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A Summary of the Activities of the Maine Indian Tribal-State Commission. July 1, 2006 – June 30, 2007

Maine Indian Tribal-State Commission

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A Summary of the Activities of the Maine Indian Tribal-State Commission (July 1, 2006 – June 30, 2007)



Prepared by

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I. Executive Summary

This executive summary describes the Maine Indian Tribal-State Commission's (MITSC) work from July 1, 2006 to June 30, 2007. MITSC's bylaws specify an annual report will be transmitted to the State, the Penobscot Nation, and the Passamaquoddy Tribe at the close of each year.

MITSC is an inter-governmental entity created by An Act to Implement the Maine Indian Claims Settlement (known hereafter as the Maine Implementing Act (30 MRSA §6201 - §6214)). The Maine Implementing Act (MIA) directs MITSC to "continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State...."

Tribal-State relations continue to improve since the last MITSC annual report published in October 2006. Perhaps the single most important continuing factor contributing to this improved political atmosphere is Governor John Baldacci's engagement in tribal-state issues, especially his willingness to discuss possible changes to the Maine Implementing Act. Another decisive factor helping to enhance tribal-state relations is the executive and legislative branches of State Government reclaiming primary roles as the developers of policy with respect to the Tribes. Legislative leaders' enthusiastic support to include information about the Maine Indian Claims Settlement Act (MICA), MIA, MITSC, Wabanaki Tribes, and tribal-state relations in this year's legislative orientation program for the 123rd Legislature offers more evidence of increasing State consciousness of tribal-state relations.

Tribal Leaders also deserve credit for their diplomatic and statesmanlike words taking a long-term view of their relationship with the State during political controversies. The Tribes' consent to creating the Tribal-State Work Group (TSWG) and their continuing active involvement in the process reflect greater faith in MITSC to help the parties resolve difference and a hope that differences will be genuinely addressed. The Maliseets' decision to join MITSC serves as another example of growing Tribal confidence in MITSC.

During much of its history, MITSC has made many well thought-out recommendations, some the product of many months or even years of deliberation and work, only to have them ignored by the signatories to the Settlement Act. Many individuals and signatories to the Settlement Act have cited this ineffectiveness at implementation as a fundamental MITSC weakness. MITSC has consciously focused during the last one and a half years on ensuring the implementation of its recommendations. MITSC Chair Paul Bisulca has repeatedly said MITSC had to regain its customers. Beyond making and supporting recommendations, MITSC had to demonstrate success in implementing them.

Successfully implementing MITSC and signatory recommendations required two fundamental things: increased contractor man-hours and MITSC's direct assistance to state and tribal staff efforts.

MITSC fully achieved its goal for increased State funding with the Legislature and Governor eventually supporting its original budget request for a \$38,000 increase in both FYs 2008 and 2009. We also averted a mid-year funding crisis by persuading Governor Baldacci to provide \$25,000 in emergency funding to MITSC in January 2007 to apply to FY 07. MITSC is now funded at a level that more adequately supports MITSC's increased workload and need for greater contractor man-hours to apply to its own initiatives, which are described in the annual report.

Because of increased funding MITSC is also better able to monitor and actively assist in the implementation of agreements reached by both the State and Tribes. The MITSC Chair views past staff failures on both sides as having contributed to a perception that "leadership on the other side" does not always live up to the terms of agreements. This perception interfered with MITSC's goal to build trust among the parties with which it works. MITSC's direct assistance to state and tribal staffs and the results that have been achieved have increased trust and a sense of accomplishment by the signatories.

FY 2007 was a year that saw growth in MITSC's visibility and operational effectiveness. MITSC successfully achieved eight of its nine work plan objectives for FY 2007. Some of the more notable work plan achievements include its success at obtaining increased and/or new State, Federal, and private funding, resolving a difference regarding Federal Trust Responsibility that blocked renewal of the Atlantic Salmon Cooperative Agreement, and implementation of all phase one Tribal-State Work Group recommendations. Beyond the FY 2007 work plan, MITSC played a key role in the appointment of Wayne Newell to the University of Maine System Board of Trustees (and August 28 appointment of Denise Altvater to the Maine State Prison Board of Visitors), facilitating resolution of concerns raised by the Sipayik Criminal Justice Commission with the State, county, and local criminal justice system, and helping to nurture the strengthening relationship between the Wabanaki and Bates, Bowdoin, and Colby Colleges.

MITSC stands prepared to undertake perhaps its most important mission during its 27 year history, helping Tribal and State parties to the Maine Implementing Act resolve their differences about the Act's intent, interpretation, and application. MITSC already considers the process a success by the fact that all signatories mutually agreed to create the Tribal-State Work Group and by them collectively designing the process for considering changes to MIA. However, the new MITSC will also continue to judge its effectiveness by the ultimate results of the Tribal-State Work Group process. MITSC also expects the Tribal-State Work Group to review MITSC's powers and consider to what extent those powers should be changed or expanded to equip MITSC to better serve the signatories and tribal-state relations in the 21st century.

II. Introduction

A. Purpose and Organization of This Report

This report summarizes MITSC's work from July 1, 2006 to June 30, 2007. MITSC's bylaws specify an annual report will be transmitted to the State, the Penobscot Nation, and the Passamaquoddy Tribe at the close of each year. MITSC issued its last annual report in October 2006. It covered a 38 month period attributable in part to the resignations of the former MITSC Chair and Executive Director and the temporary suspension of MITSC meetings from November 2003 until January 2005. With this annual report, MITSC intends to publish summaries coinciding with the MITSC fiscal year, July 1 to June 30.

Section II of this report entails an overview of MITSC and outreach it performed to governments, the media, religious community, and non-governmental organizations (NGOs). *Section III* describes the condition of Tribal-State relations and challenges confronting MITSC. *Section IV* explains MITSC's work implementing its 2007 work plan. *Section V* discusses other significant MITSC work undertaken in 2007. When the term "Tribes" is used in this report, it refers to the Passamaquoddy Tribe and Penobscot Nation, unless the context indicates otherwise.

III. Overview of MITSC

A. Purpose and Responsibilities

MITSC is an inter-governmental entity created by An Act to Implement the Maine Indian Claims Settlement (known hereafter as the Maine Implementing Act (30 MRSA §6201 - §6214)). The Maine Implementing Act (MIA) directs MITSC to "continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate."

The Act specifies additional responsibilities for MITSC:

- ☞ Land Acquisition. Make recommendations about the acquisition of certain lands to be included in Indian Territory.
- ☞ Fishing Rules. Promulgate fishing rules for certain ponds, rivers, and streams adjacent to or within Indian Territory.
- ☞ Studies. Make recommendations about fish and wildlife management policies on non-Indian lands to protect fish and wildlife stocks on lands and waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Indian Nation, or MITSC.
- ☞ Extended Reservations. Review petitions by the Tribes for designation as an "extended reservation."

MITSC also performs an informal information and referral function for people looking for information about the Settlement, the Wabanaki, Tribal enrollment, State of Maine Tuition Waiver Program, and tribal-state relations. It also provides to the Executive and Legislative Branches of State Government staff support pertaining to Indian-related legislation and other Indian matters.

B. MITSC Members

MITSC has nine members, including four appointed by the State of Maine, two by the Passamaquoddy Tribe, and two by the Penobscot Nation. The ninth member is the chair, who is selected by the eight appointees. Seven members constitute a quorum.

Due to the approval by the Houlton Band of Maliseet Indians, Passamaquoddy Joint Tribal Council, and Penobscot Nation of LD 373, An Act To Change the Membership of the Maine Indian Tribal-State Commission To Add Seats for the Houlton Band of Maliseet Indians and the State, MITSC will expand in the fall of 2007 with two seats for the Maliseets and two additional seats for the State of Maine bringing its total membership to 13. The Maine Legislature enacted LD 373 in May 2007 and Governor Baldacci signed the bill into law May 22, 2007.

Several changes occurred to MITSC's membership during the 12 months covered by this report. Mark Chavaree, a Penobscot Nation appointee who served on MITSC for approximately 16 years, resigned his position on May 21, 2007. MITSC Chair Paul Bisulca wrote in a May 25, 2007 letter to Mark, "Together with your unassuming manner and articulate expression of thought, your contributions during sixteen years of service have earned you the Commission's greatest respect and gratitude." On June 13, 2007, Chief Francis and the Penobscot Tribal Council appointed Bonnie Newsom, the Penobscot Nation Tribal Historic Preservation Officer, to replace Mark Chavaree. MITSC's longest serving member, John Banks who heads the Penobscot Nation Department of Natural Resources, remains as the other Penobscot Nation representative.

Passamaquoddy Chief Rick Phillips-Doyle replaced former Governor Mark Altwater as the Sipayik representative for MITSC on October 31, 2006. Chief Phillips-Doyle resigned from MITSC on June 25, 2007. At the end of the MITSC fiscal year, the Passamaquoddy Sipayik seat remained vacant but Chief Phillips-Doyle appointed Passamaquoddy Tribal Council Member Hilda Lewis to fill the seat on August 27, 2007. Passamaquoddy Tribal Representative Donald Soctomah represents the Passamaquoddy Tribe at Motahkmikuk.

Karin Tilberg, one of the State of Maine's four appointees, effectively resigned February 2, 2007. Governor John Baldacci nominated James Nimon, Director of the Office of Business Development for the Department of Economic and Community Development, to replace her. The State Senate unanimously confirmed James Nimon's nomination on June 12, 2007. On the same day, the State Senate also confirmed Greg Cunningham, a lawyer for Bernstein, Shur, Sawyer, and Nelson, for a second term on MITSC. The other two State appointees are Mike Hastings, Director of the Office of Research and Sponsored Programs, University of Maine, and Paul Jacques, Deputy Commissioner, Inland Fisheries and Wildlife.

C. Meetings and Other Events

From July 1, 2006 through June 30, 2007, MITSC held 7 regular meetings, including two in Augusta, one in Penobscot Indian Territory at Mattamiscontis Lake, one at Indian Island, one in Princeton near the Passamaquoddy Reservation at Motahkmikuk, one at the Maliseet Reservation in Littleton, and one in Orono. In addition, Commissioners met twice via conference call on May 2 and May 10, 2007 to discuss an internal personnel matter.

MITSC was privileged to be represented at the ceremony at which Governor John Baldacci presented Penobscot Nation war hero Charles Shay with a proclamation declaring June 6, 2007 Native American Veterans History Day. Following the proclamation ceremony, MITSC representatives observed from the House Gallery Penobscot Tribal Representative Donna Loring reading a legislative sentiment she sponsored honoring Charles Shay. MITSC representatives also attended an October 12, 2006 talk given by Nick Smith, "In the Right Place at the Right Time," at the Fogler Library Special Collections Department, University of Maine. Mr. Smith has devoted more than 50 years to understanding Wabanaki culture and history. John Dieffenbacher-Krall attended the inaugural ceremony for Governor William Nicholas, Lieutenant Governor Joseph Socabasin, Passamaquoddy Tribal Representative Donald Soctomah, and the Passamaquoddy Tribal Council for the government based at Motahkmikuk on November 18, 2006. Paul Bisulca attended the inaugural for Chief Rick Phillips-Doyle, Lieutenant Governor Thomas Lewey, and the Passamaquoddy Tribal Council for the government based at Sipayik on January 20, 2007. Both Paul Bisulca and John Dieffenbacher-Krall attended the Penobscot Nation inaugural for Chief Kirk Francis, Vice-Chief Dennis Pehrson, Penobscot Tribal Representative Donna Loring, and the Penobscot Tribal Council on November 17, 2006.

D. Governmental Outreach

The current MITSC Chair and Executive Director perceive building and enhancing governmental relationships as a critical role of MITSC. MITSC leadership has emphasized meeting with Wabanaki and State of Maine leaders and maintaining frequent and open communications. Executive Director John Dieffenbacher-Krall regularly emails Wabanaki and State leaders news articles and other updates covering topics that could potentially or do impact tribal-state relations.

Because of the importance of tribal-state relations and a desire to ensure that the progress of the last 1 ½ years continues, MITSC met with the top three gubernatorial candidates who challenged incumbent Governor John Baldacci in the November 2006 general election. The MITSC Executive Director and Commissioner Mark Chavaree met Independent candidate Barbara Merrill and her campaign manager on October 6, 2006. MITSC Chair Paul Bisulca and John Dieffenbacher-Krall met with Green Independent Party candidate Pat LaMarche on October 10, 2006 and Republican Party candidate Chandler Woodcock on October 17, 2006. All the gubernatorial candidates were presented a briefing paper about the Maine Indian Claims Settlement Act, Maine Implementing Act, MITSC, MITSC responsibilities, and contact information for the five Wabanaki Tribal Governments along with the two Tribal Representatives.

MITSC continued to travel around the State to meet with Tribal and Maine leaders. Several meetings were held with Penobscot Nation Chief Kirk Francis. Paul Bisulca and John Dieffenbacher-Krall met with Maliseet Chief Brenda Commander and the Maliseet Tribal Council on August 14, 2006. MITSC also helped convene six Wabanaki Leaders meetings on September 27 and November 17, 2006 and February 8, April 19, May 18 and May 25, 2007. MITSC Chair Paul Bisulca considers the Wabanaki Leaders meetings to be highly valuable forums at which he can communicate with the chiefs, hear their individual and collective concerns, and then articulate Tribal Leaders' concerns to other Maine leaders.

MITSC met with both executive and legislative leadership for the State of Maine during the last year. Paul Bisulca and John Dieffenbacher-Krall met with Governor Baldacci on November 22, 2006 and May 8, 2007. The MITSC Chair and Executive Director met with Speaker Glenn Cummings on January 26, 2007 and with both Senate President Beth Edmonds and Speaker Cummings on May 16, 2007. Paul Bisulca and John Dieffenbacher-Krall had regular communications with Governor Baldacci's lead staff person for tribal-state relations during the report period. Until his January 2007 resignation, the lead person was Daryl Fort followed by Karin Tilberg and then the current person, Chief Legal Counsel Mike Mahoney. MITSC also had numerous communications with Governor Baldacci's Deputy Chief of Staff, Ryan Low, Deputy Legal Counsel, Karla Black, Senior Economic Adviser, Jack Cashman, and Director of Boards and Commissions, Joe Boucher.

