. Stephen Hall, Senate Chair, Committee on Inland Fisheries and Wildlife, 117th Maine Legislature

If the State sees advantages to having Maliseet and Micmac participation, maybe it can pay for this. Paul Bisulca, Penobscot Tribal Representative

After lengthy discussion, the Task Force reached consensus that the Maliseets and the Micmacs should be represented on an Advisory Committee on Tribal-State Relations, to be appointed by the MITSC. In addition, to ensure that their voice is heard more loudly in Augusta, a majority of the Task Force members felt that the Maliseets and Micmacs, like the Passamaquoddies and the Penobscots, should have non-voting Tribal Representatives in the Maine Legislature.

12. Racism

Racism is experienced by the Wabanaki, but generally is not recognized by the majority society. Racism is part of the context of tribal-state relations.

The Task Force received and discussed compelling testimony about racism, including racism facing children in school.

If there is one Indian, that person is welcomed, but if there are too many Indians, people are concerned. Ralph Dana, Passamaquoddy Tribe at Pleasant Point

There is something wrong if our children cannot get educated five miles or one mile from their home, because they do not want to go to the public high school. On the positive side, children feel more comfortable at Lee Academy, but it takes two hours to get there. Vera Francis, Passamaquoddy Tribe at Pleasant Point

Education is the most profound right young people have. Civil rights laws can help deal with racism. There is no way Passamaquoddy children should be riding two hours to get to school. Thomas Harnett, Maine Department of Attorney General

All of us have experienced racism in education. I have been in difficult situations and wanted to be treated like everyone else. Non-Indians can never be in our shoes, but the State can try to understand us better. Task Force Member Deanna Pherson, Penobscot Nation

There are prejudice and racism issues the Micmacs continue to deal with. This is a continual education process. The congressional delegation does not understand what the Micmacs are about. They look at the Micmacs with different eyes and with the same focus of long ago. The local people have done this too, but they are making progress. We want the local people to know that we are not out to get them, but we are a force to deal with, we exist, we have a presence in the community, and, like it or not, we are there to stay. Mary Philbrook, Tribal Chief, Aroostook Band of Micmacs

During hearings, several tribal members described their feelings of anger and distrust and their desire for separation:

I have learned from the outside world to look at people with distrust. Task Force member Dolly Dana, Passamaquoddy Tribe at Pleasant Point

Maine is a white state. The Indians did not steal land, the white people did. Other people make laws for the Tribe, but the laws are not for the people. Indian people are used over and over again. White people have taken so much and given so little back. Indian people are a silent minority and there is a lot of anger. Ann Pardilla, Penobscot Nation

I believe totally in my people and that is why I want separation. Linda Meader, Passamaquoddy Tribe at Indian Township

A non-tribal member appearing before the Task Force during a September hearing commented that racism must be addressed, because it relates to tribal-state relations. She suggested that churches

and other organizations could be approached to help address racism and that workshops could be held.

Underlying everything, including the sovereignty question, is racism. Sensitivity training and consciousness-raising are needed.
Karen Reinert, Committee on Indian Relations, Episcopal Diocese of Maine

During Task Force discussions, there were suggestions that the MITSC needs to recognize the problem of racism. The minutes indicate that the MITSC has not discussed this.

Racism must be acknowledged. Instead, there seems to be defensiveness and walking on eggshells. Sometimes when people have been hurt by a system, they need to be listened to without defensiveness. I hope the Commission is not afraid to address racism. Vera Francis, Passamaquoddy Tribe at Pleasant Point

We need to deal with people as people, before we deal with issues.
Roger Smith, Task Force Chairperson

The Task Force urges the MITSC not to skirt the issue of racism in its deliberations. It also urges churches and other organizations to support prejudice reduction workshops for individuals involved in Indian non-Indian relationships.

13. Lack of Awareness

State employees, including policymakers, generally are uninformed about the Wabanaki, the Settlement, and the MITSC.

One of the Task Force members expressed strong concerns about the State's lack of awareness of the Wabanaki. The Tribes, too, have interest in addressing this.

I have been struck by the lack of awareness of tribal concerns which seems to run throughout state government. Issues come up over and over that I would have thought there would be dialogue on-for example, economic development, education policy, and racism in public schools. Why hasn't the Department of Economic and Community Development gone on the road to meet with tribal members to share resources and technical assistance for small businesses and to look into the real economic problems facing the Tribes?...Is the Department of Education aware of the racism in public schools and the curriculum deficiencies which were brought to the attention of the Task Force? Surely, it is within the responsibilities of the Department of Education to know about these problems and to work with the Tribes to solve them. Sharon Treat, House Chair, Judiciary Committee, 117th Legislature

The Tribe stresses education, hoping that if people understand us better, maybe they will treat us differently. Fred Moore, Passamaquoddy Tribal Representative

There are many other examples of the lack of awareness by state employees. One was shared by the Executive Director of the MITSC, who was responsible for several initiatives and programs in the Maine Department of Human Services from 1979 to 1987. She reported that in her work in the areas of long term care, work and welfare, and services for people with disabilities, the existence and needs of tribal members were never even a consideration. Another example is a 1994 report issued by the Maine Department of Labor entitled *Diversity and Community*. The report included

no mention of Indians. Over the past few years, the Penobscots have encountered ignorance about the Settlement during and related to proceedings before the Board of Environmental Protection.

The MITSC minutes indicate a substantial investment of time by the MITSC to produce an educational video. The MITSC raised almost \$100,000 from over a dozen contributors to create *Wabanaki: A New Dawn* (1995). Filmed and directed by Acadia FilmVideo of Mt. Desert Island, the video portrays the cultural survival of the Maliseet, Micmac, Passamaquoddy, and Penobscot people of Maine. First discussed in 1988 and completed in 1995, this project was on the agenda for half (twenty-six) of the MITSC's regular meetings. A video subcommittee including representatives of all four Tribes and a trio of scholars contributed many hours and guidance to the project. The video's audience includes tribal members, state personnel, and the general public. To date, the MITSC has distributed 600 videos, including 300 to school libraries in collaboration with the Maine State Library. *Wabanaki: A New Dawn* has been aired by Maine Public Broadcasting and is one of four films nationally to receive a 1996 award from the American Anthropological Association.

As a result of the collaborative approach taken by the MITSC, Acadia FilmVideo also worked directly with the Tribes to create three additional videos: *Wolaku* (1990) which records an archaeological dig near Indian Township; *Journey into Tradition* (1992) in which Acadia FilmVideo helped Penobscot canoeists who traveled to Alaska to paddle up the Yukon River make a video from film footage shot by team members; and most recently, *Penobscot: The People and Their River* (1995).

Such videos are just one small part of an educational effort. The Task Force suggested a variety of other ways to educate people about the Settlement and the Wabanaki. Training for new Committee Chairs at the Legislature could provide an educational opportunity concerning the MITSC and tribal-state relations. The MITSC should renew its request to meet with Governor King's cabinet. There could be an annual or biennial report on tribal-state relations delivered to the Legislature. The MITSC could use public television and the print media to educate the public about the Tribes and tribal-state issues.



Key Concepts

Several concepts are key to the understanding of the relationship between the State and the Tribes.

Aboriginal Rights. Aboriginal rights are the basis for the trust relationship between Wabanaki people and the federal government. The Wabanaki inherited these rights because their families were living here before Europeans laid claim to the land. They did not lose their rights to the land or to hunt and fish just because European colonists established governments here. Many of the rights that they did not give up in treaties or agreements still exist and are acknowledged by the United States and Canada. Some treaties upheld by court decisions affirm such rights as hunting and fishing and crossing the United States-Canada border freely.

Acculturation and Assimilation. Acculturation is the cultural modification of an individual, group, or people by adapting to traits from another culture. It is the merging of cultures as a result of prolonged contact. Assimilation is the process of becoming like or the state of being like. To assimilate is to alter, to cause to resemble, to be absorbed into the culture and mores of a population or group. In the case of the Wabanaki and other native peoples, acculturation and assimilation are driven by the majority over the minority, leading to the loss of the minority's separate identity.

Federal Recognition. The trust relationship or federal recognition by the United States implies responsibilities to Native Americans in exchange for their land and ways of life that were given up when treaties were signed. The United States also acknowledges certain rights of self-government that were not given up by the Native Americans when a foreign government, the United States, was established on North American soil.

Throughout the 19th Century and much of the 20th Century, the Wabanaki people of Maine were considered "state Indians", because they had never signed any treaties with the federal government. As a result of legal action brought by the Passamaquoddy Tribe, the Passamaquoddies, the Penobscots and the Maliseets finally received federal recognition during the late 1970s. The Aroostook Band of Micmacs did not receive federal recognition until 1991.

This victory of federal recognition once would have been considered a defeat. It was not the aim of Wabanaki diplomacy in the 17th and 18th centuries to become a ward of the United States (a domestic dependent nation), but to continue to exercise complete sovereignty.

Federal recognition of the Passamaquoddy Tribe and the Penobscot Nation meant that the reservations fell under federal law and not state law, and that both groups could begin to exercise some of the rights that the State of Maine had never recognized, e.g., the right to have their own court systems. There were other rights, too, such as control and regulation of hunting and fishing on the reservation, and jurisdiction over foster care for Passamaquoddy and Penobscot children. It also meant that they were entitled to health services and other federal programs for Native Americans.

Property and Land. The English government and settlers and the Wabanaki had vastly different concepts of property and land. This led to many misunderstandings, which in turn led to broken treaties. The English assumed that when the Wabanaki gave them rights to land, they had received sole and exclusive possession of it. In this view, the Wabanaki had renounced claims to occupy or use the land in any way. When the Wabanaki came back to use the land, the English were outraged. In the Wabanaki view, the English had received a right to share use of the land.

Appendix #1

The English could hunt and fish and farm, but the Wabanaki expected to continue to do the same in the same area. The land, in this view, did not have a human master. It was a sacred, social world. It had a life in which one could participate, but one could not transfer exclusive title to it in exchange for English cloth or corn. When the English pushed them off the land and deprived them of the use of it, the Wabanaki were outraged. Even today Indians and non-Indians view property and land quite differently, and there are many misunderstandings and disagreements about land use.

Sovereignty. Sovereignty is the right of people to govern themselves. European settlement raised this issue in an acute form for the Wabanaki. They sought to retain their sovereignty in the face of European expansion. The claim to be sovereign peoples is still made today by the Wabanaki. There is a belief that even if the exercise of sovereignty is denied, the right to self-government and self-determination cannot be destroyed.

Sovereignty presumes an accepted definition of who "the people" are. Definitions of who does and does not belong can change over time. Forms of government and relations with outsiders also can change. The principle of sovereignty permits interaction with others, as in trade or war. It also permits dependence on others, provided that this has been freely chosen and can be ended by choice. What cannot be altered is the right of a sovereign people to determine their own fate.

Treaties signed by Wabanaki and the federal government during the 1700s and 1800s implied that the United States recognized Indians as sovereign. In the view of the U.S. Government, this implication changed as the result of a Supreme Court decision written in 1831 in which Chief Justice John Marshall qualified Indian sovereignty in the United States:

- ◆ He observed that Indians lived in "distinct political communities, having territorial boundaries, within which their authority is exclusive." However, he would not grant that they were sovereign foreign nations. He called them "domestic dependent nations" and declared that "they occupy a territory to which we assert a title independent of their will."
- ◆ He held that Native American tribes retain all of their sovereign powers except those specifically taken from them by Congress. He said that actions taken by Congress to limit tribal rights of self-government must be clearly stated, with any doubts resolved in the Indians' favor. This recognition of the continuation of inherent sovereignty in Indian Tribes is a critical feature of federal Indian law today.

Many native people assert that they retain as much right to govern themselves today as they had before the Europeans set foot in the Americas.

Trust Relationship. In his 1831 decision, Chief Justice Marshall also held that the relationship between the Federal Government and the Indians is that of a "ward to his guardian." Subsequent Supreme Court decisions clarified that the Federal Government has a duty to act as guardian solely for the benefit of native peoples in any matter that affects their interests. Thus was born what has come to be known as the trust relationship, including the Bureau of Indian Affairs to administer specific programs to assist native peoples.

The Resolve (Chapter 84)

Resolve, to Improve Tribal and State Relations

Sec. 1. Task force established. Resolved: That the Maine Indian Tribal-State Commission, referred to in this resolve as the "commission," shall establish the Task Force on Tribal-State Relations, referred to in this resolve as the "task force"; and be it further

Sec. 2. Members. Resolved: That the task force must consist of commission members and any other persons the commission determines necessary or appropriate to serve voluntarily on the task force. The commission shall consider including as members of the task force the following: representatives of the Passamaquoddy Tribe; representatives of the Penobscot Indian Nation; Legislators serving in the 117th Legislature, in particular members of the Joint Standing Committee on Judiciary and the Joint Standing Committee on Natural Resources; the Attorney General or a representative of the Attorney General; and the Governor or a representative of the Governor.