One of the signatories to the Maine Indian Claims Settlement Act (MICSA) is the United States. Yet despite the US' interest and obligation to ensure effective implementation of MICSA, historically little executive and legislative contact has occurred between MITSC (created under the Maine Implementing Act) and these two branches of the Federal Government. Perhaps the most glaring Federal shortcoming is its failure to provide any financial support for MITSC operations. To rectify this situation, MITSC has initiated outreach to the Maine Congressional Delegation and Eastern Region of the Bureau of Indian Affairs to increase communication. MITSC believes that the Federal Government has a responsibility to fund mechanisms, like MITSC, which support Tribal/Federal/State relations. Paul Bisulca and John Dieffenbacher-Krall met with US Representative Tom Allen on December 18, 2006 and US Representative Mike Michaud on December 19, 2006. Meetings were requested with US Senators Susan Collins and Olympia Snowe on November 28, 2006. At the time of the publication of this report, MITSC had received no response from either office to our meeting request.

E. Media Outreach

As part of increasing its political relevance and effectiveness, MITSC has actively worked to raise its public profile. During the last year, MITSC has deliberately reached out to selected media outlets, some with a fairly good understanding of MITSC and others with little knowledge of MITSC's responsibilities and work. MITSC sought editorial board meetings with the editors of most of Maine's daily newspapers and a few weekly newspapers that include one or more Indian Reservations within their reader circulation area. MITSC held editorial board meetings with the Sun Journal on December 6, 2006, Calais Advertiser on February 1, 2007, Kennebec Journal and Morning Sentinel on March 26, 2007, Bangor Daily News on March 27, 2007, and

Times Record on June 8. John Dieffenbacher-Krall appeared on the WERU radio program Indigenous Voices on August 5, 2006. Paul Bisulca and John Dieffenbacher-Krall appeared on the cable TV public affairs program State of the State originating on the Time-Warner Network on October 17, 2006. In addition, John Dieffenbacher-Krall had op-eds published in the Sun Journal on April 1, 2007 and Bangor Daily News on May 14, 2007.

F. Religious and Non-Governmental Organization (NGO) Outreach

Implicit in MITSC's mission is a duty to help the non-Indian population to better understand the Wabanaki Tribes. Several years ago, MITSC commissioned and supported the production of the film video, *Wabanaki: A New Dawn*. MITSC maintains communications with a number of groups and religious denominations with an interest in tribal-state relations. MITSC has enjoyed a long-term relationship with the Episcopal Committee on Indian Relations. The Rev. Canon Roger Smith, the group's chair, also chaired the Task Force on Tribal-State Relations created by the 117th Maine Legislature. John Dieffenbacher-Krall regularly attends the group's meetings generally held at the St. Ann Parish Hall on Indian Island.

MITSC also has an ongoing relationship with the Friends Committee on Maine Public Policy, a Quaker group. Paul Bisulca and John Dieffenbacher-Krall attended one of the group's meetings at their invitation on September 30, 2006. Nationally, the Quakers also run the American Friends Service Committee (AFSC). In Maine, AFSC has supported the Maine Wabanaki Program and lent support to the Sipayik Criminal Justice Commission through the work of Jamie Bissonette, Director of the Criminal Justice Program in New England. Denise Altvater, Chair of the Sipayik Criminal Justice Commission, staffs the Maine Wabanaki Program.

Historically, the Wabanaki Tribes have had a close relationship with the Roman Catholic Church with churches located at Indian Island, Motahkmikuk, and Sipayik. Paul Bisulca and John Dieffenbacher-Krall met with Roman Catholic Diocese of Portland Bishop Richard Malone and Marc Mutty, Director of Public Affairs, on March 26, 2007.

The Episcopal Diocese of Maine, New England Annual Meeting, Society of Friends (Quakers), and Roman Catholic Diocese of Portland all belong to the Maine Council of Churches. MITSC has prioritized building a relationship with its relatively new Executive Director, the Rev. Jill Saxby, and its board leadership. Paul Bisulca and John Dieffenbacher-Krall met with the Rev. Saxby on December 18, 2006. MITSC has received an invitation to address a Maine Council of Churches board meeting on September 21, 2007.

G. Funding

MITSC finished fiscal year (FY) 2007 (July 1, 2006 to June 30, 2007) with a balance of \$9,945 comprising a balance of \$7,142 for FY 07 and a carry-over of \$2,803 from FY 06. During the 2007 fiscal year, MITSC took in \$82,904 and spent \$75,762. In comparison to the 2006 fiscal year (July 1, 2005 to June 30, 2006), MITSC received \$46,795 and spent \$61,806 for a deficit of \$15,011. Thanks to the rather large sum of money carried over from the previous fiscal year, MITSC finished the fiscal year with a balance of \$2,803.

MITSC made increasing and stabilizing its budget a FY 2007 priority. Please see the description under the section assessing our performance implementing the FY 2007 work plan. Work remains to persuade the Federal Government to participate in funding MITSC operations. In addition, further discussion and assessment modifications are needed to better reflect each party's relative ability to pay. On a per capita basis, the Tribes are paying nearly \$5 per person to support MITSC functions while the state paid a little less than 5¢ in FY 07.

IV. Tribal-State Relations and Challenges Confronting MITSC

A. Tribal-State Relations Improved

Tribal-State relations continue to improve since the last MITSC annual report published in October 2006. Perhaps the single most important continuing factor contributing to this improved political atmosphere is Governor John Baldacci's engagement in tribal-state issues, especially his willingness to discuss possible changes to the Maine Implementing Act. The prior administration refused to discuss the many substantive issues that the Tribes have concerning their understanding, interpretation, and implementation of the agreement. While the Passamaquoddy racino initiative question before voters in November 2007 and the Penobscot Nation effort to gain authorization to operate slot machines on Indian Island strain the relationship due to Governor Baldacci's and the Tribe's policy differences on gambling, many concrete achievements and initiatives pointing to better tribal-state relations exist.

Another decisive factor helping to enhance tribal-state relations is the executive and legislative branches of State Government reclaiming primary roles as the developers of policy with respect to the Tribes. A pattern had developed during the last two decades in which diplomatic and political processes became overwhelmed by the legal process. As the pattern of resorting to the legal system intensified and became the norm by which tribal-state relations happened, diplomacy and compromise got pushed aside in an intensifying atmosphere of conflict and litigiousness.

MITSC has consciously worked to have the signatories resolve their differences through discussion and offering potential solutions outside of the courts. The respective leaders for the signatories are the appropriate people for developing the policies governing tribal-state relations. The Attorney General and Tribal attorneys should be limited to offering their interpretations of statutory and case law.

Tribal Leaders also deserve considerable credit for the improvement in inter-governmental relations by avoiding harsh rhetoric when characterizing tribal-state relations. In a *Sunday Telegram* article published January 7, 2007 that presented the premise that Governor Baldacci has ignored the concerns of Washington County, Chief Phillips-Doyle is quoted, "'I'm hopeful this term. He (referring to Governor Baldacci) seems to be more action-oriented.'" It was important to the tribe that he attend the inauguration, he said, despite the past disappointments. "We can't close the door on anything or anyone, especially the governor of Maine," he said. "If he could focus some of his energy toward Washington County and the tribe, we could work our own way out of our economic hardship.'"

Governor William Nicholas of the Passamaquoddy Tribe at Motahkmikuk wrote a January 28, 2007 op-ed to the *Sunday Telegram* disputing the premise of the January 7, 2007 article. He begins the op-ed by saying, "Recent newspaper articles cite the Passamaquoddy Tribe complaining of Gov. Baldacci's "betrayal" on tribal gambling issues. When the articles began showing up in several different newspapers, my telephone began ringing. I wish my telephone had rung as vigorously prior to the writing of the narrative, as I would of have added an entirely different point of view."

The sale of the PIN Rx facility in early 2007 presented challenges to both the Penobscot Nation and the State, but the two entities worked together to ensure that PIN Rx's MaineCare clients were not denied access to life-saving prescription drugs. PIN Rx and Tribal leaders worked hand-in-hand with State officials to transition the business to a new operator without interruption. Penobscot Nation Chief Kirk Francis demonstrated repeated restraint with the media as PIN Rx dominated the Maine news for several months. Chief Francis and Governor Baldacci continue to work together on a number of mutual issues of interest with each of them committed to emphasizing the many positive aspects of the Penobscot Nation and State of Maine relationship.

Governor Baldacci made history this year when he nominated Passamaquoddy Elder and current Tribal Council Member Wayne Newell to serve on the University of Maine System Board of Trustees (UMSBOT). Mr. Newell is the first Wabanaki person to fill one of the public seats on the Trustees. MITSC initially raised the idea of Governor Baldacci appointing a Wabanaki person to the USBOT in January 2006. MITSC Commissioners voted February 27, 2006 to recommend Mr. Newell for a seat on the Trustees after Wabanaki Leaders united behind his candidacy. MITSC Chair Bisulca wrote Governor Baldacci early the next month advocating for Mr. Newell's appointment. MITSC also successfully persuaded a number of other groups and individuals to support the nomination. Mr. Newell received a unanimous vote of support from the Education and Cultural Affairs Committee on March 15, 2007 and he was unanimously confirmed by the State Senate on March 20, 2007.

Maine became the first state in the nation in 2001 to mandate teaching about its Indigenous People in the public school system. The bill, LD 291, An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools, requires Maine schools to teach Maine Native American Studies. The idea for LD 291 was initially discussed at the Assembly of Governors and Chiefs held in 1999. At the directive of Tribal and State leaders, the MITSC Education Committee worked to prioritize education. It produced a draft work plan that included a recommendation to require the public school curriculum and learning results to include the Wabanaki.

Legislation accomplishing this goal was sponsored by Penobscot Nation Tribal Representative Donna Loring, passed by the 120th Maine Legislature, and signed into law in June 2001 as Maine Public Law 2001, Chapter 403. The Maine Legislature enacted LD 291 with no dedicated funding to either develop the required curricula or provide teacher training to effectively implement it. Several contributors (MITSC, the Department of Education, the University of Maine System, the Wabanaki Tribes, and private donors) voluntarily supported the work of the

Wabanaki Studies Commission charged with helping to prepare for the inclusion of Wabanaki Studies as part of Maine Studies taught in Maine's schools.

One of the Wabanaki Studies Commission's eight recommendations in its final report issued in October 2003 cited the need for State funding to help support the initial implementation of LD 291. Though the law was enacted six years ago, the law can still be described in a start-up mode with its implementation varied across Maine's public schools. To increase teacher knowledge and teaching proficiency, the Native American Studies Program at the University of Maine has sponsored three Summer Institutes to train teachers. According to the Program Director, the institutes have trained approximately 120 teachers so far. The University of Maine, with funding from the Bureau of Indian Affairs, intends to hold a combined institute/LD 291 evaluation session in the fall of 2007. In support of better tribal-state relations, Department of Education Commissioner Susan Gendron recently pledged to Maureen Smith, Director of Native American Studies at the University of Maine, to provide \$20,000 in funding for the 2008 Summer Institute.

Legislative leaders' enthusiastic support to include information about MICSA, MIA, MITSC, Wabanaki Tribes, and tribal-state relations in this year's legislative orientation program for the 123rd Legislature offers more evidence of increasing State consciousness of tribal-state relations. David Boulter, Executive Director of the Legislative Council, helped facilitate discussions between MITSC and staff from the Maine Development Foundation to include visits with the Maliseets and Passamaquoddy Tribe during the Northern and Eastern Maine Bus Tour held January 10 – 12, 2007 (see more information under the Tribal-State Work Group). In addition, Legislative Leaders created an opportunity for MITSC to address a combined gathering of the House and Senate on January 25, 2007 held in the House Chambers (again, see the Tribal-State Work Group section for further details).

Last September an issue people committed to positive tribal-state relations thought had been addressed resurfaced. The Bangor Daily News reported that the Piscataquis County Commissioners wrote a letter to Governor Baldacci seeking an exemption from Maine's Offensive Names Law, Title 1, section 1101. This law prohibits the use of the words nigger, squaw, or sqa in geographic place names. Passamaquoddy Tribal Representative Donald Soctomah sponsored the bill to add the words squaw and sqa to the already banned word nigger. It passed in 2001. MITSC wrote a report, *Proposal to Drop "Squaw" from Place Names in Maine*, in support of the legislation.

After the publishing of the Bangor Daily News story, the Portland Press Herald, Kennebec Journal, Morning Sentinel, Bangor Daily News, and Times Record all editorialized against the action by the Piscataquis County Commissioners. The Episcopal Committee on Indian Relations wrote to Governor Baldacci asking him to state his position on the issue and urging him to act against communities retaining the offensive words squaw or sqa. Governor Baldacci wrote in response to the Committee on Indian Relations letter, "I do not support repealing the current law in this matter. I would not sign any legislation that proposes to do so. I will continue to work hard to represent our Tribal communities as well as all Maine people in what I feel is the spirit of respect and dignity. We need to work together to build communities not divide them."

About the time that the Piscataquis County Commissioners' interest in seeking an exemption from the prohibition against using the word squaw emerged, a similar issue surfaced that concerned Tribal Leaders and which elicited a strong response from Governor Baldacci. Tribal Leaders learned that the 2006 Annual State Trends and Leadership Forum of the Council of State Governments was scheduled to take place at the Pointe Hilton Squaw Peak Resort in Phoenix, Arizona. The State of Maine belongs to the Council of State Governments. Wabanaki Leaders asked Governor Baldacci in an October 1, 2006 letter to officially protest the scheduling of the Council of State Governments at Squaw Peak Resort. Governor Baldacci wrote back to the Wabanaki Leaders that he had already written Jim Douglas, Governor of Vermont and President of the Council of State Governments, on September 20, 2006 expressing his disappointment with the choice of venue and informing Douglas no Maine executive branch employees would attend the event.

Wabanaki Tribes view Mother Earth as sacred. Maine's First Peoples engaged in many practices before the arrival of Europeans to practice sound stewardship of Maine's natural resources. Governor Baldacci recognized this stewardship with a proclamation he issued January 31, 2007. The Proclamation reads:

WHEREAS, the Tribes of Maine are among the Oldest Continuous Governments in the World;
and

WHEREAS, the State of Maine and the Tribes of Maine have a government to government relationship that has existed since the early nineteenth century; and

WHEREAS, the Maliseet, Micmac, Passamaquoddy and Penobscot, the Wabanaki people, have lived in what is now Maine for over 11,000 years; and

WHEREAS, the Maliseet, Micmac, Passamaquoddy and Penobscot ancient customs, laws, traditional and cultural practices encompass all of creation, maintaining an ecological balance in their sustenance and other activities; and

WHEREAS, for thousands of years the Wabanaki holistic view and its application to the natural world reflected the environmental and ecological standards, that today, we need to sustain; and

WHEREAS, the people of Maine live in the most beautiful place on earth; and

WHEREAS, all people of Maine owe a debt of thanks to the Wabanaki people for caring for and nurturing this land, for which we shall always be grateful,

NOW, THEREFORE, I, JOHN E. BALDACCI, Governor of the State of Maine, do hereby proclaim that the *Maliseet, Micmac, Passamaquoddy and Penobscot Tribes* are recognized for their stewardship of Maine's abundant natural resources, and urge all citizens to join this observance.

Governor Baldacci also rectified the general historical omission of the tremendous contributions Wabanaki Veterans have made to the United States securing its freedom from England and later defending the US in its wars. On June 6, 2007, Governor Baldacci declared the day Native American Veterans History Day. Governor Baldacci recognized Charles Norman Shay, a Penobscot Indian, as an American hero who served with distinction during World War II and the Korean War. The final WHEREAS paragraph states:

WHEREAS, Mr. Shay seeks no recognition for himself except as it helps to bring attention to the bravery and sacrifice of other Native Americans whose service to the United States is at risk of being lost to history.

Dr. Harald E.L. Prins, University Distinguished Professor of Anthropology, Kansas State University, and Dr. Paul Herbert of the US Army's First Infantry Division History Museum, believe Governor Baldacci is the first governor to recognize the contributions of Native American Veterans.

B. Abandoning What Doesn't Work for Approaches That Do Work

During much of its history, MITSC has made many well thought out recommendations, some the product of many months or even years of deliberation and work, only to have them ignored by the signatories to the Settlement Act. Many individuals and signatories to the Settlement Act have cited this ineffectiveness at implementation as a fundamental MITSC weakness. MITSC has consciously focused during the last one and a half years on ensuring the implementation of its recommendations.

The new approach begins with MITSC's acceptance that it has a responsibility to use all its resources and connections to implement its recommendations. If something is recommended, MITSC is prepared to do more than initially presenting the recommendation to the appropriate party or parties. MITSC should not passively observe governments ignore or reject its recommendations. MITSC now strives to focus on how to implement its recommendations instead of complaining about being ignored.

MITSC carefully analyzes the political dimensions potentially affecting the implementation of any of its recommendations or suggested courses of action. This increased political sensitivity has helped MITSC successfully implement its agenda. By carefully anticipating who may support, who may oppose, and who needs persuasion regarding any proposal, MITSC has been successful implementing its recommendations.

When necessary, MITSC builds alliances within and outside the signatory governments to advance its agenda. MITSC also takes into account public opinion and shaping it through effective use of the media. MITSC undertakes extensive networking and keeps a broad range of individuals and interests informed about its work.

Sometimes people with paper or organizational chart responsibility for certain activities are not the best ones to implement specific initiatives. When progress is not being made on specific

initiatives, MITSC does not hesitate to recommend and promote new structures and/or personnel to accomplish the task.

C. MITSC Authority

Some representatives of the signatories to the Settlement Act have questioned the legal authority for some of the new approaches and activities MITSC has adopted to increase its effectiveness. Before the current MITSC leadership, many people, especially Tribal members, openly questioned whether MITSC should continue to exist. They asked why have MITSC if it is not going to accomplish anything? The enervated MITSC also fed cynicism among the Wabanaki that it buffered State Leaders from having to engage in serious tribal-state discussions.

Tribal representatives left MITSC for a 14 month period from November 2003 until January 2005. The Passamaquoddy MITSC representatives walked out of the November 6, 2003 MITSC meeting joined by the Penobscot representatives. During the reflections on the defeat of Question 3, the initiative question that proposed construction of a Passamaquoddy/Penobscot casino in Sanford, Maine, Cliv Dore explained that he had been instructed by Passamaquoddy leaders to attend this MITSC meeting in order to make a statement. He said the leaders had decided to stop sending representatives to MITSC until further notice as the Tribe reassesses its entire relationship with the State of Maine. Upon making his statement, Mr. Dore left the meeting. After indicating that he also was under instructions not to participate, Wayne Newell (participating by phone) left the meeting by hanging up. John Banks and Mark Chavaree indicated that they had not received any word from Penobscot leaders, but they would leave the meeting, as well, in order to be in solidarity with the Passamaquoddy MITSC members. Mr. Banks and Mr. Chavaree then left the meeting.

MITSC Chair Paul Bisulca has repeatedly said MITSC had to regain its customers. Beyond making recommendations, MITSC had to demonstrate success in implementing them. Under this new approach, MITSC has favored action instead of constant consultation with lawyers regarding its legal authority to act.

MITSC has understood this approach to receive the strong endorsement of Wabanaki Chiefs and Governor Baldacci. At several Wabanaki Leader meetings held during the past year, Paul Bisulca has directly asked the assembled Chiefs if they approve what MITSC is doing. They have consistently answered yes. MITSC does not believe Governor Baldacci would have signed an emergency financial order on January 25, 2007 transferring \$25,000 from the Governor's Contingent Account had he not approved of the new MITSC approach. MITSC also perceives Governor Baldacci's support and the Legislature's approval of a \$38,000 annual budget increase from the State for FYs 2008 and 2009 as another strong endorsement of our new approach.

MITSC does believe the question of its legal authority deserves examination. Negotiators of the Maine Implementing Act some 28 years ago could not be expected to precisely know the exact powers MITSC would need in the 21st Century to serve the signatories. The Tribal-State Work Group is an appropriate venue to examine MITSC powers and adjust its authority if necessary as part of a package of recommended changes to the Maine Implementing Act.

V. Assessment of MITSC Implementation of Fiscal Year 2006 – 2007 (July 1, 2006 to June 30, 2007) Work Plan

MITSC delineated nine work plan objectives in section VIII of its October 2006 annual report (MITSC Plans for Fiscal Year 2006 – 2007). The following section constitutes MITSC's assessment of its effectiveness implementing those objectives.

A. Provide Administrative and Staff Support to Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act and Related Issues

MITSC staffed the Tribal-State Work Group discussed at the Assembly of Governors and Chiefs held May 8, 2006 and created by Governor Baldacci's Executive Order 19 FY 06/07. MITSC issued the report specified in the Executive Order on December 6, 2006 (see Appendix I).

Tribal-State Work Group members made three recommendations. One, create seats for the Houlton Band of Maliseet Indians on MITSC and add two State seats to retain the tribal-state membership balance. This recommendation became LD 373, An Act To Change the Membership of the Maine Indian Tribal-State Commission To Add Seats for the Houlton Band of Maliseet Indians and the State, previously mentioned under the MITSC Members section of this report on page 2. This objective will have been achieved on the effective date of the legislation, September 21, 2007.

A second Work Group recommendation suggested incorporating in-house and external briefing sessions on the Wabanaki, the Maine Implementing Act, and tribal-state relations in the official legislative orientation for the 123rd Maine Legislature. MITSC worked with Laurie Lachance and Cheryl Miller of the Maine Development Foundation to incorporate stops at Wabanaki Reservations during the January 10 – 12, 2007 Policy Leaders Academy Economic Tour of Northern and Eastern Maine, Engaging in Maine's Future. Many legislators remarked how much they appreciated the opportunity to visit the Maliseet Reservation in Littleton and the Passamaquoddy Tribe at Sipayik Reservation in Perry.

To implement the in-house briefing recommendation, MITSC addressed a combined gathering of the Maine House and Senate on January 25, 2007. Paul Bisulca, Paul Thibeault, an attorney for the Pine Tree Legal Wabanaki Unit, and John Dieffenbacher-Krall addressed the legislators. Please refer to Appendix II for a complete version of the remarks. Later that day Paul Bisulca and John Dieffenbacher-Krall briefed the Judiciary Committee.

Finally, the Work Group recommended continuing the group and expanding its membership. This recommendation became a legislative resolve, LD 1263, Resolve, To Continue the Tribal-State Work Group. The Maine Legislature enacted the resolve in June 2007 and Governor Baldacci signed it into law June 29, 2007.

B. Assist Wabanaki, State of Maine and Other Leaders to Make a Decision on Whether to Pursue Hosting a Campus in Maine as Part of a Multi-Tribal College to Serve Tribes Residing East of the Mississippi River

MITSC spent considerable time and resources assisting primarily Wabanaki Leaders with analyzing the feasibility of creating a Tribal College in Maine. At the 2006 Assembly of Governors and Chiefs, then Penobscot Nation Chief James Sappier volunteered to draft a resolution for consideration by the United South and Eastern Tribes (USET) that would express USET support for the Wabanaki Tribal College initiative.

In thinking about a Wabanaki Tribal College, two immediate issues that emerged involved accreditation and funding. MITSC worked with Chief Sappier to arrange meetings with University of Maine System Chancellor Terrance MacTaggart on September 5, 2006 and a conference call with Maine Community College System President John Fitzsimmons on September 11, 2006 to discuss their potential involvement in a Wabanaki Community College. Successful Tribal Colleges typically begin by partnering with an existing institution of higher learning to gain access to accreditation. Once the Tribal College has sufficiently established itself, it can successfully obtain its own accreditation. Both Chancellor MacTaggart and President Fitzsimmons expressed a general willingness to work with the Wabanaki Tribes on the college initiative.

As MITSC worked with Chief Sappier, it realized that MITSC, Tribal members, potential collaborators/supporters of the Wabanaki Tribal College, and State of Maine representatives from the Governor's Office and Department of Education needed far more information about Tribal Colleges and how to establish one. MITSC decided to help organize a forum at which experts could answer people's basic questions and create a dialogue about the Tribal College initiative. MITSC organized a forum on September 13, 2006 in the Bangor Room, Memorial Union, University of Maine. Featured speakers included Fenna Hanes, Senior Director, Office of Programs, New England Board of Higher Education (NEBHE), Dr Gerald Gipp, Executive Director, American Indian Higher Education Consortium (AIHEC), Dr. Darren Ranco, Asst. Professor of Native American Studies & Environmental Studies, Dartmouth College, and Christine Legore, Director of Distance Learning, University of Maine System. Please see the minutes in Appendix III for a summary of the meeting.

Chief Sappier's term as Chief of the Penobscot Nation expired September 30, 2006. To continue the progress on the Wabanaki Tribal College and to address some other emerging educational opportunities, MITSC suggested to Wabanaki Chiefs that they form a group to focus on education issues for the four Tribes. This suggestion became the Wabanaki Education Task Force. Chief Sappier serves as its chair. Other members include Chief Kirk Francis, Passamaquoddy Tribal Council Member Wayne Newell, Maliseet Education Director and Tribal Council Member Brian Reynolds, Penobscot Nation member Alivia Moore, and Dr. Darren Ranco, also a member of the Penobscot Nation.

Wabanaki Education Task Force Chair Sappier worked with the Task Force and Wabanaki Chiefs to prepare a resolution for consideration by USET at its February 2007 meeting. USET

adopted the proposed resolution on February 15, 2007. The resolution states that the USET Board of Directors supports the Wabanaki Tribal leadership in their pursuit of a multi-Tribal community college located in the State of Maine.

Progress on developing a Wabanaki Tribal College has effectively stopped due to the challenge of identifying funding to sustain it. Wabanaki Leaders and Governor Baldacci need to reexamine this initiative absent adequate funding for it to continue.

C. Resolve Differences Blocking Renewal of Atlantic Salmon Cooperative Agreement

MITSC committed itself to continue promoting dialogue and suggesting options to achieve a satisfactory solution for renewing an agreement that has gone unsigned for three and half years. To review, MITSC Commissioner John Banks placed the issue of the expired *Cooperative Agreement between US Fish and Wildlife Service and NOAA Fisheries and the Maine Atlantic Salmon Commission* before MITSC at the February 27, 2006 MITSC meeting. The Federal natural resource agencies and the Maine Atlantic Salmon Commission signed the agreement in 1998 with it expiring December 31, 2003. It describes how the Federal natural resource agencies and State of Maine will cooperate to manage Atlantic salmon.

The Maine Attorney General objected to the inclusion of language that acknowledges the Federal agencies' Federal Trust Responsibilities to Native American Indian Tribes. The Penobscot Nation insisted the disputed language remain in the agreement. The parties were at loggerheads.

MITSC proposed possible alternative language to the disputed words in section VI.F. Unable to reach agreement, MITSC then proposed deleting the disputed language in exchange for a letter from the Federal natural resource agencies to the Wabanaki Tribes affirming their Federal Trust Responsibility to the Tribes on matters concerning Atlantic salmon restoration and recovery. Patricia Kurkul, Northeast Regional Administrator, NOAA's National Marine Fisheries Service, and Marvin Moriarty, Northeast Regional Director, US Fish and Wildlife Service, wrote to the five Wabanaki Tribal governments October 11, 2006. All five Tribal Governments informed MITSC that they found the letter acceptable.