The commission shall determine the designation or election of the chair of the task force; and be it further

Sec. 3. Duties. Resolved: That the task force shall:

1. Explore ways to improve the relationship between the State and the commission and between the State and federally recognized Indian tribes;

2. Determine the appropriate role that the Houlton Band of Maliseets and the Aroostook Band of Micmacs may or should have in the commission without interfering with the Act to Implement the Maine Indian Claims Settlement. The task force shall consult with and invite the participation of members of the Houlton Band of Maliseets and the Aroostook Band of Micmacs in carrying out the duties under this subsection;

3. Evaluate the general effectiveness of the commission;

4. Engage in other activities to improve tribal-state relations; and

5. Develop recommendations based on subsections 1 to 4; and be it further

Sec. 4. Meetings. Resolved: That the commission shall convene the first meeting of the task force. The task force may meet as often as it determines necessary; and be it further

Appendix #2

Sec. 5. Report. Resolved: That by December 15, 1996, the task force shall submit a report of its work and recommendations, along with any draft recommendations for legislation, to the First Regular Session of the 118th Legislature, the joint standing committee of the Legislature having jurisdiction over judiciary matters, the Joint Tribal Council of the Passamaquoddy Tribe, the Governor and Council of the Penobscot Indian Nation, the Houlton Band Council of the Houlton Band of Maliseets and the Aroostook Micmac Council of the Aroostook Band of Micmacs. Any recommendations for legislation must be submitted to the Revisor of Statutes by December 15, 1996 for consideration as legislation during the First Regular Session of the 118th Legislature; and be it further

Sec. 6. Staff and funding. Resolved: That the commission shall provide staff and funding for the task force. All members of the task force may receive the legislative per diem and reimbursement for expenses as determined by the commission; and be it further

Sec. 7. Freedom of access. Resolved: That for the purposes of the laws regarding freedom of access, the proceedings of the task force are public; and be it further

Sec. 8. Appropriation. Resolved: That the following funds are appropriated from the General Fund.

1996-97

**MAINE INDIAN TRIBAL-STATE
COMMISSION**

**Maine Indian Tribal-State
Commission**

All Other

\$7,500

Provides funds for ongoing support of the Maine Indian Tribal-State Commission to fulfill its responsibilities under the Maine Indian Claims Settlement Act of 1980. The commission is requesting the Passamaquoddy Tribe and the Penobscot Nation to match this amount, in keeping with a long-standing agreement to support the financing of the commission on a 50/50 tribal-state basis.

Concerns Identified during Hearings

Several specific substantive issues arose during the hearings before the Task Force on Tribal-State Relations, which were beyond its scope. The Task Force recommends that the Maine Indian Tribal-State Commission review these and determine whether and how they can be resolved.

1. A bank would not finance a Penobscot tribal member's business, because it was on tribal land.
2. The State uses demographic information about the Indians to get federal money, but the Tribes do not receive any of the money.
3. The Passamaquoddy Tribe should be able to collect taxes from non-tribal members for services. They live on non-alienated lots, but pay their taxes to the State, when it is the Tribe that provides services.
4. The State's Office of Substance Abuse is taking funding away from the Passamaquoddy Tribe, when the Tribe's audit has been accepted by the Federal Government.
5. The State told Indian Township's Social Services Department that they cannot provide money for laundry, when they allowed this at Pleasant Point.
6. The Passamaquoddy Tribe had to let Washington/Hancock transportation dollars go, because they did not receive dollars required to administer these funds.
7. Maine gives licenses for eels. These cost a lot. People are catching eels that are supposed to be for the Tribe.
8. State courts receive fines resulting from tribal enforcement efforts. The tribal courts should receive such fines.
9. The Passamaquoddy Tribe has two major concerns about Georgia Pacific. The first is the erosion of Passamaquoddy lands by waters from Georgia Pacific. Second, Georgia Pacific is saying that Gordon Island is open to recreation by the public. Passamaquoddy people are buried there, as a result of self exile when they had smallpox. Today Passamaquoddy people go to Gordon Island for vision quests. There should have been stipulations that this land would be protected. The very basic being of the Passamaquoddy culture was not taken care of.
10. There are tribal concerns about general assistance.
11. Tribal Members can be subjected to double jeopardy, since they can be tried for the same thing in State and Tribal courts.
12. When the Tribe was trying to enhance Passamaquoddy classes, the State had dollars for English, but not for Passamaquoddy. Passamaquoddy teachers do not have college degrees, so dollars are not available. The Tribe does not believe the State is in a position to determine whether or not Passamaquoddy teachers are qualified.

Tribal-State Commission Members: 1983-1996

1996

Chairperson: Bennett Katz.

Passamaquoddy Members: Anthony "Mike" Best and Cliv Dore.

Penobscot Members: John Banks and Mark Chavaree.

State of Maine Members: Fred Hurley, Matthew Manahan (resigned), Evan Richert, and Vendean Vafiades (replacing John Cox after one MITSC meeting).

1995

Chairperson: Bennett Katz.

Passamaquoddy Members: Anthony "Mike" Best and Cliv Dore.

Penobscot Members: John Banks and Mark Chavaree.

State of Maine Members: Stephen Adams (position vacant until replaced by Evan Richert after two MITSC meetings), John Cox (position vacant after the first meeting), Fred Hurley, and Matthew Manahan.

1994

Chairperson: Bennett Katz.

Passamaquoddy Members: Sonja Dana (replacing Roger Ritter and replaced by Anthony "Mike" Best after three MITSC meetings) and Cliv Dore.

Penobscot Members: John Banks and Mark Chavaree.

State of Maine Members: Stephen Adams, John Cox, Fred Hurley, and Maynard Marsh (replaced by Matthew Manahan after four MITSC meetings).

1993

Interim Chairperson: Arthur Johnson (replaced by Bennett Katz after three meetings).

Passamaquoddy Members: Cliv Dore and Roger Ritter.

Penobscot Members: John Banks and Mark Chavaree.

State of Maine Members: Stephen Adams, John Cox, Fred Hurley, and Maynard Marsh.

1992

Interim Chairperson: Arthur Johnson.

Passamaquoddy Members: Roger Ritter and Harold Socobasin (replaced by Cliv Dore after one meeting).

Penobscot Members: John Banks and Mark Chavaree.

State of Maine Members: Stephen Adams, John Cox, Fred Hurley, and Maynard Marsh.

1991

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Roger Ritter and Harold Socobasin.

Penobscot Members: John Banks and Doug Francis (replaced by Mark Chavaree after one meeting).

State of Maine Members: Fred Hurley, Maynard Marsh, Clare Payne (replaced by John Cox after two meetings), and Linda Smith (replaced by Stephen Adams after two meetings).

1990

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Roger Ritter and Harold Socobasin.

Penobscot Members: John Banks and Doug Francis.

State of Maine Members: Fred Hurley, Maynard Marsh, Clare Payne, and Linda Smith.

Appendix #4

1989

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Molly Neptune (replacing Robert Newell and replaced by Roger Ritter after one MITSC meeting) and Harold Socobasin.

Penobscot Members: John Banks and Doug Francis.

State of Maine Members: Fred Hurley, Maynard Marsh, Clare Payne, and Linda Smith.

1988

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Cliv Dore (replaced by Harold Socobasin after two meetings) and Robert Newell.

Penobscot Members: John Banks and Doug Francis.

State of Maine Members: Paul Frinsco (replaced by Linda Smith after three meetings), Fred Hurley, Maynard Marsh, and Clare Payne.

1987

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Cliv Dore and Robert Newell (replacing Allen Sockabasin).

Penobscot Members: John Banks and Kirk Loring (replaced by Doug Francis after three MITSC meetings).

State of Maine Members: Paul Frinsco (replaced by Linda Smith after three meetings), Fred Hurley, Maynard Marsh, and Bonnie Post (replaced by Clare Payne after four meetings).

1986

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Cliv Dore and Allen Sockabasin.

Penobscot Members: Wayne Mitchell and Kirk Loring.

State of Maine Members: Paul Frinsco, Fred Hurley, Maynard Marsh, and Bonnie Post.

1985 Members

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Cliv Dore and Allen Sockabasin.

Penobscot Members: Wayne Mitchell (replacing Tim Love) and Gerardo Pardia (replacing Watie Akins and replaced by Kirk Loring after two meetings).

State of Maine Members: Paul Frinsco, Fred Hurley, Maynard Marsh, and Bonnie Post.

1984 Members

Chairperson: Alton "Chuck" Cianchette.

Passamaquoddy Members: Cliv Dore and Allen Sockabasin.

Penobscot Members: Watie Akins and Tim Love.

State of Maine Members: Paul Frinsco, Fred Hurley, Maynard Marsh, and Bonnie Post.

1983 Members

Chairperson: vacancy.

Passamaquoddy Members: Cliv Dore and Allen Sockabasin.

Penobscot Members: Watie Akins and Tim Love.

State of Maine Members: Paul Frinsco, Fred Hurley, Maynard Marsh, and Bonnie Post.

MITSC Executive Directors

Holly Dominie, Maine State Planning Office, 1983 - 1984

John Andrews, Consultant, 1984 - 1985

John Melrose, Maine Tomorrow, 1985 - 1989

Diana Scully, Vantage Point, 1989 - present

MITSC Meeting Highlights: 1983-1996

1983 Meetings

April 21, 1983 (Augusta) 7 present, 1 absent, 1 vacancy, 10 other participants

Legislation-

LD 1016: Concerning the MITSC Chair. Discussion about whether the MITSC's Chairman (and Interim Chairman) should be a voting member.

LD__: Process for obtaining certification of tribal approval of legislation amending the Implementing Act.

LD 1480: To allow Houlton Band of Maliseets to create a housing authority. Discussion that the MITSC should not have jurisdiction regarding the relationship between the Maliseets and the State.

LD 193 (Penobscot land) and LD 1136 (Passamaquoddy land): Extensive discussion about the addition of lands designated as Penobscot and Passamaquoddy Trust Lands. *Motion made to support legislation regarding Passamaquoddy trust land designation. (No action taken.)*

April 27, 1983 Rescheduled.

May 5, 1983 Rescheduled.

May 26, 1983 (Augusta) 8 present, 1 vacancy, 7 other participants.

Legislation-

LD 193 and LD 1136: Continue extensive discussion about lands to be designated as Penobscot and Passamaquoddy Trust Lands. *Actions:*

The Governor of Maine and counsel for the Tribes should develop a process for the MITSC to review and act on requests for additional designation of Indian Territory under the Settlement, including suggested criteria for consideration by the MITSC. (Passed unanimously.)

The Legislature should not consider amendment to Passamaquoddy Indian Territory at this time. (Passed.)

The Legislature should report out favorably a revised description of the proposed Penobscot Indian Territory to include the addition of lands within Williamsburg acquired from the Dead River Company and Lincoln Paper Company prior to January 1, 1983. (Passed vote 6-1)

LD 1016: Discuss process of selecting a permanent MITSC Chairperson (since legislation relating to this is receiving favorable action.)

Continuation of how to obtain tribal approval of legislation amending the Implementing Act.

Budget-Awaiting word from the State Governor's office about the Commission's budget request.

Maliseets-Consideration of Maliseet membership on the MITSC.

MITSC Meetings-Concerns about spending too much time in MITSC meetings.

August 5, 1983 (Augusta) 7 present, 1 absent, 1 vacancy, 7 other participants.

Legislation-

PL 497: Process by which Tribes certify State approval of amendments to Settlement Act.

PL 492: Open the MITSC chair to any Maine citizen.

PL 493: Extend Passamaquoddy time period for purchasing land by 2 years.

PL 494: Extend Penobscot time for purchasing land by 2 years; add land in Williamsburg.

PL 498: Provide same training for Tribal and State enforcement officers.

PL 481: Concerning representatives to the Legislature.

Fishing-With respect to salmon, things are going well between the Penobscot Nation and the State Department of Inland Fisheries and Wildlife and the Atlantic Salmon Sea Run Commission.

Trust Land-Continuation of discussion about MITSC's request for a proposal from representatives of the Maine Governor's office and of the Tribes to propose a system for evaluating when land should be added to Indian Territory. Concerns that Governor of Maine does not support MITSC's recommendations.

MITSC Budget-Governor of Maine did not recommend to the Legislature funding for the MITSC. How to get Maine Governor to support \$20,000 for MITSC during upcoming Special Session of Legislature.

Being Taken Seriously-MITSC needs to figure out how to be taken seriously by decision-makers.

Appendix #5

MITSC Chair—Discussion about selection. *Action: To advertise the vacancy of Chair, review applications at the next MITSC meeting, and make a selection at the meeting thereafter. (Passed unanimously.)*

October 20, 1983 (Augusta) 7 present, 1 absent, "several" other participants.

MITSC Chair—Candidates for MITSC Chair and process for making selection.

MITSC Budget—Concern about MITSC's budget coming from Department of Inland Fisheries and Wildlife and interest in moving forward with direct appropriation legislation. *Action: To present for submission appropriation legislation of \$20,000. (Passed unanimously.)*

1984 Meetings

June 7, 1984 (Pittsfield) 7 present, 2 absent, 3 other participants.

MITSC Budget—Governor Love and Governor Stevens agreed to ask their Tribal Councils for one-half of the budget, with other half to be requested from the State. *Action: To establish a budget of \$45,000 annually from July 1, 1984 to June 30, 1985. (Passed unanimously.)*

MITSC Executive Director—Search for Executive Director and priorities for that person once on board.

Trust Land—*Action: To request from the Legislature an extension of time to acquire trust land until December 31, 1988. (Passed unanimously.)*

Tribal Courts—Expansion of tribal court jurisdiction.

Marine Issues—Marine resources jurisdiction. Cliv Dore to present position paper to MITSC.

November 12, 1984 (Indian Island) 4 present, 5 absent, 3 other participants. No quorum.

MITSC Executive Director—Interviews with two candidates for Executive Director. *Action: Selection of John Andrews.*

1985 Meetings

May 14, 1985 (Waterville) 8 present, 1 absent, 5 other participants.

MITSC Executive Director—*Action: To hire John Andrews as Executive Director. (Passed unanimously.)*

MITSC Role—MITSC is not a state body. It exists under dual authorization of the Tribes and State.

MITSC Budget—State and Tribal funding decisions for MITSC's FY 1986-87 budget are still pending.

Legislation—

MITSC agreed to review issues related to legislation (LD 279) concerning criminal offenses on the Penobscot Reservation.

Action: To table any action on legislation (LD 517) concerning Beano on Indian Reservations. (Passed unanimously.)

Action: To approve a 5-year extension of the deadline for acquisition of Trust Lands. (Passed unanimously.)

MITSC Meetings—Tentative schedule for monthly meetings with rotating locations. (Note: June and July meetings subsequently canceled.)

MITSC Bylaws—Agreement that the Executive Director should prepare a summary of MITSC responsibilities and procedures drawn from the Settlement and draft a set of bylaws.

August 22, 1985 (Indian Island) 6 present, 3 absent, 3 other participants. No quorum.

Trust Land—New position advanced about acquisition of Trust Land. Rather than extending deadlines, allow legislative action on specific land acquisitions proposed by Tribes, subject to recommendation by MITSC.

MITSC Meetings—Reaffirmation of monthly meeting schedule.

Appendix #5

MITSC Budget—Review of finances. Expenses during FY 1985 were \$5,902 with \$5,486 carried forward to FY 1986. Legislature appropriated \$22,500 for FY 1986.

Industrial Parks—Discussion of joint ventures being negotiated between the Penobscot Nation and Old Town and the Passamaquoddy Tribe and Perry to develop industrial parks located on land to be conveyed to the Tribes.

MITSC Executive Director—Resignation of Executive Director.

Penobscot Green Book—MITSC asked to sponsor publication of the “green book” about the Settlement.

September 26, 1985 (Augusta) 9 present, 3 other participants.

MITSC Executive Director—*Action: To enter into a contract for services with Maine Tomorrow (John Melrose) for an unspecified term. (Passed by all MITSC members with Cliv Dore abstaining).*

Industrial Park—Discussion about legislation to convert land in Old Town from municipal jurisdiction to tribal jurisdiction.

MITSC Members—Consideration of request by Penobscots to allow designated alternates to MITSC member. MITSC agreed that alternates should not be allowed.

Tax Issue—Discussion about taxpayer perception in unorganized Township of Argyle that there is a relationship between Penobscot land purchases and increased taxes. Agreement that major reason for increase relates to statewide revaluation.

Mapping—Request for most up-to-date maps revealing lands owned by the Tribes in fee and in trust.

MITSC Operations—Agreement to change MITSC’s stationery to include the title “Maine Indian Tribal-State Commission and not include the seals of either the State or the Tribes.

Penobscot Green Book—Further discussion about MITSC sponsorship of the Penobscots’ “green book.”

Industrial Park—Questions about land annexation.

MITSC Bylaws—Request for draft MITSC by-laws.

December 19, 1985 (Augusta) 8 present, 1 absent, 5 other participants.

Industrial Park—Update on and legislation about proposed acquisition and annexation of lands in Old Town by the Penobscot Nation.

Fishing and Hunting—

Letter from Department of Inland Fisheries and Wildlife about issuance of hunting and fishing licenses to non-Indians and state hunter safety requirement. *Executive Director asked to get together with parties involved and see if issues could be resolved.*

Proposal for cross-deputization of Penobscot and State game wardens. Executive Director and Fred Hurley agreed to look into the matter and organize a meeting, if necessary, to reach consensus.

MITSC Bylaws—*Action: To accept bylaws as written and as amended. (Passed by vote of 5-2.)*

Trust Land—Proposed Passamaquoddy land acquisition in Perry and conversion of land to trust status for purpose of remedying a housing shortage on the reservation.

Mapping—Status of mapping of Indian Trust Lands. Request that maps indicate waters that are subject to MITSC regulation of fisheries.

Nuclear Issue—Status of Nuclear Waste Repositories issue.

Industrial Park—Penobscot Nation/Old Town agreement. *Action: To approve the concept of acquiring trust land for economic development with final approval required after knowledge of specific legislation is provided. (Passed.)*

1986 Meetings

February 20, 1986 (Augusta) 7 present, 2 absent, 6 other participants.

Trust Land—

Alternative procedures for approving trust land acquisition. *Action: To accept a report on the extension of Maine Indian Territories, as amended, and forward it to the State Governor, President of the Senate, and Speaker of the House.*

Appendix #5

Passamaquoddy acquisition of land in Perry. *Action: If the Town of Perry approves the land acquisition on March 17, 1986, the MITSC Executive Director is authorized to place an ad seeking public comments on the proposed project and notifying the public of the MITSC's intent to hold a public hearing on the project 5 days from the date the ad appears. (Passed unanimously.)*

Industrial Park—Penobscot acquisition of Trust Land in Old Town. *Action: Contingent upon receipt of necessary certifications of approval from the City of Old Town and the Penobscot Nation, to place an ad pursuant to the MITSC's bylaws, and to hold an MITSC meeting 14 days from the date of the hearing. (Passed.)*

Mapping—Agreement for MITSC to develop its own maps that indicate trust lands and appropriate water bodies subject to MITSC regulation.

Nuclear Issues—*Action: To develop a position on the issue of high level nuclear waste repositories near trust lands for presentation at an April 1, 1986 public hearing and that the position be forwarded to the Congressional delegation. (Passed.)*

March 10, 1986 (Augusta) 7 present, 2 absent, 4 other participants.

MITSC Fisheries Rulemaking—Discussion about MITSC rulemaking on fisheries. Clear that before rulemaking could proceed, maps are needed detailing water boundaries subject to MITSC rulemaking. *Action: To authorize the MITSC Executive Director to proceed with maps.*

Economic Development—Consideration of tribal-state relations in economic development. *Action: To authorize the Executive Director to undertake interviews and come back to the MITSC with information on opportunities for cooperation. (Passed.)*

Nuclear Waste—Review of draft letter to federal Departments of Interior and Energy regarding the siting of a nuclear waste repository at the Bottle Lake Complex. Comment made that this issue belongs in the court and not in the MITSC. *Action: To proceed with the letter after comments from MITSC members were incorporated. (Passed.)*

Trust Land—

Review of draft report about extensions for acquisition of territory. *Agreement to forward the draft to the President of the Senate, Speaker of the House, and Governor of Maine and to request an opinion from the Attorney General's office about 30 MRSA §6205(5).*

Discussion about status of proposal concerning Passamaquoddy acquisition of Indian Territory within Perry and question about whether it has received approval by the Joint Tribal Council.

Legislation/Industrial Park—LD 1844: concerning Penobscot acquisition of Indian Territory within Old Town. No public comments received. *Action: To recommend passage of LD 1844 enabling the Penobscot Nation to acquire up to 300 acres of Indian Territory within Old Town for the purpose of industrial development. (Passed by vote of 5 in favor and 1 opposed.)*

March 31, 1986 (Augusta) 8 present, 1 absent, 5 other participants.

Legislation/Trust Land—LD 1717: concerning the acquisition of Trust Lands by the Passamaquoddy Tribe in Perry. It was noted that these lands would not be taxable by the town of Perry. *Action: To recommend to the Legislature the adoption of LD 1717 to incorporate the provisions identified in Article 40, as amended, at the Town of Perry Regular Town Meeting of March 18, 1986. (Passed by vote of 6 in favor and 1 abstention.)*

Trust Land—Discussion about additional Passamaquoddy Trust Land acquisition described in March 28, 1986 memorandum from Tureen and Margolin. Discussion about process for lands in unorganized territories versus organized territories. Acquisition represents a package involving 4 parcels located in the Bottle Lake complex. *Action: To proceed, in accordance with MITSC bylaws, to review the proposal presented in the March 28, 1986 memorandum from Tureen and Margolin. (Passed by vote of 6 in favor and 1 opposed.)*

April 11, 1986 (Augusta) 8 present, 1 absent, 3 other participants.

Legislation/Trust Land—Request by Passamaquoddy Tribe to amend 30 MRSA §6205(1)(B) by adding lands designated as Trust Lands. No public comments received. To be added to LD 1717. *Action: To recommend to the Maine Legislature that the Dyer Interests proposed for acquisition by the Passamaquoddy Tribe be added to those areas presently designated in 30 MRSA §6205(1)(B) as eligible for inclusion as Passamaquoddy Territory.*

Mapping—Review of status of mapping of Indian lands.

Appendix #5

June 4, 1986 No quorum. No meeting.

July 31, 1986 (Indian Island) 5 present, 4 absent, 5 other participants. No quorum.

Penobscot Presentations-

Management in areas of forestry, mining and minerals, wildlife and parks, and overall natural resources management.

Economic development efforts. The Penobscot Nation has plan to gain access to Orson Island which lies to the north of Indian Island. MITSC could be helpful by improving awareness within the Nation of the State's resources that are available for economic development. *MITSC Chair asked to discuss this at the MITSC's next meeting.*

Bureau of Public Lands-Review of difficulty in current market in that large land owners are most interested in consolidating and owning more lands as opposed to selling their lands. The Penobscot Nation is frustrated with land acquisition activities being conducted by the Bureau of Public Lands. MITSC Chair asked to have Rob Gardiner, Director of Public Lands, come to the next meeting. It was suggested that this be followed by discussions with the Chairs of the Energy and Natural Resources Committees of the Legislature.

MITSC's Role/Economic Development-Review of MITSC's role in economic development. The Executive Director summarized his discussions with representatives of the Tribes. It was felt that because the Tribes are proprietary bodies, the opportunities for collaboration are limited to those instances in which the Tribes directly request assistance from the MITSC. The MITSC could conduct an informational workshop to improve dialogue between the State and the Tribes. It was suggested that the next state vacancy be filled with a person actively involved in State economic development programs.

MITSC Budget-Recommendation by Executive Director that MITSC reduce its annual budget by \$15,000.

Workshop on Fishing Issues-Review of report of workshop on fishing rules and regulations.

Marine Issues-Cliv Dore indicated that there is an unresolved issue regarding sustenance fishing in marine waters. MITSC Chair asked the Executive Director to set up a meeting with Cliv Dore and Department of Marine Resources officials to explore this issue.

Mapping-Review of statewide map displaying Indian Lands in trust and in fee.

Trust Land-Review of and satisfaction with Attorney General's opinion about acquisition of Indian Territory when deadline passes. No response from Governor on this. Helpful response from Speaker John Martin.

Tribal-State Relations-Concern expressed about relationship between State and Tribal representatives. Suggestion for MITSC to sponsor a social gathering to foster improved relationships.

December 10, 1986 (Augusta) Meeting canceled.

1987 Meetings

January 16, 1987 (Augusta) 7 present, 2 absent, 9 other participants.

Bureau of Public Lands-Report by Rob Gardiner about acquisition of public lands by State of Maine. Bureau of Public Lands has little contact with the Tribes. *It was suggested and agreed that the MITSC coordinate a half-day workshop at which representatives of the Bureau of Public Lands could meet with representatives of the Penobscot Nation and Passamaquoddy Tribe.*

MITSC Members-Concerns about process for notifying the MITSC of changes in representation by the respective governments. MITSC cautioned about avoiding interference with sovereignty of Tribal Governments and that matters of qualifications for representation should be left to the respective appointing authorities. When a member is replaced in the middle of a term, the replacement only will serve the remainder of that term. It was clarified that the Joint Tribal Council is the appointing authority for the Passamaquoddy Tribe.

Marine Issues-Cliv Dore mentioned that the MITSC still had unfinished business to attend to regarding differences between the Passamaquoddy Tribe and the State of Maine regarding the management of marine resources. *It was understood that when a new Commissioner of Marine Resources was on board, a meeting would be arranged.*

Appendix #5

Hunting—Governor Newell expressed concern about sustenance hunting by out of state Indians and an apparent requirement for a transportation fee when game is taken out of the State. *Fred Hurley agreed to follow up on the matter.* [In a letter dated January 16, 1987, Fred said the State has no jurisdiction over the taking, possession, or transportation of wildlife (except for eagles) from Indian Territory. He said a hunter would have to prove to law enforcement officials, through appropriate permits and registrations, that game was taken from Indian Territory.]

Mapping—Review of maps provided by the Penobscots detailing Trust lands. It was agreed that the MITSC should rely on maps being prepared by the Sewall Company for the Passamaquoddy Tribe and the Penobscot Nation.