MITSC wrote to Administrator Kurkul and Director Moriarty November 28, 2006 informing them that all the Wabanaki Tribal Governments had consented to dropping the language of section VI.F. in exchange for the Federal Trust assurance expressed in the October 11, 2006 letter. MITSC urged the speedy renewal of the Cooperative Agreement. As this was written, MITSC understood a desire to update the agreement with some new provisions had delayed its final renewal. Yet the principal stumbling block, the dispute regarding section VI.F, was successfully removed.

D. Build Effective Working Relationships with New Tribal and State Leaders Elected in 2006/2007

MITSC has forged strong relationships with a number of Tribal and State Leaders. However, work remains and MITSC intends to continue seeking opportunities to build relationships.

MITSC's uncertain budget for the middle portion of the fiscal year did cause it to limit travel by Commissioners and the Executive Director. With the increased State support for FYs 2008 and 2009, MITSC will be able to travel with more certainty, especially to the Wabanaki Reservations in Aroostook and Washington Counties.

E. Secure Additional Funding for MITSC

MITSC fully achieved its goal for increased State funding with the Legislature and Governor eventually supporting its original budget request for a \$38,000 increase in both FYs 2008 and 2009. We also averted a mid-year funding crisis by persuading Governor Baldacci to provide \$25,000 in emergency funding to MITSC in January 2007 to apply to FY 07. Besides its success with State Government, MITSC received a \$4,475 grant from the Episcopal Committee on Indian Relations to fund the conversion of *Wabanaki: A New Dawn* from VHS to DVD format (see section I below).

MITSC failed to secure any Federal funding for its operations. The work done with US Representatives Allen and Michaud and the staff of all four members of the Maine Congressional Delegation has begun the conversation about the Federal Government's responsibility for partially funding MITSC operations. MITSC believes it will need to work more closely with the Tribes and State to obtain Federal funding in future years.

MITSC thanks Penobscot Nation Tribal Council Member Jim Sappier for his efforts to explore funding for MITSC from the Ford Foundation and Tribes deriving substantial income from gaming operations. Though these efforts did not prove successful, we deeply appreciate Council Member Sappier's commitment to a MITSC with adequate financial resources to fulfill its responsibilities.

F. Establish Strong Presence on Any Bills Supported or Opposed by MITSC and Monitor Other Legislation Potentially Affecting Tribal-State Interests during 1st Session of the 123rd Maine Legislature

MITSC supported LDs 73, 169, 373, and 1263, all bills previously discussed. MITSC also endorsed LD 507, An Act Recognizing Native American Religion in Maine Prisons and Jails, sponsored by Passamaquoddy Tribal Representative Donald Soctomah. Tribal Representative Soctomah introduced LD 507 as an insurance policy in case discussions between the Sipayik Criminal Justice Commission and Maine Department of Corrections did not fully meet Tribal expectations concerning Native Americans' rights to observe and practice their religion (please see section V.A below for more discussion of this issue).

Paul Bisulca testified in support of LDs 373 and 507 at the Judiciary Committee public hearing held March 7, 2007. On March 29, Paul Bisulca testified in support of LDs 73, 169, and 1263. Paul Bisulca and/or John Dieffenbacher-Krall attended most of the legislative work sessions held on these five bills. MITSC also maintained close contact with Margaret Reinsch, Judiciary Committee Analyst, and Susan Pinette, Judiciary Committee Clerk, on the status of these bills and others potentially affecting the Wabanaki Tribes or tribal-state relations. MITSC also

performed fiscal analyses at the request of the Office of Fiscal and Program Review on six bills with one bill analyzed twice, once in its original form and once after amendment.

MITSC played an extremely active role on LD 1263, the resolve to transform the Tribal-State Work Group into a legislative body instead of a creation of the Executive Branch of State Government. MITSC drafted the legislation and identified the bill's principal sponsor, Representative Dick Blanchard (D-Old Town). When an amendment was proposed that had the potential to cause the Wabanaki Tribes to withdraw from the Work Group, MITSC successfully persuaded the amendment's sponsor to withdraw it. MITSC also advocated with the Appropriations Committee and legislative leadership to fully fund the resolve. Though the funding allocated for MITSC to staff the Tribal-State Work Group was reduced, MITSC still views the appropriation of \$12,000 for LD 1263 as an important accomplishment given the financial atmosphere this past legislative session.

Twenty-four years ago the Maine Legislature enacted Chapter 27 in Title 3, Approval of Amendments to the Maine Indian Claims Settlement Act. The legislation requires the Maliseets, Passamaquoddy Tribe and Penobscot Nation to inform the Maine Secretary of State when any one of the Tribes has approved a change to the Maine Implementing Act subject to Tribal approval. "The certification shall state the date and manner of approval of the legislation and shall be prima facie evidence of approval."

Though the Tribes have specific procedures to follow when communicating their approval of changes to the Maine Implementing Act, MITSC learned the State has none. MITSC Executive Director John Dieffenbacher-Krall raised this issue with Legislative Council Executive Director David Boulter in May 2007. When MITSC heard a process had been developed but was not informed of the procedure, MITSC Chair Paul Bisulca wrote to David Boulter on June 19, 2007 asking him to specify who had responsibility for transmitting legislation to the Tribes involving amendments to the Maine Implementing Act and the procedure for conveying the information to the Wabanaki. MITSC caused consultation to occur between David Boulter, legislative leadership, Rick McCarthy, Chief of Staff for Senate President Beth Edmonds, and Ken Hardy, Legal Counsel for Speaker Glenn Cummings.

This internal legislative discussion resulted in a decision that Senate President Beth Edmonds would transmit an attested copy of the legislation to the officers designated by the Chief and Tribal Council of the Penobscot Nation, Passamaquoddy Joint Tribal Council, and Chief and Tribal Council of the Houlton Band of Maliseet Indians. David Boulter has stressed this is the procedure that was used for transmitting LD 373 to the affected Tribes but may or may not be used in the future. MITSC perceives a need to establish a procedure for the State similar to the obligations imposed on the Tribes in 3 MRSA §601 – 602.

G. Hold Meeting Focused on MITSC Fishery Responsibilities with Tribal, State and Federal Natural Resources Staff and Managers

Funding limitations and competing priorities precluded MITSC from holding a session focused on its fishery responsibilities as delineated in 30 MRSA section 6207 during FY 2007.

H. Continue Upgrading MITSC Website

MITSC essentially completed work on the website in April 2007. Maintenance work continues with periodic updates necessary as Commissioners change, new minutes and other written material becomes available, and new meetings are scheduled. All minutes for 2005 and 2006 and the initial MITSC meeting for 2007, the December 6, 2006 Tribal-State Work Group report, October 2006 MITSC Annual Report, and a number of news articles were posted. MITSC also updated the Commissioner biographical profiles and photos. People have positively remarked about the large quantity of content available on the site. The MITSC website address is www.mitsc.org.

I. Convert *Wabanaki: A New Dawn* from VHS to DVD Format and Make New Format Available to Interested Parties

MITSC commissioned a 28 minute documentary in 1989 to inform the general public about the Wabanaki and to serve as a source of pride for Wabanaki people. David Westphal and Dennis Kostyk completed the project for MITSC in 1995. At the time, VHS format was the state of the art for this medium. As people replace VHS equipment with DVD capable machines, fewer and fewer people will be able to view *Wabanaki: A New Dawn* in its original form. MITSC Commissioners directed John Dieffenbacher-Krall to explore converting *Wabanaki: A New Dawn* from VHS to DVD format and find outside funds to pay for the conversion.

The VHS to DVD conversion involved more than simply transferring the electronic data from one medium to another. It also required resizing the original artwork for the cover. James Francis, Penobscot Nation Tribal Historian and accomplished artist, donated his expertise to resize and update the artwork for the new Amaray DVD cover. With that obstacle overcome, MITSC approached the Episcopal Committee on Indian Relations to fund the conversion and to make 1,000 copies. The Committee on Indian Relations rapidly responded with a yes providing the complete cost of \$4,475. MITSC thanks the Episcopal Committee on Indian Relations and the Episcopal Diocese of Maine for its financial support of this project. MITSC authorized the conversion in October 2006 and received the finished DVDs in November 2006.

Wabanaki: A New Dawn is available to Tribal members for \$9.99 plus \$2.01 for postage and packaging. Non-tribal members can purchase the video for \$19.99 plus \$2.01 for postage and packaging. MITSC accepts checks and money orders made payable to the Maine Indian Tribal-State Commission or MITSC.

VI. Other MITSC Activities

A. Passamaquoddy Concerns with Dept. of Corrections, County and Local Law Enforcement

MITSC Commissioner Donald Soctomah requested MITSC become involved with State of Maine, county and local treatment of Passamaquoddy people who had contact with the criminal justice system in the winter of 2006. Denise Altwater, Chair, Sipayik Criminal Justice

Commission, and Jamie Bissonnette, Director, New England Criminal Justice Program of the American Friends Service Committee, were invited to address the Commission on March 21, 2006. Ms. Altvater and Ms. Bissonnette presented information detailing many alleged abuses of Passamaquoddy and other Wabanaki people who had contact with the criminal justice system. Later that day MITSC Chair Paul Bisulca and Executive Director John Dieffenbacher-Krall attended a meeting with legislative leaders, Corrections Commissioner Martin Magnusson, Associate Commissioner Denise Lord, Passamaquoddy Tribal Representative Fred Moore, and others. Commissioner Magnusson pledged to initiate a comprehensive investigation of all the alleged charges presented by the Sipayik Criminal Justice Commission and report back.

MITSC diligently monitored the progress made by the Dept of Corrections in reporting back to the Sipayik Criminal Justice Commission. MITSC and the Sipayik Criminal Justice Commission received a draft report in January 2007. Paul Bisulca, John Dieffenbacher-Krall, Denise Altvater, and Jamie Bissonnette view the report as preliminary and incomplete. Paul Bisulca and John Dieffenbacher-Krall met with Denise Lord and Karla Black on January 26, 2007 to discuss how Corrections could improve the report. As of the publication date of this summary, the Department of Corrections continues to expand the report with the intention of sharing it with MITSC and the Sipayik Criminal Justice Commission as soon as possible, possibly at an October 23, 2007 meeting with Wabanaki Leaders.

The Dept. of Corrections agreed at the meeting held March 21, 2006 in Speaker John Richardson's office to continue to discuss with the Sipayik Criminal Justice Commission removing obstacles to Native American prisoners practicing their religion. Identified issues included the ability of Native American prisoners to use sacred medicines and materials including tobacco, Native American inmate access to Indian spiritual leaders comparable to access enjoyed by some other religious faiths, especially Christians, and Native American prisoners' ability to participate in sweat lodge ceremonies. Discussions continued between Denise Altvater; Jamie Bissonnette; Arnie Neptune, a Penobscot Nation Elder; Denise Lord; a representative of the Attorney General; and personnel from the Maine State Prison and Bolduc Correctional Facility. A breakthrough occurred with the agreement to hold a sweat at the Bolduc prison on May 18 (see Appendix IV Report: Sweat Lodge at Bolduc Prison). All involved agree the sweat was an unqualified success.

Discussions and negotiations between the Sipayik Criminal Justice Commission and Dept. of Corrections experienced a brief setback when Sacred Feathers, a group of some Native American prisoners incarcerated at the Maine State Prison in Warren, along with Native American Circle and 10 individual inmates filed a lawsuit in US District Court in Bangor on February 1, 2007. The plaintiffs allege a number of violations of their religious rights and discriminatory practices at the Maine State Prison. Sacred Feathers had also sued earlier this decade. They eventually dropped their lawsuit and negotiated a settlement agreement that expired on December 23, 2005. The Sipayik Criminal Justice Commission, a Tribally sanctioned group of the Passamaquoddy Government at Sipayik, and Corrections officials agreed to let the agreement expire and continue working to address the outstanding issues. The Sipayik Criminal Justice Commission does not represent the Sacred Feathers group and the Sacred Feathers group has no connection to the Passamaquoddy Tribe.

MITSC encouraged the Sipayik Criminal Justice Commission and the Department of Corrections to continue their discussions despite the lawsuit. MITSC was heartened to learn that Corrections officials adopted that approach recognizing that the two groups have separate though somewhat related concerns. MITSC stressed that the Sipayik Criminal Justice Commission is an official body of one of the signatories to the Maine Indian Claims Settlement Act. Because of that connection and the fact that the Passamaquoddy Tribe has these concerns, this will remain a MITSC priority issue until the Passamaquoddy Tribe is satisfied they are adequately resolved.

Many individuals and groups testified in support of LD 507. As Judiciary Committee members listened to the testimony, their periodic comments made clear their desire that Corrections officials accommodate Native American religious practices. In lieu of passing LD 507, the Judiciary Committee asked Corrections to continue working with the Sipayik Criminal Justice Commission to resolve the outstanding issues regarding Native American inmates' practice of their religion.

The Judiciary Committee voted March 15, 2007 to hold LD 507 over for consideration during the second session of the 123rd Legislature and to write a letter to Corrections encouraging resolution of the outstanding issues. In taking its course of action, the Judiciary Committee expressed its hope that all of the issues would be resolved, obviating the need for passing the bill. If the issues of Native American prisoner religious rights have not been adequately addressed, the Committee stated its intention to recommend passage of LD 507 in 2008. The Judiciary Committee issued its letter to Commission Magnusson on June 20, 2007 (see Appendix V).