Legislation—Review of upcoming legislation proposed by Penobscots (acquisition of land, change use of word "Reservation" to "Territory", and creation of extended Reservations.)

Community/Economic Development Workshop—*Agreement for MITSC to organize a tour in the Spring of Indian Island, Indian Township, and Pleasant Point for State and Tribal officials involved in community and economic development.*

February 20, 1987 (Augusta) 7 present, 2 absent, 7 other participants.

MITSC Executive Director—Renewal of contract with Maine Tomorrow. *Action: To adopted the contract between the MITSC and Maine Tomorrow. (Passed unanimously.)*

MITSC Role—Discussion of whether MITSC should concern itself with issues relating to the Federal Government. Federal action can affect the Settlement and should be of concern to MITSC.

Legislation—

LD 178: Remove lands held as Indian Territory from LURC jurisdiction. *Action: To not take a position on this legislation at this time. (Passed.)*

LD 286: Remove some of the statutory standards for creating future Indian communities, including the requirement of a petition by 25 or more adult Tribal members and reference of having the extended community in reasonable proximity to the existing Reservation. *Action: To not take a position on this legislation at this time. (Passed.)*

Draft legislation: Open up all of Williamsburg Township as eligible for inclusion in Penobscot Territory. *Action: To give public notice and request comments on this proposed legislation in accordance with MITSC's bylaws. (Passed.)*

Community/Economic Development Workshop—Review of tentative agenda for tour and workshop that would address the community and economic development needs of Maine's Tribal Governments.

April 16, 1987 (Augusta) 6 present, 3 absent, 4 other participants. No quorum.

Community/Economic Development Workshop—Workshop scheduled for July 8, 1987.

Mapping—Update on mapping of tribal lands.

Legislation—

LD 969: The transportation of high level radioactive waste.

LD 1274: Giving the Tribes veto power with regard to the siting of low-level waste facilities.

April 28, 1987 (Augusta) 8 present, 1 absent, 4 other participants.

Legislation—

LD 488: Opening up Williamsburg Township to acquisitions by the Penobscot Nation of lands to be converted to trust status. *Action: To recommend approval of LD 488 to the Legislature. (Passed.)*

LD 969: Storage and transportation of high level radioactive waste. *Action: To take no action on LD 969. (Passed.)*

LD 1274: Prohibit the siting of low-level radioactive waste facilities in Indian Territory. *Action: To support the concept embodied in LD 1274. (Passed.)*

July 8, 1987 (Indian Township, Pleasant Point) Workshop on Economic Development

November 18, 1987 (Pittsfield) 6 present, 3 absent, 3 other participants. No quorum.

Tribal Courts—Proposal to expand jurisdiction. Tribal Governments requested to send a written confirmation to MITSC of their approval of this proposal.

Appendix #5

Economic Development Workshop—Report on workshop. It was a success.

MITSC's Fisheries Rulemaking—Penobscot Nation may wish the MITSC to consider assuming its authority to promulgate rules regarding fisheries.

Mapping—Update on mapping of Tribal lands.

1988 Meetings

January 20, 1988 Meeting canceled.

March 1, 1988 (Augusta) 7 present, 2 absent, 3 other participants.

Legislation—

Tribal Courts: Should MITSC should make a recommendation on this? Relationship to Indian Civil Rights Act, subpoena powers, sunset clause were discussed.

Action: To recommend that the legislation be enacted. (Motion did not pass.)

Action: To support the proposed expansion of jurisdiction and request that the Attorney General and Tribal Governments meet to work out an arrangement that addresses the question of Tribal Courts possessing the same powers as State courts. (Passed unanimously.)

Trust Land: LD 2248 permits a portion of the Mattagamon Lake Dam Lot in T6R8 and Smith Island to become part of the Penobscot Indian Reservation. Advertised as required by MITSC's bylaws, but no comments received.

Action: To approve LD 2248. (With 3 voting in the affirmative, 1 in the negative, and 2 abstentions, the motion did not pass.)

Action: To make no recommendation on LD 2248. (With 4 members voting in the affirmative and 3 in the negative, this motion did not pass.)

Action: To table the required recommendation by MITSC. (Passed unanimously.)

MITSC Role—MITSC Chair questioned the continued need for the MITSC. Since Tribes had not sought to depart from the fishing regulations offered by the State, the MITSC has not been called upon to perform any service in this area. Any issue the MITSC becomes involved in is a matter to be settled by the respective governments and MITSC's effort involves duplication. The MITSC should consider disbanding. Suggestion that the MITSC convene a meeting of high ranking members of the State and Tribal Governments to discuss the future of the MITSC. State does not take an active interest in the MITSC. If MITSC is to continue, how can it function more effectively? Agreement to look a need to explore change in quorum requirement and use of alternates.

March 16, 1988 (Augusta) 7 present, 2 absent, 6 other participants.

Legislation—

LD 2248: Review of islands to be flooded by Bangor Hydro. Extensive discussion. *Action:* To recommend to the Legislature approval of LD 2248. (Passed by a vote of 5-2.)

LD 2440: Tribal Court legislation.

July 13, 1988 (Pittsfield) 7 present, 2 absent, 5 others present.

MITSC Chair—*Action:* To have Alton "Chuck" Cianchette serve as MITSC Chair for the next 4 years. (Passed unanimously.)

MITSC Members—Discussion of revising the quorum requirement from 7 to 6 and the use of alternates. *Action:* To eliminate the quorum requirement. (Motion defeated.) *Action:* To leave the quorum requirement unchanged. (Passed.)

MITSC Budget—Discussion of complexities involved in State fiscal responsibility for MITSC's budget. John Melrose asked to define alternatives to the present arrangement and indicate cost savings.

Fishing and Wildlife Workshop—Agreement that representatives of State and Tribal Governments should get together again for an informational meeting to update everyone on progress regarding fish and wildlife management and regulatory issues.

Appendix #5

- Marine Issues**—Agreement that John Melrose will work with Melvin Francis to set up a meeting on issues of concern to the Passamaquoddy Tribe about marine resources.
- Trust Land**—Discussion about land acquisitions. Maps of Trust lands being updated. John Melrose asked to convene a group of State and Tribal Government representatives responsible for land acquisition planning and policies with report back to next MITSC meeting.
- Tax Issue**—Legislation likely concerning the tax status of Indian business enterprises. Agreement that Chuck Cianchette and John Melrose will set up briefing with Jamie Weber and representatives of State Government to ensure better understanding of the issues.
- Municipal Issues Workshop**—Discussion of exercise by Tribal Governments of their municipal responsibilities. Concern that there is insufficient money available from the Bureau of Indian Affairs for road improvements. Concern about adequacy of wastewater treatment plant at Pleasant Point. Tribal Government needs technical assistance on road maintenance. Could the Maine Department of Transportation provide this? The Department of Education and Cultural Services is not making contributions to the Retirement System for teachers employed on the Reservation. There was agreement to hold a one-day workshop where State agency representatives overseeing programs of concern to municipalities would be available to make presentations for the benefit of Tribal Governments.
- Radioactive Waste**—Recent events regarding rules on low level waste facility siting. Virtually all other federal land is exempt from siting, but Tribal Trust Land is not accorded this treatment.
- Land Use Regulation**—Activities undertaken on behalf of the Penobscot Nation to improve communication with the Land Use Regulation Commission regarding recent changes in the law. Agreement that John Melrose will work with John Banks and Melvin Francis to pull together a meeting between Tribal Governments and LURC staff.
- MITSC Budget**—Brief discussion of new biennial budget, including consideration of whether the total budget should be reduced from \$30,000 to \$20,000. *Action:* To have the budget remain the same at \$30,000 for each of the next two years. (Passed.)

November 16, 1988 (Pleasant Point) 8 present, 1 absent, 14 other participants.

- MITSC Operations**—Decided to continue with current finance management by the State, in spite of MITSC's difficulties in working with this system. MITSC members presented with notebooks including documents of importance to MITSC's operations, including roster of MITSC members, updated copy of Settlement Act, MITSC bylaws, budget, and maps of lands designated as Indian Territory.
- Boundaries**—Uncertainty of boundary locations in some areas causes problems. It is responsibility of Bureau of Indian Affairs to clearly designate and identify boundaries of territories, but it has not done a good job of doing this.
- Tax Issue**—Tax status of Indian business enterprises. Federal Government consider tribes as governmental entities and, therefore, exempt from taxation. Settlement eliminated federal bar against State taxation.
- Fish and Wildlife Workshop**—Discussion of workshop to be sponsored by MITSC. Agreement that there should be workshops on both fishing management issues and hunting issues. *Action:* That MITSC should organize workshops, position papers should be prepared in advance for each workshop, Tribal and State representatives involved in these areas should be invited, and moderators should be designated and charged with the responsibility to report back to MITSC on results and further actions required by MITSC. (Passed.)
- Wabanaki Film**—Consideration of how MITSC should respond to the variety of information requests received regarding Indians. Joseph Nicholas suggested that a video could be used and Chuck Cianchette suggested that the MITSC could put some of its funds to use in the development of a video presentation. John Melrose was asked to work on this with Joseph Nicholas and Skipper Mitchell, Jr.

1989 Meetings

March 14, 1989 (Hallowell) 9 present, 10 other participants.

- Legislation/Tribal Courts**—Passamaquoddy Tribal Court legislation relates to jurisdiction was on the Reservation. *Action:* To support the legislation. (Passed unanimously.)

Appendix #5

Legislation/Taxation—Discussion of Representative Foster's proposal (LD 708) to tax Tribal enterprises. Her constituents have concerns about unfair competition between private enterprises and similar enterprises operated by Tribal governments. The tribal enterprises are not subject to State or Federal corporate income tax. *Action: To not support the legislation as drafted and presented to the MITSC in the form of LD 708. (Passed unanimously.)*

Fish and Wildlife Workshop—Review of workshop. Concern about availability of hunting licenses in Jackman area. Request for follow up on bald eagle issue. Suggestion that there be follow up with State and Tribes in a few months on issues raised at conference.

Municipal Workshop—Planning for workshop. *It was agreed that the workshop should be in July after adjournment of the Legislature.*

Wabanaki Film—Discussion of February 17, 1989 memo regarding educational video about the American Indians in Maine. *Action: To pursue funding for this project. (Passed.)*

October 4, 1989 (Hallowell) 7 present, 2 absent, 4 other participants.

Legislation—

LD 708: The bill to tax tribal enterprises was defeated.

Penobscots are interested in legislation to amend deadline for acquisition of Trust Lands.

Question about Tribe's interest in pursuing opportunity zone legislation. Bill was held over from last session.

It was understood that the Passamaquoddy Tribe would let the MITSC know should they want the MITSC to be active on this bill.

Boundaries—This issue was raised in MITSC's 1989 workshop. *Action: To communicate with State and Tribal Warden Services to urge discretion in law enforcement until boundary lines are clarified and to further communicate with the Bureau of Indian Affairs to urge the expeditious completion of necessary survey work. (Passed.)*

Municipal Issues Workshop—Review agenda. *Agreement that workshop should be in Bangor during last week of November or first week of December, 1989.*

Wabanaki Film—Clarification that the film will tell the story of all Maine Indians, not only the Passamaquoddy and Penobscot Peoples. *Action: To proceed, including applications for funding. (Passed unanimously.)*

MITSC Executive Director—Announcement that John Melrose would step down as MITSC's Executive Director. *Action: To amend the agreement with Maine Tomorrow to have Diana Scully serve as Executive Director in place of John Melrose. (Passed.)*

December 12, 1989 (Bangor) Municipal Issues Workshop.

1990 Meetings

May 1, 1990 Meeting (Indian Island) 9 present; 12 other participants.

MITSC Budget—Discussion of budget. *Diana Scully was instructed to research the laws and rules affecting the management of the MITSC's funds.*

Legislation—

LD 1701: Creates a commission to study the establishment of a state and tribal partnership to encourage economic development. Should the MITSC should help to carry out the study, since the Legislature appropriated no funds for it? It was felt not because this would divert attention away from the MITSC's business. *Action: To urge the Governor, President of the Senate, and Speaker of the House to appoint appropriate members to the commission to study the establishment of a tribal-state partnership in economic development in a timely manner.*

LD 2228: Provision in omnibus tax bill to enable Passamaquoddy Tribe and Penobscot Nation to participate in state-municipal revenue sharing. (Issue raised at Municipal Issues Workshop.)

During recent legislative session, all 3 reservations received funding increases for education.

Appendix #5

Boundaries— Federal Department of Interior responded in March 1990 to MITSC's December 1989 letter urging them to complete survey work required to mark boundaries in Maine. *Executive Director was instructed to get information from John Banks and Roger Ritter about abutting property owners, to set up with meetings with those identified to discuss possible cooperative approaches to the marking of boundaries, and to determine the appropriate follow up with the Department of Interior.*

Land Use Regulation—Applicability of Land Use Regulation Commission rules to Trust Lands. There is a large gray area between environmental law and land management law. *Action: To make informal calls to LURC and other appropriate agencies to determine: their interest in meeting with the MITSC to discuss the effects of and jurisdiction over land use and environmental laws and rules on Passamaquoddy and Penobscot lands, who should attend, when the meeting should be held, and what specific issues should be discussed. (Passed unanimously.)*

Wabanaki Film—Update.