As MITSC has worked with the Sipayik Criminal Justice Commission and Dept. of Corrections officials, the need to increase the number of Wabanaki people within the corrections system in staff and advisory capacities has become clear. During a meeting with Corrections Commissioner Martin Magnusson on March 13, 2007, Paul Bisulca relayed some steps that the US Army took in the 1970s to reduce racial tensions. In response, Commissioner Magnusson suggested the Wabanaki Tribes might want to recommend a member for the Maine State Prison Board of Visitors. MITSC raised this issue at a Wabanaki Leaders meeting this past spring. Tribal Leaders approved identifying a suitable candidate. The Sipayik Criminal Justice Commission offered Denise Altvater as a representative of the Wabanaki Tribes. Tribal Leaders endorsed Denise Altvater as their representative. MITSC Commissioners unanimously voted on June 15, 2007 to recommend to Governor Baldacci that he appoint Denise Altvater to the Maine State Prison Board of Visitors. Paul Bisulca wrote to Governor Baldacci June 20, 2007 urging he appoint Denise Altvater to the position. Governor Baldacci appointed Denise Altvater to the Maine State Prison Board of Visitors on August 28, 2007.

B. Bates, Bowdoin, and Colby Education Initiative

In preparing for the forum MITSC organized September 13, 2006 to provide information about a potential Wabanaki Tribal College, Paul Bisulca consulted with Penobscot Nation Chief James Sappier about people with expertise on the subject. Chief Sappier suggested Dr Gerald Gipp, Executive Director, American Indian Higher Education Consortium. Paul Bisulca contacted Dr. Gipp's office and learned he was scheduled to be in Maine on September 13 for a speaking

engagement at Bowdoin College. Dr. Gipp expressed a willingness to participate in the Wabanaki Tribal College forum in Orono as long as Bowdoin College consented. Paul Bisulca then contacted Kassie Freeman, Dean for Academic Advancement, Bowdoin College, who was coordinating Dr. Gipp's visit to the college. She readily agreed Dr. Gipp could appear in Orono. As the conversation progressed, Paul Bisulca learned of Kassie Freeman's deep interest in attracting more Indian students to Bowdoin College.

Kassie Freeman invited Paul Bisulca and Chief Sappier to meet with leaders from Bowdoin and Bates and Colby Colleges on September 14, 2006 to discuss how the three colleges could attract more Indian students. Chief Sappier and Paul Bisulca met with Bowdoin President Barry Mills, Bates President Elaine Hansen, Kassie Freeman, and other representatives of the three colleges. The colleges expressed a desire to continue the conversation with the Wabanaki Tribes and MITSC. This represents the start of the Bates, Bowdoin, and Colby (BBC) Education Initiative.

MITSC worked closely with Kassie Freeman to schedule a follow-up meeting to allow staff from the three colleges to meet with Tribal representatives and MITSC to discuss how to move forward. Bates College hosted a meeting on December 6. Representatives from all three colleges along with Dr. Darren Ranco, Dartmouth College and member of the Wabanaki Education Task Force, Paul Bisulca, and John Dieffenbacher-Krall attended the meeting. Everyone in attendance agreed to schedule another meeting to expand the number of people involved with more representation from the Tribes and Colleges. Paul Bisulca also told the group he would encourage Wabanaki Leaders to send a letter to the presidents of Bates, Bowdoin, and Colby articulating what they viewed could be done by the colleges to attract more Wabanaki students and better support and retain them.

Chief Kirk Francis wrote on behalf of the Wabanaki Leaders to Presidents Adams, Hansen, and Mills on December 14, 2006. His letter outlined five principal suggestions: 1) establishment of a tuition waiver/scholarship program outside of the institutions' regular need-based financial aid program 2) appoint an admissions person at each college who specializes in Native recruitment 3) create mentoring/retention/social space for Native students at each of the institutions 4) build Native American/American Indian Studies programs at the schools 5) Form a college-wide advisory group that brings the four previously articulated recommendations together with the group having access to top administrators and charged with tracking progress

BBC staff, Wabanaki representatives, and MITSC met January 26, 2007 at Colby College. The group was welcomed to the campus by Colby President William Adams. People assembled discussed the December 14, 2006 letter of Chief Francis to the BBC Presidents. Staff generally expressed support for the Wabanaki Leaders' recommendations with the sole reservation expressed about the tuition waiver or 100% scholarship proposal.

During the meeting, a sub-committee was formed on College Pre-programming designed to work with Wabanaki students in 4th, 5th, 6th, and 7th grades. Brian Reynolds, Education Director for the Maliseets, leads the group. Each college agreed to select a team to work with Brian on this initiative. The College Pre-programming Sub-committee met May 14, 2007 at Colby College.

Another agreement made at the January 26 meeting recognized a need for a meeting between the Wabanaki Leaders and the BBC Presidents. Wabanaki Education Task Force Chair Jim Sappier explained that the Tribes want to know the individuals with whom they are forming a partnership. People also agreed there was a tremendous value to the Presidents and their staff visiting a Wabanaki Reservation.

The historic Wabanaki/BBC meeting took place May 18 at Indian Island. Presidents Adams, Hansen, and Mills stated their agreement to all the suggestions made in Chief Francis' December 14, 2006 letter with the exception of a tuition waiver program. The Presidents expressed their unwillingness to make an exception to their need-based financial aid programs. They assured the Wabanaki Leaders that in all likelihood most if not all Wabanaki students would qualify for 100% financial aid under their existing financial aid programs. The leaders exchanged gifts. The prospect for a long-term, mutually beneficial relationship between the Wabanaki Tribes and the colleges seems assured.

Governor Baldacci congratulated the Tribal and College leaders in a May 17, 2007 memo addressed to them. The Governor wrote, "I applaud all of you for your joint efforts to strengthen this vital population among Maine's youth. The proposal being discussed has the potential to expand access to college education from three of the finest institutions of higher learning in the country. If I can be of any assistance to this endeavor, please do not hesitate to contact me."

C. University of Maine Education Programs Designed to Benefit the Wabanaki and LD 291

MITSC recognizes educational opportunity and attainment as key to Wabanaki cultural, economic, and governmental survival and enhancement. The University of Maine established a Native American Program, consisting of the Wabanaki Center and Native American Studies, as a response to its acknowledged obligations to the Wabanaki. Paul Bisulca and John Dieffenbacher-Krall met with Gail Dana Sacco, Wabanaki Center Director, and John Bear Mitchell, Wabanaki Center Associate Director, on August 14, 2006 to learn more about the Wabanaki Center and hear their perspectives on the potential Wabanaki Tribal College.

Wabanaki Leaders wrote to Dr. Edna Szymanski, Senior Vice President for Academic Affairs and Provost, February 8, 2007 seeking a meeting "to discuss the current and future state of Wabanaki education at the University of Maine." The Wabanaki Leaders stated "we strongly support the University of Maine and value the educational opportunities that Maine's flagship university has offered to our students." Chiefs Commander, Francis, Higgins, Nicholas and Phillips-Doyle explained "though we are grateful for the programs created and operated at the University of Maine to support Wabanaki students, we believe the effectiveness of current programs could be enhanced with a more rigorous examination of them."

MITSC attended a March 20, 2007 meeting requested by the Wabanaki Education Task Force with the Wabanaki Center and Native American Studies to talk about what the Tribes and MITSC could do to strengthen the Wabanaki programs at the University of Maine. Maureen Smith identified a need to create tenure track positions within Native American Studies. Dr. Smith explained her academic appointment rests with the History Department and Lisa

Neuman's appointment exists through the Anthropology Department and Native American Studies with the Anthropology Department deciding whether to grant Dr. Neuman tenure. Gail Dana Sacco expressed concerns regarding declining and inconsistent University financial support for the Wabanaki Center.

To help prepare for the meeting with Wabanaki Leaders, Dr. Szymanski requested a meeting with MITSC held March 26, 2007. Paul Bisulca, Mike Hastings, and John Dieffenbacher-Krall represented MITSC. MITSC then helped to facilitate the scheduling of the requested Wabanaki Leaders meeting with Dr. Szymanski and leaders of the Wabanaki Center and Native American Studies held on Indian Island May 25, 2007.

An issue that arose at the meeting between Dr. Szymanski and Wabanaki Leaders and in a subsequent Wabanaki Leaders meeting held later that day concerned funding for the 2007 Summer Institute. The Native American Studies Program headed by Dr. Maureen Smith ran 5 - day long training sessions in 2003, 2005, and 2006 to increase teacher knowledge about the Wabanaki and enhance their proficiency teaching under the requirements of LD 291, An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools. Approximately 120 teachers were trained during the three sessions. Dr. Smith had no funding for the tentative 2007 Summer Institute as of May 25, 2007. MITSC worked with the Wabanaki Tribes to persuade Dean White, Superintendent, Bureau of Indian Affairs, to provide \$15,000 to pay the costs of the 2007 Summer Institute. Subsequently, the Summer Institute was rescheduled for the fall of 2007 as a training/LD 291 evaluation session.

D. Penobscot River Restoration Project

John Banks requested MITSC adopt a position in support of the Penobscot River Restoration Project (PRRP), a tribal/state & federal government/NGO initiative to remove the two southernmost main stem dams on the Penobscot River and modify the Howland Dam on the Piscataquis River to restore 500 miles of migratory fish habitat. MITSC communicated its support of the PRRP in a May 5, 2006 letter to Laura Rose Day, Executive Director, Penobscot River Restoration Trust. MITSC testified in support of the PRRP at a Federal listening session held by Secretary of the Interior Dirk Kempthorne at Jeff's Catering, Brewer, on September 20, 2006 (see Appendix VI for the MITSC testimony).

E. Assertion of MITSC Jurisdiction on Atlantic Salmon Management Issues

The Wabanaki Tribes relied on their skill as hunter-gatherers for millennia to sustain their people. For the Tribal signatories to the Settlement Act, securing the right to fish, hunt, and trap constituted a major priority during the Settlement Act negotiations. Title 30, §6207, subsection 4 states, "Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6."

MIA Section 6207, subsection 8 obligates 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 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 or the commission.” MITSC understands this provision to mean State officials have an obligation to consult with MITSC and consider its input anytime any proposed fisheries management change poses the potential to affect Passamaquoddy and Penobscot fishing rights delineated under subsection 4 in §6207.

MITSC’s authority under §6207, subsection 8, was disputed. The Attorney General’s staff advised Patrick Kelliher, Executive Director, Maine Atlantic Salmon Commission, that he has no duty to consult or consider the input of MITSC on certain Atlantic salmon management decisions with the potential to affect Penobscot Nation fishing rights on the Penobscot River. Paul Bisulca and John Dieffenbacher-Krall met with Patrick Kelliher and Inland Fisheries and Wildlife Deputy Commissioner Paul Jacques on December 18, 2006 to discuss MITSC consultation authority. Kelliher expressed a willingness to brief MITSC and provide information whenever requested.

Though MITSC appreciated Patrick Kelliher’s attempt to accommodate its need to fulfill its understanding of its obligations, the MITSC Chair was not fully satisfied with the requirement for MITSC to initiate such consultation. He requested Karin Tilberg, Senior Advisor to Governor Baldacci on Natural Resource Issues, to become involved. Paul Bisulca, Karin Tilberg, and Patrick Kelliher met February 15, 2007. At the meeting, Patrick Kelliher agreed to consult with MITSC in the same manner it would with any other governmental party notwithstanding the different understanding of MITSC’s consultation authority under §6208, subsection 8.

Appendix I

REPORT of the
TRIBAL-STATE WORK GROUP TO STUDY ISSUES
ASSOCIATED WITH THE MAINE IMPLEMENTING ACT

Created by
Executive Order 19 FY 06/07

Presented to:

Chief Brenda Commander, Houlton Band of Maliseet Indians
Chief Rick Doyle, Passamaquoddy Tribe @ Sipayik
Chief Kirk Francis, Penobscot Nation
Governor William Nicholas, Passamaquoddy Tribe @ Motahkokmikuk
Chief William Phillips, Aroostook Band of Micmacs
The Honorable Barry Hobbins, Senate Chair, Joint Standing Committee on Judiciary
The Honorable Deborah Simpson, House Chair, Joint Standing Committee on Judiciary
Governor John E. Baldacci
The Honorable Beth Edmonds, President, Maine Senate
The Honorable Glenn Cummings, Speaker, Maine House of Representatives

December 6, 2006

Prepared by:
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1. Executive Order 19 FY 06/07 An Order to Create a Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act
2. Members of the Tribal-State Work Group
3. FRAMEWORK FOR DISCUSSION WABANAKI/STATE OF MAINE LEADERS MEETING Mutual Freedom, Partnership, and Prosperity: The Social, Economic and Legal Relationship between the Wabanaki Tribes and the State of Maine May 8, 2006
4. Minutes of the Tribal-State Work Group for September 6, October 10, and November 14, 2006
5. TRIBAL-MAINE ISSUES: ISSUES THAT HAVE BEEN LITIGATED OR ARE IN LITIGATION
6. Letter to Presiding Officers from Legislative Members of Tribal-State Work Group
7. Draft Bill, An Act To Amend the Maine Implementing Act To Add Seats for the Houlton Band of Maliseet Indians and State of Maine
8. Draft Resolve, To Create the Tribal-State Work Group

Executive Summary

The 13 members of the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act unanimously recommend continuation of the group. While the group achieved tangible accomplishments during its nearly five months of existence, it purposefully did not take up the most contentious issues connected to the Maine Implementing Act. Five months during an election year did not allow sufficient time to study, analyze, receive public input, and attempt to forge a consensus concerning possible resolution of issues that have been so extensively litigated and politicized.

However, the existing members want to continue working to address the most difficult issues, many of which are outlined in the Framework Document prepared for the May 8, 2006 Assembly of Governors and Chiefs (see appendix three.) The Work Group members believe that the best mechanism for continuing their work would be to constitute it as an official body of the Maine Legislature with a temporary existence in order to make possible legislative recommendations to the Second Session of the 123rd Legislature. A legislative resolve (see appendix eight) is proposed to fulfill this recommendation.