MITSC Executive Director—*Action: To enter into agreement proposed by Diana Scully, dba Vantage Point, for management services for the MITSC. (Passed unanimously.)*

Municipal Issues Workshop—Specific actions resulting from the December 8, 1989 workshop included addition of provision to LD 2228 to allow Passamaquoddy Tribe and Penobscot Nation to participate in state-municipal revenue sharing, increased funding for education for the Tribes, and reimbursement of Tribes under the local road assistance program for roads in the Trust Lands.

GIIC—*Diana Scully was asked to get information to MITSC members about the Governors Interstate Indian Council and to conduct a poll of members to determine interest in joining the GIIC.*

August 8, 1990 (Bangor) Meeting of LURC and Tribal Representatives facilitated by MITSC.

September 14, 1990 (Pleasant Point) 7 present, 2 absent, 21 other participants.

Tribal-State Relations—Discussion about concerns raised in September 7, 10 and 13, 1990 letters from Governor Jim Sappier that certain State agencies (Land for Maine's Future Board, Land use Regulation Commission, Maine Waste Management Agency) use rules as weapons to block Tribal efforts to become independent. *Action: To have Diana Scully facilitate a meeting of representatives of the LMFB and Penobscot Nation.*

Land Use Regulation—Suggestion that MITSC should follow up on August 8 meeting of LURC and Tribal representatives by informing LURC that the Tribes should be treated differently than municipalities. Comment that, first, a recommendation is needed about how to proceed under the Settlement. *(Passed unanimously.) Note: Later MITSC agreed that this would not accomplish much and legislation is needed to make real change.*

MITSC Operations—Update on financial management of MITSC funds and recommendation for placement of funds in private checking account.

Wabanaki Film—*Action: To enter into contract with David Westphal of Acadia FilmVideo, contingent on availability of funding, to produce a film about the Wabanaki People. (Passed unanimously.) Note: Meeting followed by joint meeting with Film Advisory Committee.*

1991 Meetings

January 22, 1991 (Pittsfield) 7 present, 2 absent, 5 other participants.

Wabanaki Advocate—Consideration of proposal to seek federal funds for Wabanaki advocate position. *Action: To support the development of a position to advocate on behalf of Native People living in Maine, but the MITSC cannot serve as the base for the position because the advocacy role conflicts with its responsibility to balance the interests of the State and the Tribes. (Passed unanimously.)*

Wabanaki Film—\$15,000 raised to date with expenditures of \$7,000.

Trust Land—Request by James W. Sewall Company for information about Indian Trust Lands needed as part of their collection of data for the Low-Level Radioactive Waste Siting Project. *Action: To provide maps of Indian Trust Lands to the James W. Sewall Company. (Passed unanimously.)*

Appendix #5

MITSC Budget—Update on budget and State appropriations process. *Action: To send a letter from Chairman Cianchette to Governor McKernan stressing the cooperative funding of the MITSC and the importance of discussion with the Tribes about any changes in the MITSC's budget. (Passed unanimously.)*

Boundaries—March 1990 letter from Department of Interior said that if the MITSC wants a project office in Maine, survey needs should be quantified by tract, acreage, and date of purchase so they can determine whether there can be additional survey services. MITSC received this information from the Penobscot Nation, but not from the Passamaquoddy Tribe. Roger Ritter agreed to check into the availability this requested information.

MITSC Operations—

Announcement of MITSC's new telephone number, the first time it has had its own number.

Agreement that letterhead should remain as is without State and Tribal seals.

Placing MITSC's Tribal funds in a private checking account rather than having them flow through the State system. *Action: To place Tribal dollars in a checking account. (Passed unanimously.)*

Legislation—

Land Use: Draft legislation offered by Penobscot Nation. *Action: To table discussion of legislation concerning land use jurisdiction until the Tribes ask the MITSC to place it back on the agenda at a future meeting. (Passed unanimously.)*

Gill nets: Legislation proposed by Penobscot Nation. *Action: To have MITSC testify before the Legislature in support of the gill net legislation proposed by the Penobscot Nation, stressing the importance of developing a long-range management plan for fisheries under the MITSC's jurisdiction. (Passed unanimously.)*

Tribal Courts: Legislation relating to the procedure by which Tribal authorities may reach a fugitive or evidence of a violation subject to prosecution by the Tribe, when the person or evidence is not within the reservation. *Action: To support legislation providing Tribal authorities with the authority to enforce Tribal law when a fugitive or evidence is not within the reservation. (Passed unanimously.)*

Trust Land: *Action: To support legislation to add a farm in Albany Township owned by the Passamaquoddy Tribe to the list of lands that can be held in trust for the Tribe. (Passed unanimously.)*

March 27, 1991 Postponed because of a death.

April 2, 1991 (Hallowell) 8 present, 1 absent, 13 other participants.

Legislation/Land Use—Bills proposed by both the Penobscot Nation and the Passamaquoddy Tribe. A few MITSC meetings ago, Governor Sappier raised a number of concerns about land use. These bills are the Tribe's recommendations about how to proceed. *Action: To support both the Passamaquoddy and Penobscot bills pertaining to land use regulation on Trust lands. (Passed unanimously.)*

Maliseets—Houlton Band of Maliseets is not represented on the MITSC. Agreement that Clair Sabattis, Tribal Chair of the Houlton Band is welcome to participate in the meetings.

MITSC Budget—Passamaquoddy Tribe has not yet paid its 1991 assessment to the MITSC. State is proposing reductions of over \$1,300 for each year of the upcoming biennium. *Action: To let the Joint Standing Committee on Appropriations and Financial Affairs know that the MITSC opposes any reduction in the MITSC's annual budget level of \$30,000 over the next biennium. (Passed unanimously.)*

Governors' Meeting—Announcement of April 5 meeting to plan for meeting of Governors involving the Tribal Representatives and a representative of the Governor's Office. This is result of Chairman Cianchette's letter to Governor McKernan urging such a meeting. It was agreed that Executive Director should participate.

Wabanaki Film—A stumbling block to fund-raising is MITSC's lack of 501(c)(3) status. It was suggested that the funds for the film could flow through the Penobscot Nation, because they are recognized as tax exempt by the IRS. *Action: To use the \$8,000+ balance currently in hand to finish work on the script for the Wabanaki film. Passed unanimously.*

Compliance Officer—Governor Sappier agreed with earlier position taken by MITSC to support the concept of an advocate but not to base this position at the MITSC. He asked for consideration, instead, of a compliance officer. *Action: As soon as the Tribes forward to the MITSC information to define the problem in more specific terms, to have Diana Scully write on behalf of the MITSC to the appropriate officials to request compliance reviews.*

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MITSC Fisheries Rulemaking—Growing interest in having the MITSC exercise its authority to adopt fishing regulations. The Penobscot Nation soon will have draft rules for the MITSC to review. Enforcement would be handled jointly between the State and the Nation.

Native American Crafts—Whether the State should play a role in the protection and promotion of Native American crafts.

May 1, 1991 (Augusta) Meeting of State and Tribal Governors.

June 26, 1991 (Indian Island) 8 present, 1 absent, 7 other participants.

MITSC Budget—The MITSC has not received its payment from the Passamaquoddy Tribe at Indian Township for FY 1991.

Compliance Officer—State Division of Community Services had intended to make funds available to ensure that the State provides the Wabanaki People of Maine with public services, benefits, and assistance for which they are eligible. However, this turned out not to be possible.

MITSC Fisheries Rulemaking—Penobscot fishing rules will be proposed for adoption by the MITSC after cleared internally by Penobscot Nation. *Executive Director instructed to research with what, if any, state procedures the MITSC must comply in order to promulgate rules (e.g., the Administrative Procedures Act.)*

Wabanaki Film—\$15,964 raised to date.

Legislation—

LD 1550 and LD 1776: The Legislature's Judiciary Committee decided to "carry over" these bills relating to land use regulation in Penobscot and Passamaquoddy Territory until the Second Regular Session of the 115th Legislature. *Action: To ask for a progress report on the land use debate from the Attorney General's Office and the parties. (Passed unanimously.)*

Chapter 357: Penobscot gill net legislation was enacted.

Chapter 484: Tribal Court legislation was enacted. This clarifies that Tribal Government has the authority to enforce laws over which it has exclusive jurisdiction. This also includes a provision that expressly permits Indian preference in employment on or near reservations.

Cuts in education funding were proposed for the Tribes. After extensive lobbying by the Penobscot Nation much of the funding was restored.

MITSC Role—*Agreed that top issues for MITSC's 1992 agenda should be regulation of tribal land use, fishing, and ensuring that the State provides Wabanaki People with public services, benefits, and assistance for which they are eligible.*

MITSC Operation—*Agreed that the MITSC should have at least quarterly meetings.*

MITSC Executive Director—*Agreed that Vantage Point should provide management services over the next year.*

September 30, 1991 (Indian Township) 8 present, 1 absent, 7 other participants.

Legislation/Land Use—Meetings between LURC and Tribal staff had been positive and production, but that members of the Judiciary Committee have not been pushing for an update on discussions about the 2 carried over land use bills. John Banks urged the MITSC to voice support for the 2 tribal land use bills to the Attorney General's Office. The Chair asked the Tribes to have their attorneys frame the questions that the MITSC should ask the Attorney General. *Action: To table the discussion of tribal land use until a future MITSC meeting.*

MITSC Fisheries Rulemaking—Explanation of fishing regulations proposed by Penobscot Nation. *Action: To accept the regulations as proposed by the Penobscot Nation concerning Round Mountain Pond, Alder Stream, and East Branch Lake. (Passed unanimously.) Action: To accept the regulations proposed by the Penobscot Nation concerning Round Mountain Pond, Alder Stream, and East Branch Lake, with the exception of the prohibition against the use of motor boats on Round Mountain Pond. (Passed by a vote of 4-2). It was agreed to request the Attorney General's Office for an opinion about the motor boat provision.*

State Compliance—The Executive Director noted that at the April 2, 1991 meeting, MITSC members had decided to ask the Attorney General for an investigation about the extent to which the State is in compliance with various federal requirements to make services and assistance available to the Tribes. She noted that she had not proceeded because of the MITSC's uncertain budget situation. It was noted that MITSC minutes reflect confusion about whether this is advocacy or compliance.

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Wabanaki Film—The film has received additional funding of \$15,000. Tom Tureen decided not to support the film. The Chair suggested asking the Legislature for funding. *Action: To seek financial support from the Legislature for the Wabanaki film—to match up to \$50,000 in private funds raised for the film. (Passed unanimously.)*

MITSC Budget—Legislature reduced MITSC's budget by \$1,395 during FY 1992. Passamaquoddy Tribe at Indian Township did not pay its assessment for FY 1991.

MITSC Chair—Chairman Cianchette announced that he will resign from MITSC at the end of the year, because he is running for the State Senate.

Boundaries—A question was raised about the status of the marking of boundaries. Roger Ritter replied that the Tribe need to approach property owners.

Trust Land—A Penobscot proposal to place land in Lakeville in trust will be brought before a future MITSC meeting.

December 17, 1991 Meeting (Augusta). 8 present, 1 absent, 8 other participants.

MITSC Budget—Budget is a moving target. MITSC still has not received 1991 assessment from Passamaquoddy Tribe at Indian Township, nor the 1992 assessments from the Penobscot Nation or Passamaquoddy Tribe at Indian Township.

MITSC Fisheries Rulemaking—Two proposed versions of the fishing rules concerning Round Mountain Pond, Alder Stream, and East Branch Lake (one prohibiting the use of internal combustion motors and the other not prohibiting this.) *Action: To adopt the fishing rules that exclude the prohibition on the use of motors on Round Mountain Pond. (Passed unanimously.)*

Legislation—

Action: To reaffirm MITSC's support of legislation proposed by the Passamaquoddy Tribe to place into trust the small farm in Albany Township. (Passed unanimously.)

Action: To support the legislation proposed by the Penobscot Nation to place into trust approximately 18,000 acres in the town of Lakeville. (Passed unanimously.)

Action: To support the education legislation proposed by the Penobscot Nation to find a new simple, permanent foundation for state funding for Indian schools. (Passed unanimously.)

Action: To support Tribal Court legislation to extend jurisdiction of the Penobscot and Passamaquoddy Tribal Courts to all of the trust lands, instead of just the reservations. (Passed unanimously.)

Land Use Regulation—Penobscot Nation has working draft of a comprehensive land use plan which is more restrictive than what is required by LURC. No action is required by MITSC at this time.

Wabanaki Film—The request for state funds failed to pass the Legislative Council and, therefore, will not be introduced to the Legislature. *Action: To enter into another agreement with David Westphal so he can continue his work on the Wabanaki video. (Passed unanimously.)*

1992 Meetings

January 15, 1992 (Augusta) 5 present, 3 absent, 1 vacancy (Chair), 3 other participants. No quorum.

MITSC Chair—Informal session with Arthur Johnson about the MITSC and position of Chair. After Mr. Johnson left, all MITSC members agreed that the MITSC should offer the chairmanship to him. Agreed that if a poll indicated consensus about this and if Mr. Johnson accepted the position, this should be the first item of business for the next meeting to be scheduled in February.

February 13, 1992 No quorum. Meeting postponed.

March 11, 1992 (Hallowell) 9 present, 3 other participants.

MITSC Chair—Discussion of Arthur Johnson as Interim Chair. *Action: To have Arthur Johnson serve as the Interim MITSC Chair for one year and, upon completion of the year, the appointed MITSC members and Mr. Johnson should discuss and decide upon selection of a Chair to serve a full 4-year term. (Passed unanimously.)* Support expressed for idea of rotating the position of chair between non-Tribal members and Tribal members.

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Boundaries—Update on marking of boundaries: *It was agreed that there is no additional MITSC role.*

State Compliance—Review of compliance issue—ensuring that Tribes have access to public services and support for which they are eligible or to which they are entitled. *Chairman Johnson appointed a subcommittee to work with the Executive Director to identify, clarify, analyze, and make recommendations concerning compliance issues that need to be addressed. It was agreed the Executive Director would send a letter to Tribal Leaders asking them to identify the issues they believe should be addressed.*

Being Taken Seriously—Concern expressed that MITSC is not taken seriously (e.g., tribal land use legislation.) MITSC is supposed to be the voice on issues relating to the Settlement, but this is not happening. MITSC needs to earn the respect of the Attorney General, the Legislature, and others so that its position on tribal-state issues will be taken seriously.

Wabanaki Film—\$30,000 raised to date.

Maliseets and Micmacs—Clair Sabattis said the MITSC should include Maliseets and Micmacs. Tribes must meet to develop agreement about the particulars of broadened membership.

MITSC Budget—Tribal assessments have all been paid both for FY 1991 and FY 1992.

Legislation—

LD 2045: The Tribes and the State agreed on a compromise for the Indian school financing bill.

LD 2081 and LD 2084: The Passamaquoddy and Penobscot bills to add land to trust status were heading for enactment.

LD 2016: Bill reported out of Committee did not extend tribal jurisdiction to trust lands, gave the Passamaquoddy Tribe the same jurisdiction over Class D crimes that Penobscot Nation already has, expanded jurisdiction for both Tribes to victimless Class D and Class E crimes, and included a sunset provision for tribal jurisdiction over Class D crimes.

LD 1550 and LD 1776: The Judiciary Committee is using LD 1776 as the vehicle. Amended bill requires the Tribes to bring their land use plans before the Legislature rather than LURC in order to assume jurisdiction over tribal trust lands. Governor might veto LD 1776.

Fishing—Brief discussion about permitting for bass fishing tournament on the Penobscot River.

MITSC's Role—

The MITSC should develop a seminar about the Settlement.

The MITSC needs to develop a process for reviewing, analyzing, developing positions on, and building consensus on legislative proposals affecting tribal-state relations. Perhaps the new process could be tested on legislation to restructure and strengthen the role of the MITSC.

There needs to be discussion of what the goals and role of MITSC should be in the future.

June 24, 1992 (Pleasant Point) 7 present, 2 absent, 4 other participants.

Wabanaki Film—Representatives of all 4 Wabanaki groups in Maine have been filmed. Editing process is beginning.

Legislation/Land Use—This became a partisan issue. A compromise was silent on whether the Tribes or LURC has jurisdiction over regulation of land use in the Trust Lands. *Chairman Johnson wrote a letter to Governor McKernan asking him to agree to a meeting requested by Tribal Governors. It was agreed that the MITSC would obtain copies of letters requesting the meeting of Governors and would make them available to Governor McKernan.*

Audit and Program Review—The Legislature's Audit and Program Review Committee asked all State agencies to specify criteria and process it would use to evaluate success in meeting goals by September 1, 1992. They have included the MITSC in this request.

Sunset Review—The MITSC will be subject to sunset review by the Legislature. The MITSC must submit a report to them by February 1, 1993. MITSC then will be reviewed during the summer and fall of 1993.

MITSC Budget—Budget proposed for FY 1993, including \$900 for audit. *It was agreed to offer the Executive Director \$20,000 for the coming year. She accepted the offer. It was agreed that the budget level for the next biennium (FY 1994 and FY 1995) should return to the \$30,000 level.*

State Compliance—Report and recommendations by Compliance Subcommittee:

Action: To establish a Wabanaki Resources Coordinator. (Passed.)

Action: To continue to pursue funding options. (Passed.)

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Action: To invite a representative of the Department of Human Services to the next meeting of MITSC to begin discussions about communications difficulties (Passed.)

Paper about Settlement—Discussion about draft paper on the Settlement prepared by the Executive Director. She prepared this because of concerns expressed by MITSC members that so few Maine people are informed about the Settlement and issues faced by the Tribes. Paper is being circulated for corrections and comments.

Tribal Views—Views about the Settlement and various programs:

Jurisdiction is still misunderstood by the State.

HUD housing creates long term obligation which is hard for tribal members to meet because of job instability.

Tribal Government is a major economic base.

There has been an influx of tribal members from urban areas since the Settlement. There have been clashes between those raise on and off the Reservations.

The State believes that Indian People are just like anyone else, but they are not.

The Attorney General's Office initiated a commission on hate crimes that included no Indian representation.

Assimilation will be the greatest outcome of the Settlement.

After the Settlement creditors extended credit to tribal members and many became over extended.

MITSC Role—

The Chair asked whether there is a role for the MITSC in economic development. Cliv Dore said this is an internal matter for the Tribes to handle.

The Chair asked the Executive Director to talk with Representatives Attean and Soctomah to identify who to target for a seminar. Representative Soctomah suggested that legislators could be invited for a meeting.

Maliseets and Micmacs—The Chair asked if the Houlton Band of Maliseets and Aroostook Band of Micmacs should be represented on the MITSC. It was pointed out that the Settlement is specific to the Passamaquoddy Tribe and Penobscot Nation.

September 10, 1992 (Augusta) Meeting of Governors held. MITSC involved.

September 14, 1992 Meeting rescheduled.

September 28, 1992 (Indian Island) 7 present, 2 absent, 8 other participants.

Wabanaki Film—\$40,000 needed to complete the Wabanaki film. **Action:** To continue and complete its fund-raising for the Wabanaki film with enthusiasm. **Action:** To make an immediate payment of \$5,000 to David Westphal. (Passed unanimously.)

MITSC Budget—**Action:** To communicate to appropriate State officials that the MITSC's budget should be at \$30,000 during each year of the 1994 and 1995 biennium.

MITSC Audit—Discussion about need for audit of MITSC's financial statements for year ending June 30, 1992. **Action:** To select the lowest bidder to perform the audit, unless Schatz, Fletcher is willing to perform it on a pro bono basis. (Passed unanimously.)

Paper about Settlement—Very few comments received on draft paper about the Settlement. Representative Attean and Glen Starbird had some helpful comments. It was agreed to invite the Attorney General to the next meeting to comment on the paper. It was agreed to add a statement to clarify that the paper does not represent the official position of or legal interpretation of the Settlement by the MITSC.

Department of Human Services—Discussion with representatives of DHS about communications with the Tribes and Tribal access to services. It was suggested that the proposed Wabanaki Resources Coordinator is needed to coordinate meeting between DHS and the Tribes and to write grants.

December 12, 1992 (Augusta) Meeting of Tribal and Department of Human Services Representatives.

1993 Meetings

January 8, 1993 (Augusta) 7 present, 2 absent, 5 others present.

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MITSC Audit—Review of auditor's draft report. It was agreed that:

John Cox would review financial transactions, since a single individual performs all of the MITSC's accounting functions.

Action: There should be 2 signatures on any check written for \$1,000 or more. (Passed unanimously.)

The MITSC should get the one-write system.

The budget's approval should be recorded in the minutes.

The contract with Acadia FilmVideo should be amended to reflect the total of \$75,000.

The auditor's report should be accepted with a minor change.

Sunset Review—Update on Legislature's sunset review process for the MITSC.

Wabanaki Film—Update.

MITSC Chair—Discussion of interim chairmanship and idea of rotating the chair between non-Indians and Indians.

Legislation—

Maliseets and Micmacs: Bill title submitted to expand Commission to include Maliseet and Micmac representatives. The Houlton Band of Maliseets do not intend to proceed with this unless the Passamaquoddy Tribe and Penobscot Nation agree to it.

Trust Land: MITSC might be called upon to make a recommendation about placing land in trust for a casino proposed by the Passamaquoddy Tribe.

Department of Human Services—Review of December 11, 1992 meeting between Tribal and DHS representatives. There was agreement that there should be a State Indian Policy and a summit of Tribal and State leaders. *The Chair asked Steve Adams and Representative Attean to develop further the ideas for a State Indian Policy and a Tribal-State Summit.*

Governor Pardilla's Views on Tribal-State Relations—The Settlement extinguished the Tribes' right to land, as it was supposed to, but it did not address other rights such as fishing rights. How can the State and the Tribes come to the table to continue to work things out? Tribal leaders cannot communicate with, and there is no access to, the Governor of the State of Maine.

March 16, 1993 (Augusta) 7 present, 2 absent, 4 others present.

Legislation—

Sunset Review: Several sessions held by Audit and Program Review Committee on MITSC. Committee seems to understand special relationship between State and Tribes and is recommending that the Tribal and State Governors meet to identify and agree upon a budget-setting process for the future; that MITSC's administrative burdens be alleviated by the MITSC receiving the State's share of the budget once a year in July in the form of a grant; and that MITSC aggressively pursue ways of increasing tribal access to public resources, including a way of funding the Wabanaki Resources Coordinator.

Tribal Protection Orders: *Action: To support bill to create parity of punishments for the violation of protection orders, regardless of whether the order is issued by the a State or Tribal Court, and present testimony during hearing. (Passed unanimously.)*

LD 661: Bill to exempt Passamaquoddy Tribe from paying property tax to Eastport and Perry.

LD 788: Bill to prohibit the unauthorized use of the name "Passamaquoddy".

Passamaquoddy casino legislation: MITSC would be taking action of placing land in trust, not on the casino. This is similar to the Penobscots' look at the land in Old Town for an industrial park. Discussion about whether MITSC should be involved in issues about the casino. Need to act according to MITSC's bylaws.

Wabanaki Film—Update.

MITSC Chair—*Action: To approach Bennett Katz to explore the possibility of his chairing the MITSC. (Passed unanimously)*

Attorney General—Reinvite the Attorney General to MITSC's next meeting.

April 12, 1993 (Augusta) Meeting of Governors; MITSC involved

May 14, 1993 (Augusta) 8 present, 1 absent, 6 other participants.

Fishing—Discussion of smelt fishing on Duncan Pond and its tributaries. Can the Department of Inland Fisheries and Wildlife change the rules affecting smelt fishing on these waters without action by the MITSC? During a workshop sponsored by MITSC a few years back, it was agreed that DIFW would continue to regulate waters

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under MITSC's jurisdiction until MITSC took over this responsibility. *Action: To have a subcommittee study the issues involved and report back to the MITSC. (Passed by a vote of 7-1).* Ed Bassett said in order to protect the resource, the MITSC should act on this before the next spring run of smelts.

Governor's Meeting—Report on April 12, 1993, meeting of Governors. *There was agreement that funding level should return to \$30,000 for FY 1994 and FY 1995; that the MITSC's bylaws should be amended to spell out a more formalized process to establish the MITSC's budget in the future; and that there should be a summit meeting involving Wabanaki and State leaders focusing on the area of economic development.*

Wabanaki Film—Update.

MITSC Chair—Discussion with Bennett Katz about the position of MITSC chairperson. *Action: To offer the position of chairperson of the MITSC to Bennett Katz. The MITSC lost its quorum. It was agreed to reaffirm this informal vote at the MITSC's next meeting.)*

Casino/Legislation—Update on Passamaquoddy casino legislation. MITSC asked to recommend approval of the Passamaquoddy proposal to include land in Calais as part of Passamaquoddy Indian Territory for economic development purposes. Ads were placed in accordance with MITSC bylaws. Six comments opposed to the proposal were received. *Action: To recommend that, with the approval of the Calais City Council, land in Calais should be included as part of Passamaquoddy Trust Lands to be used for economic development purposes. (Passed unanimously by those present and voting.)*

Department of Human Services—Discussion of human services training. *Action: To pursue the development of training through the Human Services Institute for the purposes of increasing access by tribal members to human services. (Passed unanimously.)*

September 28, 1993 (Indian Island) 7 present, 2 absent, 13 other participants.

MITSC's Role—Discussion about what the MITSC should accomplish. Many ideas expressed.

MITSC Audit—Consideration of whether there should be an outside audit of the MITSC's financial statements, given its small budget. *Action: To have an internal audit of the MITSC's financial statements for FY 1993. (Passed unanimously.)*

Legislation—

Representative Attean is working on legislation to clarify that the MITSC should not be subject to bureaucratic requirements that apply to State agencies.

LD 1405: The bill on tribal protection orders passed during the Legislature's First Regular Session.

LD 788: The Passamaquoddy trademark bill passed.

LD 1266: The Passamaquoddy casino bill was held over from the First Regular Session. A Subcommittee with representatives from the Attorney General's Office, the State Police, and Tribal Representatives is working on this.