In order to resume the work of the Tribal-State Work Group as soon as possible, the members recommend that the resolve be passed as an emergency measure. Depending on the date of enactment, passing the resolve as an emergency measure will provide many more months of deliberations to resolve deep differences in legal and statutory interpretation that have intensified over 26 years. The Work Group members believe that State of Maine and Tribal interests will be advanced should conflicts stemming from the Maine Implementing Act get resolved.

The Work Group members are also intentionally including a fiscal note to fund the work of the Group. The Maine Indian Tribal-State Commission (MITSC) provided effective administrative and staff support to the Work Group. Unfortunately, MITSC is operating with a deficit. It cannot be directed to absorb the costs of the Work Group as it has no funds upon which to operate. The Work Group members believe an investment of \$15,000 is well worth the many benefits potentially accruing to the State of Maine and the Wabanaki should the most contentious issues connected to the Maine Implementing Act get resolved.

The Work Group members urge the appointing authorities to reappoint the existing members with the exception of any state legislators who may have lost their November election. In addition, the Work Group recommends adding the Tribal Representatives from the Passamaquoddy Tribe and Penobscot Nation and two additional members from the House of Representatives, one Democrat and one Republican.

Accomplishments of the Tribal-State Work Group include acting as a catalyst for including in-house and external briefing sessions on the Wabanaki, the Maine Implementing Act, and tribal-state relations in the official legislative orientation for the 123rd Maine Legislature, forging a consensus to recommend including seats for the Houlton Band of Maliseet Indians on

the Maine Indian Tribal-State Commission, and drafting legislation to add the Maliseets to MITSC (see appendix seven).

Background

The Maine Legislature passed An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and Create the Passamaquoddy Indian Territory and Penobscot Indian Territory as P.L. 1979, ch. 732. The legislation is commonly referred to as the Maine Implementing Act (MIA). The US Congress passed companion legislation in 1980 known as the Maine Indian Claims Settlement Act (MICSA).

The State and Federal Acts settled land claims brought by the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation. The Passamaquoddy Tribe and Penobscot Nation forced the US Dept. of Justice to file a lawsuit on their behalf in the summer of 1972 to recover 12.5 million acres assessed at \$25 billion. Eventually, the lawsuit was settled in 1980 and produced the Maine Indian Claims Settlement Act and Maine Implementing Act. The Passamaquoddies and Penobscots received \$13.5 million and 150,000 acres each in exchange for forever relinquishing their claim to millions of acres they once called their own. The Houlton Band of Maliseets received a much smaller settlement of \$900,000.

Besides specifying the compensation to be paid to the Tribes, MICSA and MIA established a new legal relationship between the Tribes, the State of Maine and the US defining certain powers and jurisdiction belonging to each. Though enacted with the hope of settling these questions of powers and jurisdiction, over time certain provisions of the Settlement Act have become viewed by the Tribes as oppressive and unjust. Negotiators of the original agreement have expressed concern that its implementation has deviated from the understanding reached by the parties in 1980. In addition, MIA fails to take into account changes in the capabilities and capacities of the parties achieved over 26 years that warrant adjustments in the tribal-state relationship.

A major focus of the May 8, 2006 Assembly of Governor and Chiefs addressed the disputed interpretations involving the Maine Implementing Act. The State of Maine and the Wabanaki Tribes have extensively litigated certain provisions of MIA (see appendix five). All the parties express dissatisfaction with the outcome of litigation. Governor Baldacci stated at the May 8, 2006 Assembly:

While we are doing what we are doing, we need to create a new foundation for us and future chiefs and governors. I don't want to go to court. I want to get the relationship to a point without fear of what people are doing, why they are doing it.

The leaders assembled in Veazie May 8, 2006 agreed to create a process to examine possible changes to MIA. Governor Baldacci offered to issue an executive order (EO) creating a group consisting of Tribal and State representatives. He issued the executive order July 10, 2006 (see appendix one).

Tribal-State Work Group

Governor Baldacci's Executive Order 19 FY 06/07 cites the differences in the interpretation of MIA and the other Settlements Acts pertaining to the Wabanaki "have resulted in excessive litigation," caused an "economic drain on the parties" involved, and acted as an "impediment to efforts to make social and economic improvements that could benefit both the Tribes and the State." The Executive Order states "a further analysis of the differences of interpretation or understanding of the Maine Implementing Act" and "an attempt at reconciling some of the differences is warranted."

EO 19 FY 06/07 directs the Tribal-State Work Group to "study differences in the interpretation and understanding of the Settlement Acts." It tasks the Work Group with developing "recommendations for how the 123rd Legislature might reconcile the issues in a manner that benefits both the Tribes and the State." The Work Group consists of 13 members:

1. Two members of the Senate, appointed by the President of the Senate;
2. Four members of the House of Representatives, appointed by the Speaker of the House;
3. The Governor of the Passamaquoddy Tribe at Indian Township, or a designee;
4. The Governor of the Passamaquoddy Tribe at Pleasant Point, or a designee;
5. The Chief of the Penobscot Nation, or a designee;
6. The Tribal Chief of the Houlton Band of Maliseet Indians, or a designee;
7. The Tribal Chief of the Aroostook Band of Micmacs, or a designee;
8. The Governor of the State of Maine, or the Governor's designee;
9. The Chair of the Maine Indian Tribal-State Commission, or a designee.

The EO requires the Tribal-State Work Group to issue a report by December 5, 2006 encompassing its findings, recommendations, and suggested legislation to the Joint Standing Committee on Judiciary.

Deliberations and Accomplishments of Tribal-State Work Group

The Tribal State Work-Group met three times (see minutes in appendix four) on September 6, October 10, and November 14. At the initial meeting, the group adopted its operating procedures and elected Paul Bisulca, Chair of MITSC, to lead the Work Group. It also decided on September 6 to review the legislative record and other materials from the period when the Settlement Act was adopted by the Maine Legislature.

At the October 10 meeting, Paul Bisulca told the Work Group he did not believe sufficient time was available to adequately address the most disputed sections of the Maine Implementing Act. The other Work Group members agreed with him. The group decided to focus on including information on the Wabanaki, MIA, MICSA, and tribal-state relations in the

official legislator orientation for the 123rd Legislature, recommend expansion of MITSC to include seats for the Houlton Band of Maliseet Indians, and examine how MITSC could be strengthened.

Paul Bisulca and John Dieffenbacher-Krall met with David Boulter, Executive Director, Legislative Council, and Laurie Lachance, President & CEO, Maine Development Foundation, on October 17 to discuss internal and external briefings for the incoming legislators. David Boulter oversees the legislator orientation program. The Maine Development Foundation organizes legislative bus tours as a component of the legislator orientation program to provide legislators with an opportunity to visit with businesses and public institutions that function as major employers and/or support economic development.

David Boulter agreed to the value of adding a program on the Wabanaki, MIA and MICSA, and the major issues affecting tribal-state relations to the 2007 legislator orientation program. The session dealing with these issues is scheduled for January 9 in the State House from 11 -1. The legislative members of the Tribal-State Work Group also wrote a letter to the presiding officers, Senate President Beth Edmonds and Speaker John Richardson, relaying the importance they see of briefing legislators on these subjects and encouraging their attendance at the sessions (see appendix six).

For the legislative bus tour, the Maine Development Foundation has incorporated visits with the Houlton Band of Maliseet Indians and Passamaquoddy Tribe. The Northern and Eastern Maine bus tour scheduled for January 10 – 12 will stop at the Maliseet reservation in the late afternoon on January 11 and will visit both Passamaquoddy Reservations during the morning of January 12. The Tribal-State Work Group ensured that contact information was exchanged and appropriate communications took place between the parties to schedule the legislative visits with the three Tribal Governments.

The Tribal-State Work Group voted at the October 10 meeting to recommend to the Passamaquoddy Tribe, Penobscot Nation, and State of Maine that MITSC be expanded to add two seats for the Houlton Band of Maliseet Indians and that the State of Maine receive two additional seats. The intent of the recommended expansion is to permit MITSC to formally represent the Houlton Band of Maliseet Indians and the State of Maine in their relationship under the Maine Implementing Act. This recommendation is not intended to diminish the Band's or the State's rights under that Act. At the November 14 meeting, the Work Group unanimously approved a bill draft to add the Maliseets to MITSC and to create two additional seats for the State of Maine (see appendix seven).

Tribal-State Work-Group members engaged in a far ranging discussion of MITSC's authority and responsibilities at the October 10 meeting. Many MITSC observers perceive the Commission as lacking genuine power to get things done. Work Group members discussed a number of approaches to fix this problem. Ultimately, the Work Group decided MITSC itself would be the best place to analyze its deficiencies and to suggest possible options to address them. These suggestions could be considered if the Tribal-State Work Group is continued as suggested.

Recommendations

1. Pass a legislative resolve continuing the Tribal-State Work Group and expanding its membership by adding the Passamaquoddy and Penobscot Tribal Representatives and two additional members from the House.
2. Amend the Maine Implementing Act to add to MITSC two seats for the Houlton Band of Maliseet Indians and maintain the tribal-state balance by increasing the number of State seats from four to six.
3. Incorporate into the official legislator orientation for the 123rd Maine Legislature explicit information concerning the history, culture, and current governmental structure of the Wabanaki; review of the Maine Implementing Act, Maine Indian Claims Settlement Act, and other settlement acts pertinent to the Wabanaki; and overview of current tribal-state relations.

Appendix 1

19 FY 06/07

July 10, 2006

**AN ORDER TO CREATE A TRIBAL-STATE WORK GROUP TO STUDY
ISSUES ASSOCIATED WITH THE MAINE IMPLEMENTING ACT**

WHEREAS, in Maine there are four federally recognized Indian tribes: the Penobscot Indian Nation, the Passamaquoddy Tribe, the Aroostook Band of Micmacs, and the Houlton Band of Maliseet Indians;

WHEREAS, in 1979, the Maine Legislature enacted AN ACT to Implement the Maine Indian Claims Settlement which implemented in part a settlement agreement between the State of Maine, and the Penobscot Indian Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians (“the Maine Implementing Act”);

WHEREAS, in 1980, the United States Congress ratified the Maine Implementing Act (“the Ratifying Act”);

WHEREAS, the Maine Legislature enacted the Micmac Settlement Act and the United States Congress enacted the Aroostook Band of Micmacs Settlement Act regarding the Aroostook Band of Micmacs (“the Micmac Acts”);

WHEREAS, the Maine Implementing Act, the Ratifying Act, and the Micmac Acts are collectively referred to herein as the “Settlement Acts”;

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WHEREAS, the Maine Implementing Act established the Maine Indian Tribal State Commission (“MITSC”) which was charged with continually reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Indian Nation and the State;

WHEREAS, on May 8, 2006, the Assembly of Governors and Chiefs, with the assistance of the Maine Indian Tribal State Commission, identified several differences of interpretation or understanding of the Maine Implementing Act and the Ratifying Act;

WHEREAS, the Governors and Chiefs appointed an Ad Hoc group to further identify issues upon which the State and Tribes differed regarding the Settlement Acts;

WHEREAS, on May 31, 2006, the Ad Hoc group enumerated a list of those issues;

WHEREAS, the differences of interpretation and understanding of the Settlement Acts have resulted in extensive litigation which has been an economic drain on the parties and often an impediment to efforts to make social and economic improvements that could benefit both the Tribes and the State; and

WHEREAS, a further analysis of the differences of interpretation or understanding of the Maine Implementing Act and the Ratifying Act, and an attempt at reconciling some of the differences, is warranted:

NOW THEREFORE, I, John E. Baldacci, Governor of the State of Maine, in consideration of all of the above, do hereby establish the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act (“the Work Group”) as follows:

1. Purpose

The Work Group shall study differences in the interpretation and understanding of the Settlement Acts. The Work Group shall develop recommendations for how the 123rd Legislature might reconcile the issues in a manner that benefits both the Tribes and the State.

2. Work Group Membership

The Work Group shall consist of the following members:

1. Two members of the Senate, appointed by the President of the Senate;
2. Four members of the House of Representatives, appointed by the Speaker of the House;
3. The Governor of the Passamaquoddy Tribe at Indian Township, or a designee;
4. The Governor of the Passamaquoddy Tribe at Pleasant Point, or a designee;
5. The Chief of the Penobscot Nation, or a designee;
6. The Tribal Chief of the Houlton Band of Maliseet Indians, or a designee;
7. The Tribal Chief of the Aroostook Band of Micmacs, or a designee;
8. The Governor of the State of Maine, or the Governor’s designee; and
9. The Chair of the Maine Indian Tribal State Commission, or a designee.

3. Duties

The Work Group shall consider the differences in interpretations of the Settlement Acts enumerated by the Ad Hoc group.

4. Staff

The MITSC shall provide necessary staffing services to the Work Group.

5. **Attorney General's Office**

The Maine Attorney General, or his designees, shall attend all meetings of the Work Group.

6. **Report**

No later than December 5, 2006, the Work Group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on the Judiciary.

7. **Implementation Costs**

The costs for implementing the duties included in this Executive Order shall be absorbed by the participating organizations.

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Effective Date

The effective date of this Executive Order is July10, 2006.

John E. Baldacci, Governor

Appendix 2

Members of the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act EO 19 FY 06/07				
Name	Address	Phone #s	Email	Appt. by
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Rep. Joan Bryant- Deschenes	339 Pleasant Pond Rd. Turner, ME 04282	(h) 224- 2252	jdmaine@megalink.net	Speaker Richardson
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Daryl Fort	1 State House Station Augusta, ME 04333	(w) 287- 3531	Daryl.Fort@maine.gov	Governor Baldacci
Sen. Libby Mitchell	277 Cushnoc Rd. Vassalboro, ME 04989	(w) 287- 1540	SenLibby.Mitchell@legislature.maine.gov	President Edmonds
Rep. Joan Nass	P.O. Box 174 Action, ME 04001	(w) 287- 1400	notthymefarm@metrocast.net	Speaker Richardson
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Rep. Deborah Simpson	551 Turner Street Auburn, ME 04210	(w) 287- 1400	RepDeborah.Simpson@legislature.maine.gov	Speaker Richardson

Appendix 3

FRAMEWORK FOR DISCUSSION WABANAKI/STATE OF MAINE LEADERS MEETING Mutual Freedom, Partnership, and Prosperity: The Social, Economic and Legal Relationship between the Wabanaki Tribes and the State of Maine

May 8, 2006

Rationale for meeting

The approach most likely to enhance tribal-state relations consists of honest, open discussions in which each party to the discussions identifies problems in the relationship and recommends solutions after genuinely listening and attempting to understand each other's point of view. Decision makers entering the process must also be willing to use the power of their offices to work for the approval of any recommended changes with their respective governments.