LD 661: The Passamaquoddy Water District bill was held over.

Wabanaki Film—*Action: To reaffirm its conviction that the Wabanaki video project remains of significant value to the Tribes and State of Maine. However, Because the MITSC has not been successful in raising funds to complete the project and the MITSC's continued involvement might undermine Acadia FilmVideo's efforts to raise funds for this purpose, the MITSC hereby turns over the project to David Westphal and pledges to continue to help with fund-raising and otherwise support the project. (Passed by a vote of 6-1)*

Summit—Report that there has been no follow up on the Tribal-State Summit on economic development. Tribal Governors sent a letter to Governor McKernan after the April meeting, but had received no reply. *Chair agreed to try to set up another meeting of the Governors.*

Fishing—Duncan Pond Subcommittee felt that the Passamaquoddy Tribe needs to come up with a proposal that treats tribal members and non-tribal members alike. Governor Dore said rules relating to sustenance rights cannot be promulgated by the MITSC. Response that there is no question about this on Reservation, but on Trust Lands MITSC must consider sustenance but cannot treat tribal members and non-tribal members differently. *Action: To table the report of the Duncan Pond Subcommittee and take it up again at the next meeting of the MITSC. (Passed unanimously.) Action: To reconsider the motion to table the report by the Duncan Pond Subcommittee and to accept the recommendation to sponsor another workshop involving Tribal and State representatives to revisit fishing matters, update areas of agreement, and identify issues requiring further research and collaboration. (Passed unanimously.)*

Education—Discussion about College Campus Corps possibly involving a University campus and a tribal school.

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Transportation Opportunities—Discussion about meeting between Tribal and Maine Department of Transportation representatives concerning opportunities for women and minority-owned businesses under the federal Inter-Modal Surface Transportation Efficiency Act.

Native American Graves—Discussion about Native American Graves Protection and Repatriation Act.

Micmacs—Comment about difficulty of Aroostook Band of Micmacs in dealing with the Committee that is considering future uses of Loring Air Force Base.

1994 Meetings

January 18, 1994 Meeting postponed.

February 4, 1994 (Augusta) 7 present, 2 absent, 10 other participants.

Casino Legislation—Discussion with Richard Cohen about casino legislation. Casino relates to both the Settlement and the MITSC. Fact sheet about LD 1266 distributed. *Action: To support the concept of casino-based initiatives by the Tribes in order to promote the economic welfare of the Tribes, the self-sufficiency of the Tribe, strong Tribal Government, and economic development both within the Tribes and the surrounding communities. (Passed by a vote of 6 in favor and 1 abstention.)*

Wabanaki Film—\$10,100 has been raised since the MITSC's September 1993 meeting. New MITSC member Sonja Dana asked from where the authority came for the MITSC to make a film and said the MITSC's bylaws should require the formal consent of the Tribes before it takes actions. *Action: To contribute \$3,000 in MITSC funds to the Wabanaki film project. (Passed by a vote of 6 in favor and 1 opposed.)*

Education—Preliminary proposal prepared and submitted by Wayne Newell, the principal of Indian Township School, and Executive Director for an innovative grant to support the MAWIYANE project. Sonja Dana said this should have gone before the school committee before it was submitted.

Transportation Opportunities—Maine Department of Transportation (MDOT's) is interested in working with the MITSC and making (\$15,000) available to figure out how to link Native American businesses and communities to transportation-related opportunities. *It was felt that MDOT should communicate directly with the Tribes rather than through the MITSC.*

Fish and Wildlife Workshop—Suggestions for agenda items included the taking of porpoise, clarification of the waters under the MITSC's jurisdiction, and the effects of hydro projects. *Chair appointed John Banks, Fred Hurley, Cliv Dore, and himself to serve on a subcommittee to oversee the planning and implementation of the fishing workshop.*

Legislation—

LD 1604: The bill to clarify the status of the MITSC was voted out of Judiciary Committee "ought to pass".

Sunset Review: The recommendations by the Audit and Program Review Committee about the MITSC are friendly recommendations which MITSC supports.

April 13, 1994 (Orono) Workshop on Fishing Issues held.

May 12, 1994 (Augusta) Meeting of Governors prior to MITSC meeting. MITSC involved.

May 12, 1994 (Augusta) 9 present, 8 other participants.

Impacts of Environmental Decisions—Department of Environmental Protection (DEP) staff are not sure how to better balance the Settlement Act with the Maine Rivers law and the hydro relicensing law. The Penobscot Nation indicated that DEP's reaction to tribal concerns was cavalier and insulting. DEP should consider tribal interests. A recommendation for statutory change might be the best approach. *It was agreed that Governor Dore, Paul Bisulca, and Mr. Hurley would serve on a Subcommittee to work with the Executive Director to focus on the specific questions the Tribes have and that Martha Kirkpatrick of DEP would help out.*

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Workshop on Fish and Wildlife—It was agreed that John Banks, Cliv Dore, Fred Hurley, Paul Bisulca, and Richard Stevens will serve on a subcommittee to present action recommendations distilled from the workshop at the MITSC's next meeting.

Legislation—

Casino: The legislation did not pass.

Chapter 600: This includes the friendly amendments passed by the Legislature as a result of the sunset review process. This was ratified by the Passamaquoddy Joint Tribal Council and was expected to be by the Penobscot Nation.

Chapter 489: Clarifies that the MITSC is not subject to the State's laws concerning boards and commissions.

MITSC Members—All 4 state appointees expire in June 1994. The terms of the Penobscot appointees expired on May 3, 1994. People continue in their slots until they have been reappointed or another person has been appointed to take their place.

Wabanaki Film—The MITSC is close to meeting its fund-raising goal.

MITSC's Bylaws—Discussion of MITSC's bylaws in relation to the budget process and protocols for taking action. *The Chair asked the Executive Director to prepare a draft process for amending the MITSC's bylaws.*

MITSC's Role—John Cox suggested that there should be a more substantive annual report by the MITSC to ensure that people are fully informed on the MITSC's activities.

MITSC Executive Director—It was agreed that the MITSC is satisfied with the work of Diana Scully, would like to her continue working with them over the coming year, but has only limited ability to increase her compensation (from \$20,000 to \$22,000). *Action: To approve the adopt the budget with as discussed. (Passed unanimously.) It was agreed that the budget could increase if the MITSC is able to raise additional funds for special projects.*

Education—The Chair asked for support to pursue funding from the Nellie Mae Fund for Education for a project involving the Passamaquoddy Tribe and the University of Maine at Machias. *It was agreed that the MITSC should pursue this.*

Powwow—Discussion of possible Capitol Park Powwow.

MITSC Budget—Discussion of biennial budget for FY 1996 and FY 1997. There was not agreement that the budget should be doubled from \$30,000 to \$60,000.

June 29, 1994 (Pleasant Point) 7 present, 2 absent, 12 other participants.

Fishing Subcommittee—Consideration of report by Fishing Subcommittee. *Actions:*

To implement the regulatory process outlined in Recommendations #1-#3 of the Subcommittee Report. (Passed unanimously.)

To refer back to the Subcommittee Recommendation #2—the issue of prohibition of motorized watercraft on waters under the MITSC's jurisdiction. (Passed.)

To accept Recommendation #3 with agreed upon changes: The statement should read: "it appears that the Bureau of Environmental Protection's decision in the Basin Mills hydro electric project may have breached the Maine Indian Claims Settlement Act. The BEP's decision could adversely affect fishing stocks and, therefore, could prevent the members of the Penobscot Nation from fully recognizing their reserved fishing rights."

To develop legislation and a memorandum of agreement concerning hydroelectric projects and other environmental issues by the fall of 1994. To recommend that the addition of seat for the Passamaquoddy Tribe to the Toxics Monitoring Advisory Committee. (Passed unanimously.)

To give a policy endorsement of the Passamaquoddy Tribe's efforts to amend the federal Marine Mammals Act to clarify that tribal members may hunt porpoise and to recommend to the Department of Marine Resources that there be discussions with the Passamaquoddy Tribe concerning the sustenance rights of tribal members in marine waters.

Wabanaki Film—It was agreed to pay \$7,500 to David Westphal upon receipt of the grant from the Maine Arts Commission.

Education—Update on Nellie Mae grant proposal. This requires the approval of the Passamaquoddy Governor, Council, and School Committee. *Action: To support a proposal to Nellie Mae, pending support by the Passamaquoddy Governor, Council, and School Committee. (Passed unanimously.)*

Powwow—Further discussion about a Powwow in Augusta. No agreement about this.

Appendix #5

Wabanaki Resources Coordinator—*Action*: To accept a \$20,000 grant from the Department of Human Services to hire a Wabanaki Resources Coordinator. (Passed unanimously.) It was agreed that a Subcommittee of Steve Adams, Mark Chavaree, and Cliv Dore would work on this.

MITSC Budget—*Action*: To propose a budget of \$60,000 for MITSC for FY 1996 and FY 1997. (Passed unanimously.)

MITSC Bylaws—*Action*: To amend the MITSC's bylaws to clarify that when the term of a MITSC member expires that person may continue to serve until reappointed or replaced. (Passed unanimously.) To amend the MITSC's bylaws if at least 10 days' notice of the vote scheduled on the amendment has been given to MITSC members. (Passed unanimously.)

Fishing—As follow up on MITSC's Fish and Wildlife Workshop, the Penobscot Nation has proposed a cooperative agreement for consideration by the Maine Department of Inland Fisheries and Wildlife.

Brown Ash—Report on the work and concerns of the Brown Ash Task Force.

October 21, 1994 (Augusta) 9 present, 5 other participants.

Education—The Nellie Mae Fund has provided \$25,000 over the next year for the Passamaquoddy Tribe at Indian Township to carry out the college campus corps project by expanding on the MAWIYANE partnership. Another \$25,000 for each of the next 2 years also should be available.

Impact of Environmental Decisions—

Neither the Commissioner of DEP nor Chair of BEP responded to the MITSC's letter about Basin Mills sent over the summer.

The Penobscot Nation has made efforts at the federal level to amend the Settlement to protect their Reservation. The issue is that the Penobscot Indian Reservation is not given the same recognition by the Federal Energy Regulatory Commission that is given to other federally recognized Tribes. The Penobscot proposal says they will be treated the same.

Draft legislation presented reflects areas discussed during the Environmental Subcommittee's September meeting. Agreement that the draft should include guidance language under the duties of BEP. *Consensus to revise the draft legislation, circulate it to MITSC members and Tribal Governors, and submit it to meet the cloture deadline with the understanding that it could be retrieved if it does not have the support of Tribal Councils.*

Tribal-State Relations—Discussion of hostility by State people toward tribal members. Mike Best gave examples of state personnel disregarding Tribal rights and ordinances.

Marine Issues—Governor Dore said the Passamaquoddy Tribe wants access to salt water fish without the need for licenses. This has become more of a problem over the past few years. The Executive Director said the MITSC wants to prepare a paper on salt water issues, but she has not had the time to work on this. *It was agreed that the MITSC would arrange a meeting with the Department of Marine Resources and Governor Dore to discuss these issues.*

Wabanaki Resources Coordinator—It was suggested that a Wabanaki person would best be able to carry out this project. *It was agreed that the Subcommittee would communicate with Tribal Governors and ask for recommendations for a consultant for this project.*

Wabanaki Film—The film is almost complete. MITSC is awaiting word from the Threshold Foundation about a grant to help complete it.

Waters under MITSC's Jurisdiction—Update on identifying waters under the MITSC's jurisdiction. *Action: To authorize the expenditure of up to \$500 for the computer measurement of the shores of five lakes for the purpose of determining whether they are under the MITSC's jurisdiction. (Passed unanimously.)*

December 20, 1994 (Augusta) 8 present, 1 absent, 7 other participants.

MITSC Budget—No word back from either the State or the Tribes about the request to increase the total budget to \$60,000 for FY 1996 and FY 1997. Chair recommended pursuing this to put the State and Tribal Governments on notice that Commission is not able to fully discharge its responsibilities within its current level of funding.

Wabanaki Film—Fund-raising is completed as a result of contributions by the Threshold Foundation and Episcopal Diocese of Maine.

Education—Nellie Mae Board in Boston is pleased with the Passamaquoddy connection to the project they funded in Maine.

Appendix #5

Native American Day—Discussion about replacing Columbus Day with Native American Day. Different opinions about whether there should be legislation to do this.

Wabanaki Resources Coordinator—The Tribal Governors sought people potentially interested in this, but no resumes have been submitted. *It was agreed that the Subcommittee (Steve Adams, Mark Chavaree, and Cliv Dore) should contact the Passamaquoddy and Penobscot Personnel Departments and ask them to post and circulate the announcement about the MITSC's interest in the Wabanaki Resources Coordination Consultant and that the Subcommittee should make the final selection.*

Marine Issues—Report on November 21, 1994 meeting with the Department of Marine Resources Commissioner, Cliv Dore, Fred Hurley, and Executive Director. The Commissioner agreed to seek an opinion from the Attorney General about how the Department should apply State law to sustenance fishing and commercial fishing, since the Settlement is silent about aboriginal rights in marine waters.

Tribal Court Legislation—Two tribal court bills will be submitted to the 117th Legislature. One removes a sunset provision from a law which expands the jurisdiction of the Penobscot Tribal Court to be consistent with Federal Civil Rights law. The other will allow the Penobscots to assume existing jurisdiction over federally recognized Indians. They currently have this jurisdiction only over Penobscot and Passamaquoddy tribal members.

Child Support—Governor Stevens and Mike Best reported on a situation involving child support. *The Chair asked whether the Tribes could copy the MITSC in cases where the State is acting inappropriately and said there should be a file on these cases so they can be shared with the King Administration.*

Summit—Representative Attean asked what happened to the idea of the summit of Tribal/State leaders.

Paper on Settlement—How to educate State agencies about the Settlement. It was suggested that the paper on the Settlement Act be resurrected.

Impact of Environmental Decisions—

Draft legislation: The Department of Environmental Protection staff said the MITSC's draft bill raises more questions than it answers. Cliv Dore said there are no teeth in the draft. Representative Attean said she would file the draft legislation at the Legislature by title only.

Discussion about point source discharge permitting.

1995 Meetings

March 16, 1995 (Augusta) 7 present, 2 absent, 16 other participants.

Tribal-State Relations—

Meetings: The Chair has asked to sit in on a Cabinet meeting and that it is time for another meeting of Tribal/State Governors.

Fishing: Announcement that the signing of cooperative agreement between the Penobscot Nation and the Maine Department of Inland Fisheries and Wildlife would not take place, because Governor King is not willing to sign the agreement as negotiated. Comment that there is undermining going on when the paper companies can go to the Governor's office and stop an agreement about to be signed. Another comment that this should be made an issue because it sets a tone for tribal-state relations. *Action: To ask Governor King to adhere to and sign off on the original language in the cooperative agreement. (Passed by a vote of 5 with 2 abstentions.)*

Attorney General—Session with Attorney General Ketterer.

Wabanaki Film—Preview of film. *Action: To approve the film. To have a subcommittee of Mark Chavaree, Mike Best, and Fred Hurley work on distribution of the video, inviting the participation of other advisors to the project, including Wayne Newell and Richard Silliboy. (Passed unanimously.)*

Legislation—

LD 99: This is MITSC's bill to protect tribal fish and wildlife. The DEP and industry opposes it.

LD 116 and LD 471: Update on Tribal Court bills.

Wabanaki Resources Coordinator—Introduction of Cliff Smith, Consultant, member of Passamaquoddy Tribe at Pleasant Point.

Appendix #5

May 25, 1995 Quorum evaporated. Meeting postponed.

June 16, 1995 (Indian Township) 6 present, 1 absent, 2 vacancies, 12 others. No quorum.

Waters under MITSC's Jurisdiction-

Passamaquoddy concerns: Expressed about maps of waters under the MITSC's jurisdiction. These indicate that the traditional waters at Indian Township are under the jurisdiction of the MITSC or the State. The Tribe believes that it has jurisdiction over waters within their reservations. *It was agreed that there would be a Fishing Enforcement Workshop involving State and Tribal enforcement staff on September 6. John Banks, Mike Best, and Fred Hurley will serve on the Subcommittee to plan for the workshop.*

Question about MITSC's position on Mattagamon Lake.

Agreement that mapping of waters needs to be wrapped up, there is need to return to the gem lakes study, and to get back to marine issues.

Wabanaki Resources Coordinator-Been in touch with 30 foundations and many state and federal agencies.

Concern about federal movement toward block grants. *It was agreed that the MITSC should pursue additional funding for the project.*

Definition of Reservation-Update on definition of reservation under the Federal Power Act.

Wabanaki Film-Agreements:

Election of winning cover design by Calvin Francis of the Penobscot Nation.

MITSC will advance \$2,000 for duplication and packaging.

MITSC will approach Maine Public Broadcasting about showing the film.

MITSC will approach libraries, with an initial contract with the Maine State Library.

Mark Chavaree will handle negotiations with distributors.

Legislation-

LD 1333: Tribal Court legislation is moving along well. It repeals a sunset provision to allow the continuation of existing jurisdiction and extends jurisdiction over other federally recognized Tribes.

LD 99: Incredible fear exists in the Legislature about LD 99. It went down in defeat.

Education-Update on MAWIYANE.

MITSC Executive Director-*Agreement that Diana Scully, dba Vantage Point, should continue to provide management services to the MITSC for the coming year and that she should prepare a proposed work plan including any possible additional sources of funding prior to the MITSC's next meeting.*

September 6, 1995 (Orono) Workshop on Fishing Enforcement Issues.

September 12, 1995 (Augusta) 7 present, 2 vacancies, 6 others, including 1 nonvoting member.

MITSC Members-Discussion about nomination of John Patterson. Judiciary Committee just held a hearing and he received 3 votes. Earlier the Committee supported the nomination of Evan Richert. Concern about conflict of interest of MITSC member.

MITSC Legislation-Chair and Paul Bisulca approached House Majority Leader about a bill to address the finances and membership of the MITSC.

Wabanaki Resources Coordinator-Update.

Passamaquoddy Ordinance-Discussion about ordinance limiting access to Reservation waters.

Workshop on Fishing Enforcement Issues-Report.

Definition of Reservation-Update on amending the Federal Power Act. The Penobscot Nation is asking the MITSC to make a statement to FERC. *The Chair said he could write a letter over his signature after seeing a 1988 Attorney General's ruling about sustenance fishing rights of the Penobscot Nation.*

Fish and Wildlife Pamphlet-Pamphlet on Fish and Wildlife Provisions in the Settlement is complete. Few comments received. The pamphlet does not list waters at Indian Township, given the ordinance adopted by the Passamaquoddy Tribe. There still needs to be resolution of the question about whether Mattagamon is one lake or two. *There was consensus to amend the pamphlet to include First Lake Mattagamon as one of the Penobscot waters under the MITSC's jurisdiction.*

Impact of Environmental Decisions-There was a meeting involving the Penobscot Nation and DEP. Representative Bisulca would like the ideas in LD 99 to go forward again.

Appendix #5

Trust Land—The Penobscot Nation has purchased land in unorganized territory (T1R6 at Salmon Lake.) They will want to place this in trust.

MITSC's Role—As instructed during the MITSC's June 1995 meeting, the Executive Director distributed a statement about the MITSC's overall direction and work. She expressed concern that the MITSC has never articulated a clear vision of what its role should be, that the MITSC's basic operating budget is the same today as it was 8 years ago, and at a time when people are having greater and greater expectations of the MITSC, its budget is feeling tighter and tighter. Among the tasks for the coming year she identified focus groups in different areas (e.g. natural resources, law enforcement, human services, and economic development) to help clarify the MITSC's vision, role, and plan for the future.

Wabanaki Film—*Action: To enter into a distribution agreement with the Native American Public Broadcasting Consortium, upon the satisfactory negotiation of details in the agreement. (Passed.)*

December 19, 1995 (Augusta) 6 present, 2 absent, 1 vacancy, 5 others (including 1 nonvoting member.)

MITSC's Role—The Chair reported that there is a difference of opinion among Governor King's staff about the MITSC's role.

Definition of Reservation—Great Northern Paper has indicated that the Chair's November 1, 1995 letter to the Federal Energy Regulatory Commission is in violation of the FERC process. The letter concerned interpretations of the Settlement Act about the definition of the Penobscot Indian Reservation.

MITSC Legislation—The Executive Director met with both the Penobscot and Passamaquoddy Tribal Councils. The Penobscots passed a resolution of support. No word from the Passamaquoddy Tribe. The Committee on Indian Relations of the Episcopal Diocese and the Maine Council of Churches will support the legislation.

Fishing—Discussion about wild brook trout fishing.

Trust Land—The Penobscot Nation wants the MITSC to recommend the addition of around 5,464 acres in T1R6 W.E.L.S., Penobscot County.

Passamaquoddy Ordinance—No reports of incidents, though great concern among many State officials.

MITSC's Role—Discussion.

Wabanaki Resources Coordinator—\$65,000 has been raised for this project. Executive Director and Cliff Smith feel that ultimately this project should be spun off from the MITSC and function as a private, nonprofit inter-tribal entity. *Mr. Banks requested a written report on this project.*

Wabanaki Film—There was consensus that the MITSC should use a \$1,000 contribution from the Episcopal Diocese of Maine to have the Maine State Library duplicate and distribute the Wabanaki film to school librarians. The film will be aired by Maine Public Broadcasting on January 21, 1996.

1996 Meetings

January 17, 1996 (Augusta) 8 present, 1 vacancy, 4 others (including 1 nonvoting member.)

Trust Land—Proposal to add land to Penobscot Indian Territory. *Action: To recommend that the Maine Legislature amend the Settlement Act to add newly acquired lands in Township 1, Range 6 W.E.L.S. to the Penobscot Indian Territory. (Passed unanimously.)*

Wabanaki Resources Coordinator—*Motion: To spend \$1,000 from MDOT monies for a contract with CEI to explore the establishment of an independent nonprofit to operate a revolving loan fund. Action: To table the motion. (Passed.) Action: To approve proposed use of administrative funds with the exception of the contract for CEI and discussions with other groups about this. (Passed.)*

MITSC Legislation—Update on LD 1667, bill to improve the MITSC. Question about whether legislators may be appointed to the MITSC. *Action: To obtain clarification from Attorney General about legislative members. (Passed with Cliv Dore and Matt Manahan abstaining.)*

Waters under MITSC's Jurisdiction—Letter from Bowater about the MITSC's maps showing the boundaries of the Penobscot Reservation. *It was agreed to draft a letter to Bowater stating that a definition of the boundaries of the Penobscot Reservation from the Settlement Act would be substituted for the maps in question.*

Appendix #5

Tribal-State Relations—Chair's report on conversation with Governor King about his relationship with the Tribes and the role of the MITSC.

April 18, 1996 (Indian Island) 9 present, 9 other participants (including 2 nonvoting members)

Wabanaki Film—Update on distribution.

Legislation—

LD 1667 ended up as a resolve to improve tribal-state relations. It creates a Task Force staffed by the MITSC.

The Chair asked the Executive Director to prepare a letter informing the Passamaquoddy Tribe and the Penobscot Nation that the State has increased its annual appropriation to the MITSC by \$7,500 and asking each to consider increasing its annual allocation to the MITSC by \$3,750.

Action: To approve nominations to the Task Force, as reviewed, with the MITSC Chair to make substitutions as appropriate and ensuring that the Tribes have discretion to determine their members. (Passed by a vote of 6 in favor, 1 against, and 1 abstention.)

Action: To approve the budget for the Task Force. (Passed by a vote of 6 in favor and 2 abstentions.)

LD 1787: The Legislature enacted the bill to place additional Penobscot land in trust.

Fishing—

Update on wild brook trout fishing. After extensive discussion, the MITSC decided not to adopt any wild brook trout fishing rules.

Recent discussions about fishing rights involving the Penobscots, the State, and others.

There are 15 islands in the St. Croix River to which sustenance rights of Passamaquoddy tribal members apply.

Mary Petuche Pond is listed as being under the State's jurisdiction. *All agreed it should not be there.*

Wabanaki Resources Coordinator—Cliff Smith was expected, but was not there.

MITSC Budget—

Budget for FY 1997 shows a balance of \$7,500, because it was not automatically assumed that the Tribes will match the new State dollars. Governor Dore said the Passamaquoddy Tribe might not make a payment to the MITSC, because the Tribe cannot afford to pay property tax improperly levied against it. *Action: To approve the preliminary budget for FY 1997, as presented. (Passed by a vote of 7 in favor and 1 abstention.)*

State's performance based budgeting process: Questions about applicability to the MITSC.

September 25, 1996 (Indian Island) 9 present, 7 others (including 2 nonvoting members)

Wabanaki Video—Executive Director should prepare press release about national award and explore possibility of distribution through American Anthropological Association.

Performance Based Budgeting—Executive Director should contact Commission on PBB to reiterate MITSC's different status as intergovernmental entity and its inability to meet State deadlines.

Executive Director—Continue to retain Diana Scully over the next year.

MITSC Chair—Bennett Katz will resign. MITSC members will recommend replacements in 15 days.

Great Ponds Task Force—A different process is needed for waters in Indian Territories. *Tabled.*

Fishing Rules—

Adopt a rule prohibiting the use of motors on Round Mountain Pond. (Passed unanimously)

Approve electronic rule. (Passed)

Support MITSC's exercise of jurisdiction over all waters in Penobscot Territory. (Passed 7-2)

Conflict of Interest—Discussion about the conflict of interest of one of MITSC's members.

East Branch Penobscot Stakeholders—Discussion about proposed management plan for East Branch Penobscot River Drainage and stakeholders organized by Bowater.

Tribal-State Relations—Discussion of comments about MITSC's authority.

Budget—Passamaquoddy Tribe will not support additional assessment to match new state appropriation.

Taxation—Concerns about property taxes paid to State rather than to Passamaquoddy Tribe on alienated lots. *If Mike Best writes letter with Executive Director, Bennett Katz will hand deliver to Governor King.*

Wabanaki Resources Coordination—Mark Chavaree and Matt Manahan agreed to work on Subcommittee to devise plan for using \$7,500 balance in MDOT contract.