For tribal-state relations to improve, the sovereign leaders must be willing to commit resources, including their personal time and that of appropriate staff, to support the committee work and other collaboration that will lead to concrete results. A safe space must be created in which the genuine issues causing differences between the parties are fully aired. We should recognize an inherent tension at the outset of the process between those who may wish to focus on less controversial issues that may provide opportunities for quicker resolution and others who want to engage in fundamental underlying issues at the core of the relationship. Neither view is exclusively right or wrong. The parties must be willing to allow themselves to trust in the process and in the individuals assigned to facilitate the process in order for the structured dialogue to work.

An assumption is that all the parties recognize the inherent worth of every other party to the deliberations and benefits from the existence and prosperity of the others. Governor Baldacci unequivocally stated his belief on January 23 that Maine is stronger because of the presence of the four Wabanaki Tribes. Though the Wabanaki people pre-existed the State of Maine by thousands of years, they do benefit from a positive government-to-government relationship with the State.

The MITSC Commissioners have identified five suggested topics for discussion after six months of deliberation and input from Tribal and State leaders. Careful consideration must be given to the order in which these issues are discussed. However, the trust and mutual confidence necessary to produce positive concrete results will not last unless there is a genuine willingness to eventually engage in all of the issues as they are identified by Wabanaki and State leaders.

While every Sovereign's issues must be heard and addressed, we cannot tackle every issue. Our challenge is to identify the most important issues. The set of issues may involve some combination of areas where some collaboration and agreement already exist and areas in which the parties hold strongly divergent points of view.

I. Venue for resolution of disputes

Problem Statement: Two of the sovereigns belonging to MITSC have consistently maintained that resolving disputes between the parties in the courts of the third sovereign, the State of Maine, is inherently unjust. An alternative dispute resolution process that could be independent of the judicial system of the State of Maine ought to be evaluated.

II. Internal Tribal Matters

Problem Statement: The Tribes perceive a steady diminishment of what constitutes Internal Tribal Matters since enactment of the Settlement Act. Many individuals involved in the original Settlement Act negotiations contend that the status of Internal Tribal Matters as it exists today does not reflect the intent of the agreement signed in 1980. The Tribes want to return to their understanding of the original intent of the Settlement Act regarding the scope of their authority.

III. Municipal Language of the Settlement Act

Problem Statement: One of the most contested provisions of the Maine Implementing Act involves the intent providing the Tribes with the powers of municipalities. Tribal negotiators consistently claim this language was introduced to allow the Tribes to seek the same funding opportunities as municipalities (see §6211). State negotiators, fearful of the creation of "a nation within a nation," assert that the municipality language provided comfort to them with a recognizable model subject to control of the State (see §6206 subsection 1 General Powers). Several paper corporations successfully argued that the Tribes are subject to certain responsibilities under the Maine Freedom of Access Act as any Maine municipality (see *Great Northern Paper, Inc. et. al. v. Penobscot Nation et. al.* (2001)). On February 8, 2001 and May 17, 2002, MITSC publicly expressed its view that the Tribal deliberative process is part of "Tribal Government" and therefore an Internal Tribal Matter not subject to state laws applying to municipalities. From a Tribal perspective, attempting to shoehorn Tribal Governments into a municipal government model is a poor cultural and functional fit. Tribal Governments undertake many functions and possess many powers not applicable to municipalities.

IV. Maliseets, Micmacs relationships with MITSC/State of Maine

Problem Statement: Though part of the Maine Indian Claims Settlement Act, the Maliseets were not granted seats on MITSC. The Micmacs obtained federal

recognition at a later time and enjoy a different legal status vis-à-vis the State and Federal Government. Tribal-state relations might benefit from having a formal structure in which all four Tribes could belong in order to assert concerns and or issues with the State of Maine and vice versa. One way this might be accomplished is including the Maliseets and Micmacs within MITSC. Recommendation #8 of the At Loggerheads report suggests adding Maliseet and Micmac representatives to MITSC. Another approach may be abolishing MITSC as was proposed in LD 1569 and replacing it with a new entity. The Maliseets and Micmacs must decide if they desire such membership.

V. New England intertribal college feasibility study

Problem Statement: The United South and Eastern Tribes, Inc. (USET) and the New England Board of Higher Education (NEBHE) conducted a year-long feasibility study completed late last year examining the potential of creating a Tribal college more conveniently located for the eastern and southern Tribes. Currently, the only Tribal colleges east of the Mississippi River operate in far northern Michigan. The study was funded by the Office of Minority Health in the U.S. Department of Health and Human Services. It examined the feasibility of establishing an intertribal college initially focused on health sciences, technology and pre-medical education that will serve the Tribes located in the USET region. This new institution could include a physical hub campus with numerous satellite-learning centers located on reservations and in urban Indian centers. The potential exists to have the central hub campus located in Maine. The challenge is how do Tribal and State of Maine leaders work together to realize this opportunity.

VI. Next steps

Problem Statement: A necessary prerequisite for the ultimate success of resolving tribal-state disagreements is a commitment from the five Wabanaki leaders and Governor Baldacci to follow-up work after the spring gathering. Clear steps should be outlined before the event ends Saturday so every person in attendance understands what will be done by whom. One of the surest ways to break trust is to argue about the process for change while engaged in making policy changes. Inevitably, someone will think one of the parties is seeking a negotiating advantage when specific process changes are recommended or attempts are made to clarify the process. All the parties would benefit from having a universally understood and accepted process on how Settlement Act changes are made before initiating the process for such changes. Whatever body or bodies that are created to continue the work identified by the governmental leaders should have their members identified, who is responsible for staffing them, desired work product specified, and deadlines agreed upon. Interim progress reports with firm reporting dates should also be outlined. A fall target date should be set for completion of the work with the leaders gathering to review and act on it.

Appendix 4

Minutes

**Initial Meeting of Tribal-State Work Group to Study Issues
Associated with the Maine Implementing Act
Executive Order (EO) 19 FY 06/07
September 6, 2006
Conference Room, Nick Sapiel Building, Indian Island**

Members in attendance: Passamaquoddy Tribal Council Member Brian Altvater, MITSC Chair Paul Bisulca, Rep. Dick Blanchard, Chief Brenda Commander, Daryl Fort, Office of Governor Baldacci, Sen. Libby Mitchell, Rep. Joan Nass, Chief James Sappier, Rep. Deb Simpson
Members absent: Rep. Joan Bryant-Deschenes, Chief William Phillips, Sen. Kevin Raye (the Passamaquoddy Tribe at Indian Township had not appointed a representative as of this meeting)

Others in attendance: Jerry Reid, Office of the Attorney General, Penobscot Tribal Council Member Kirk Francis, John Banks, MITSC, Maria Girouard, Paul Thibeault, Paul Jacques, MITSC, Donald Soctomah, Tribal Historian, Passamaquoddy Tribe and MITSC, Peter Sly, Penobscot Tribal Representative Michael Sockalexis, Greg Sample, Mark Chavaree, MITSC, Maliseet Tribal Council Member Clair Sabattis
Minutes recorded by John Dieffenbacher-Krall

Chief James Sappier began the meeting with an invocation. Paul Bisulca talked about a relationship (referring to that between the Tribes that reside in Maine and the State of Maine) that has been defined legally, yet relationships in practice don't work that way. Furthermore, laws often result in unintended consequences, consequences that the negotiators for the state and the tribes intended MITSC to address. The meeting today to consider comprehensive remedies to problems resulting from the Maine Implementing Act affecting tribal-state relations is the first time this has ever happened. MITSC has the responsibility to monitor the legal tribal-state relationship and to head things off before they go to court. He expects the group to look at some things in a new way, examine problems, see what can be done.

Paul Bisulca then reviewed with the group the booklet, *Governor's Work Group Maine Implementing Act: Mutual Freedom, Partnership and Prosperity*. This was followed by a review of the Executive Order that created the group. Paul Bisulca made a statement about the composition of the Work Group. He sees the panel as a State of Maine group. The Indian representatives' roles are to provide input to the State. MITSC sought to have representatives from each Tribe appointed to the panel. Nothing will happen without the support of the respective Tribal Governments.

The group then discussed possible structures for its organization. It opted for a single chair. Paul Bisulca was selected to serve as the chair.

The legislative appointees had questions about what led to the Tribal-State Work Group and its purpose. Paul Bisulca explained that the purposes of the Work Group included getting people

familiar with the issues and to identify issues that lend themselves to near-term legislative or executive action.

Members of the Work Group involved with the May 8 Assembly of Governors and Chiefs and the May 31 review of the Maine Implementing Act (MIA) explained that Tribal leaders and Governor Baldacci had discussed a two-part process. Governor Baldacci would sign an Executive Order creating a Work Group (this body) to begin examining issues identified at the two May 2006 meetings and others suggested by the parties. For issues in which quick agreement was reached, the expectation was for the appropriate executive or legislative action to occur to address them.

For a set of potentially more difficult issues, people involved expected that the 123rd Maine Legislature would form a body, perhaps a blue ribbon commission, to work on those issues through the spring, summer and fall of 2007 with the expectation of action in the winter/spring of 2008. There was also the expectation that the legislators serving on the Tribal-State Work Group would form the nucleus of the future group tasked with working on the more difficult to resolve issues. Legislators appreciated the explanation.

Work Group members began to list potential issues for consideration on a large sheet of paper. They included legislator training in Indian-State relations, potential changes to MITSC including adding seats for the Houlton Band of Maliseet Indians and ex officio representatives from the Maine Legislature, the venue where legal disputes between the Tribes and the State are heard, the municipality language in the MIA, and the lack of a Maine Indian Policy. During the discussion of venue, members discussed the possibility of a memorandum of understanding or agreement being executed between the Tribes and the State to initially refer potential legal disputes to MITSC before resorting to the judicial system. Though it did not make it on the large sheet of paper, several members discussed the central importance of resolving the Internal Tribal Matters language of MIA.

In thinking about Internal Tribal Matters, Chief Sappier told the group it needs to consider the ancient and customary practices of the Tribes. Paul Bisulca pointed out that MITSC is required by MIA to consider culture in some aspects of its rulemaking.

For the next meeting, John Dieffenbacher-Krall was tasked to investigate the availability of the legislative record from 1979-1980 connected to the consideration and adoption of MIA. Members also thought distribution of the Loggerheads report to those who do not have it makes sense. In addition, members were interested in the MITSC meeting minutes from 2002-2003 in which specific language changes were considered to address problems such as the municipality language and Internal Tribal Matters.

The group decided to hold its next meeting October 10 from 10-3 in Augusta pending communications with the absent legislators to make sure they will be available. Paul Jacques offered the use of the Inland Fisheries & Wildlife conference room once the meeting date and time had been set.

Minutes
Meeting of Tribal-State Work Group to Study Issues
Associated with the Maine Implementing Act
Executive Order (EO) 19 FY 06/07
October 10, 2006
Conference Room, Inland Fisheries & Wildlife, Augusta

Members in attendance: Passamaquoddy Tribal member @ Pleasant Point Brian Altvater, John Banks (sitting in for James Sappier), MITSC Chair Paul Bisulca, Rep. Dick Blanchard, Rep. Joan Bryant-Deschenes, Daryl Fort, Office of Governor Baldacci, Sen. Libby Mitchell, Rep. Joan Nass, Sen. Kevin Raye, Rep. Deb Simpson

Members absent: Chief Brenda Commander, Chief William Phillips, (the Passamaquoddy Tribe at Indian Township had not appointed a representative as of this meeting)

Others in attendance: Norma Bisulca, Tom Bulger, Greg Cunningham, MITSC, Bonnie Davis, Jerry Reid, Office of the Attorney General, Diana Scully, Donald Soctomah, Passamaquoddy Tribal Representative and MITSC, Toby Stanley

Minutes recorded by John Dieffenbacher-Krall

I. Consideration of minutes from 9/6/06

Dick Blanchard moved to accept the 9/6/06 meeting minutes as printed. Libby Mitchell seconded the motion. It carried unanimously.

II. Review of Agenda

Paul Bisulca explained he had decided to pare down the agenda. He concluded that the Work Group would never complete the work on the most difficult interpretation issues connected to the Maine Implementing Act by the reporting deadline of December 5, 2006. Instead of beginning that work only to have it all remain unresolved, he thought focusing on areas of consensus in which action could be taken was the best course of action to pursue. He expects the successor body to the Work Group to take up the most challenging issues.

John Banks requested permission from the chair to make a statement. John Banks said there is something wrong in Maine in the way it treats Indian people. I have been involved in Indian affairs for 26 years. I have been involved in national organizations. We are way behind the rest of the country. John referred to a meeting that occurred with Ed Cohen, Department of Interior Solicitor's office. During the meeting, Cohen said Maine State Government is the most anti-Indian in the country. John referenced the previous week's meeting of the National Congress of American Indians (NCAI). He heard a presentation by the chair of the National Indian Gaming Association. John Banks relayed figures he heard the chair of the National Indian Gaming Association present at the NCAI meeting. Indian gaming is generating impressive amounts of revenue, taxes and jobs.

- 1) In 2005 Indian gaming created 600,000 jobs, 75% of which are held by non-Indians
- 2) In 2005 Indian gaming brought in \$7.6 billion in federal revenues
- 3) In 2005 Indian gaming brought in \$2.2 Billion in State revenues
- 4) In 2005 Indian gaming brought in \$100 Million in local and municipal revenues.

John Banks emphatically declared this body can make a difference. We can set a new course for a more productive relationship. Let's work together as neighbors, as partners. Let's forget the past.

Libby Mitchell stated bad things happen when we don't understand nuances.

Paul Bisulca said it is symptomatic. When the Settlement occurred, Maine's Dept. of Indian Affairs disappeared. Indian questions get defaulted to the Attorney General. They do what soldiers do – fire and maneuver. These questions were not put in the political realm where they belong. The State has handled Tribes in a litigious way. Paul read from the State Senate record from April 2, 1980, page 718.

This bill, if enacted, will not become a general statute of the State. It will be a unique document that is similar to an agreement between the State and the Indian Tribes that has been authorized and ratified by the United States Congress. In enacting this bill the Legislature will be exercising in effect, an authority delegated by and subject to the Federal Government's authority over Indians.

Paul Bisulca continued that overall his reading of the legislative record and the *Report, Hearing Transcript and Related Memoranda of the Joint Select Committee on Indian Land Claims* produced no silver bullets. This is a relationship. We need to work that relationship to maximize the benefits to all parties. Both parties, the State and the Tribes, need to benefit from any changes made.

III. New/veteran legislator orientation 123rd Maine Legislature

John Dieffenbacher-Krall reported on the progress to date of incorporating information about the Wabanaki, the Settlement Act, MITSC and the current state of tribal-state relations in the legislator orientation program for the 123rd Maine Legislature. John Dieffenbacher-Krall relayed to the group that he had already spoken to David Boulter, Executive Director of the Legislative Council, requesting that a specific session or sessions be held on the relevant aspects of tribal-state relations, the underlying laws delineating that relationship and an overview of the Wabanaki Tribes. John Dieffenbacher-Krall stated he and Paul Bisulca had a meeting scheduled with David Boulter and Laurie Lachance of the Maine Development Foundation on October 17 to explore incorporating stops at some of the Wabanaki Reservations as part of the legislative bus tours planned for January 2007.

Libby Mitchell suggested writing a letter addressed to all current legislative leaders supporting the bus tour idea and stating the need for an in-house Augusta briefing. Libby Mitchell also suggested that the committees of jurisdiction need a special briefing.

Dick Blanchard remarked several good ideas are floating around the table. We need to have an agenda when we start the second phase with the legislative commission. We need to be able to walk before we can run.

IV. Maliseet accession to MITSC

Paul Bisulca opened the discussion by stating that the Maliseets have wavered on this a long time. Chief Commander asked me to come up in August. Paul Bisulca along with John Dieffenbacher-Krall met with Chief Commander and the Maliseet Tribal Council. The Maliseet Tribal Council voted unanimously to join MITSC. Paul Bisulca asked Jerry Reid if you see any unforeseen circumstances related to the Maliseets potentially joining MITSC. Jerry Reid responded he had not given the matter any thought coming into this meeting. As a first consideration, I don't see any problems.

Kevin Raye suggested that the new representative and senator whose districts encompass the Maliseet reservation should be given the opportunity to be the lead sponsors for the Maliseet accession bill. Paul Bisulca agreed and added that he would like to see all legislators on this work group co-sponsor the bill.

The Tribal-State Work Group agreed to recommend to the signatories of the Settlement Act an amendment to MIA to add the Maliseets to MITSC. Libby Mitchell moved that the Tribal-State Work Group recommend to the Passamaquoddy Tribe, Penobscot Nation, and State of Maine that MITSC be expanded to add two seats for the Houlton Band of Maliseet Indians and that the State of Maine receive two additional seats. If the parties give their consent, legislation will be introduced to make the recommended change. Dick Blanchard seconded the motion. It passed unanimously.

V. Changes to MITSC

Paul Bisulca referred to page 26 of the *At Loggerheads – The State of Maine and the Wabanaki* report. The report contains a section "Is the MITSC Effective?" For Paul Bisulca, the first question is whether MITSC is a state agency. Jerry Reid responded Paul Bisulca asked me this question last week. You can't simply say yes or no. There is no single statute that lists or describes state agencies.

John Banks asked is MITSC subject to the Maine Administrative Procedures Act? Jerry Reid answered that is probably correct. Jerry Reid advised that MITSC should decide when it wants to be treated like a state agency, when it does not. You can't simply say it is or is not a state agency.

Deborah Simpson recalled statements from the last meeting of the Work Group in which people described situations when the State of Maine had issues with the Tribes, it sought resolution of them in court. The Tribes tend to bring things to MITSC. The State of Maine does not reciprocate.

Libby Mitchell asked what if MITSC were more like an administrative court? Paul Bisulca pointed out §6212 of the Maine Implementing Act contemplates that the signatories will bring issues to MITSC. Libby Mitchell said I would like to hear from Deb. What is within the realm of possibility regarding requiring parties to bring issues to MITSC? Deb Simpson answered I think that it has to be more of a loose statement. State agencies should consult with MITSC before proceeding to court. Paul Bisulca stated there should be consultation.

Dick Blanchard remarked that MITSC has no teeth. Libby Mitchell asked if the executive director could draft something to outline a MITSC with more authority. Kevin Raye asked is there anything beyond rulemaking? Deb Simpson said it is not just promulgating rules, it is interpreting and implementing them.

Greg Cunningham suggested we may want to designate to a subcommittee the question what should MITSC be? Libby Mitchell stated the fundamental question is MITSC's authority. John Banks said Paul Jacques said it best at the last meeting. The negotiators of the Settlement Act recognized there were many, many unresolved issues. The solution for the unresolved issues was MITSC.

Daryl Fort suggested that the Work Group would benefit from organizing its thinking a little better. It should task MITSC with wrestling with what authority it should have.

Brian Altvater said speaking to people in the community MITSC is viewed as a token body. There are no teeth. MITSC may have worked well back in 1980, but now it needs some modifications. We need to give it a bite. People don't take it seriously.

Dick Blanchard stated we don't need to reinvent the wheel. We just need some new spokes.

Greg Cunningham said MITSC could be the best place for this discussion. Deb Simpson advocated for a subcommittee of the Tribal-State Work Group to work on the issue. Instead of doing in-person meetings, rely on the phone and email. Daryl Fort said the subcommittee needs to develop a process for the conversation, developing the right questions that we need to ask.

Minutes
Meeting of Tribal-State Work Group to Study Issues
Associated with the Maine Implementing Act
Executive Order (EO) 19 FY 06/07
November 14, 2006
Room 202, Cross Office Building, Augusta

Members in attendance: Passamaquoddy Tribal member @ Pleasant Point Brian Altvater, MITSC Chair Paul Bisulca, Rep. Dick Blanchard, Chief Brenda Commander, Houlton Band of Maliseet Indians, Daryl Fort, Office of Governor Baldacci, Sen. Libby Mitchell, Rep. Joan Nass, Passamaquoddy Tribe @ Indian Township Tribal Council Member Elizabeth Neptune, Sen. Kevin Raye, Penobscot Nation Tribal Council Member James Sappier, Rep. Deb Simpson

Members absent: Rep. Joan Bryant-Deschenes, Chief William Phillips

Others in attendance: John Banks, Penobscot Nation & MITSC, Chief Rick Doyle, Passamaquoddy Tribe @ Pleasant Point, Nancy Mullins, Dept. of Education, Jerry Reid, Office of the Attorney General, Clair Sabattis, Tribal Council Member, Houlton Band of Maliseet Indians, Peter Sly, Toby Stanley

Minutes recorded by John Dieffenbacher-Krall

I. Consideration of minutes from 10/10/06

Rep. Dick Blanchard moved to accept the 10/10/06 meeting minutes as printed. James Sappier seconded the motion. It carried unanimously.

II. New/veteran legislator orientation 123rd Maine Legislature

John Dieffenbacher-Krall reported on what had been scheduled to date. An in-house briefing is scheduled for January 9, 2007 from 11 – 1. Stops at the Houlton Band of Maliseet Indians Reservation and both Passamaquoddy Reservations have been incorporated into the legislative bus tour scheduled for January 10 – 12, 2007. Buses will stop at the Maliseet Reservation on January 11 at 3:45 pm for a visit lasting approximately 75 minutes. The tour will continue to Calais. Passamaquoddy Tribal Representative Donald Soctomah will make a presentation about Passamaquoddy petroglyphs after dinner on January 11. Legislators will visit Indian Township and Pleasant Point during the morning of January 12.

Rep. Deb Simpson reported she spoke to person at the National Conference of State Legislators (NCSL) concerning possible assistance with legislator orientation on tribal-state issues. The person contacted pledged on behalf of NCSL to offer assistance in any way possible.

Paul Bisulca asked the legislative members of the Work Group if they approved the letter to legislative leadership drafted on their behalf. The legislative members of the Work Group approved the letter to Senate President Beth Edmonds and Speaker Richardson. It was signed by

all legislators in attendance. (Paul Bisulca stopped on his way home to present the letter to Rep. Joan Bryant-Deschenes for her signature.)

III. Maliseet accession to MITSC

Brian Altvater moved, and James Sappier seconded a motion to accept the Maliseet accession bill as presented. The motion passed unanimously. Senator Mitchell suggested asking Senator-elect Roger Sherman to make Rep. Deb Simpson the lead House cosponsor in recognition of her position as House Chair of the Judiciary Committee and membership on the Work Group.

IV. Changes to MITSC

Paul Bisulca introduced the subject. Sen. Mitchell asked if the Work Group was going to deal with this in the upcoming legislative session. If so, she noted the approaching cloture date. Paul Bisulca responded no.

V. Final report of Work Group

John Dieffenbacher-Krall reminded the Work Group that the EO creating it requires a final report to be submitted by December 5. He relayed his intention to draft something 3-4 pages in length. The Work Group members expressed general approval.

VI. Creation of new body to continue work of Tribal-State Work Group

John Dieffenbacher-Krall asked for Work Group input on continuing the work of the group. Sen. Mitchell suggested an option was to introduce a legislative resolve and have the group created by the resolve report back in January 2008. Rep. Blanchard agreed with Sen. Mitchell's suggestion. We don't want to close the book. If we get a resolve through, we will get the meat and potatoes on the table for January 2008. Rep. Nass also expressed her support for Sen. Mitchell's proposal.

Chief Doyle asked how was the Work Group formed? Chief Doyle expressed concern when John Dieffenbacher-Krall discussed the final report that he did not say that it would be transmitted to Tribal Governments. Chief Doyle declared Tribal leadership needs to decide if it wants to continue in this process. In response to Chief Doyle's question, Paul Bisulca provided the background describing the process that led to the issuance of the EO creating the Work Group in July 2006. Rep. Simpson said Chief Doyle's suggestion was a good one regarding consulting with Tribal leadership to ensure that the Tribes want to continue the Work Group process.

John Dieffenbacher-Krall asked the group about the merits of a resolve vs. a bill. Sen. Mitchell responded that a resolve continues the work of the Work Group and provides authority to introduce legislation. Paul Bisulca asked other Work Group members if they felt any adjustments should be made to the membership of the Work Group. Rep. Blanchard asked Daryl Fort if Governor Baldacci would prefer to keep the membership as currently constituted or would

he be open to changes? Daryl Fort responded that we should figure out how to best move this forward. Sen. Mitchell's suggestion is a good one.

James Sappier stated I like the resolve approach. It reflects buy-in from the House, Senate, and Executive Branch of State Government. James Sappier asked is this Work Group a committee of MITSC? Paul Bisulca answered no.

Paul Bisulca asked the Work Group should we make any changes to the composition of this body? John Banks suggested adding the Tribal Representatives from the Passamaquoddy Tribe and Penobscot Nation. Chief Doyle said reading the EO Governor Baldacci appointed the Tribal leaders. Chief Doyle objects to the Governor of Maine making the Tribal appointments. Tribal leaders need to maintain their sovereignty.

Brian Altvater asked if we bring in any more Tribal representatives, do we need to bring in two more State representatives? Brian Altvater added we should check with Tribal Governments if this is acceptable to them. Rep. Simpson wanted to clarify what was before the group in terms of membership. She stated that the Tribes should decide if they want Tribal Representatives on the Work Group. Irregardless of what the Tribes decide, we should add two representatives from the Maine House, one Democrat and one Republican.

John Dieffenbacher-Krall was tasked with drafting the resolve to continue the Work Group and directed to circulate it via email to the Work Group members.

Appendix 5

TRIBAL-MAINE ISSUES

ISSUES THAT HAVE BEEN LITIGATED OR ARE IN LITIGATION

Whether Tribal-run beano games are subject to State regulation? *Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me. 1983); 30 M.R.S.A. §§ 6204 & 6206(1); 25 U.S.C. §§ 1725(a) & (b), 1725(h), 1735.

Whether the Tribes can conduct high-stakes casino gambling behind the shield of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721, 18 U.S.C. §§ 1166-1168. *Passamaquoddy Tribe v. State of Maine*, 75 F.3d 784 (1st Cir. 1996); 30 M.R.S.A. §§ 6204 & 6206(1); 25 U.S.C. §§ 1725(a) & (b), 1725(h), 1735.

Whether Maine's Freedom of Access Act, 1 M.R.S.A. §§ 401-410, applies to the Tribes? *Great Northern Paper v. Penobscot Nation*, 2001 ME 68, 770 A.2d 574; *Penobscot Nation v. Georgia Pacific*, 254 F.3d 317 (1st Cir. 2001); 30 M.R.S.A. §§ 6204 & 6206(1).

Whether the Maine Human Rights Act, 5 M.R.S.A. §§ 4551, *et seq*, applies to the Tribes? *Penobscot Nation v. Fellencer*, 164 F.3d 706 (1st Cir. 1999); *Houlton Band of Maliseet Indians v. Ryan*, 2006 U.S. Dist. LEXIS 4371, *aff'd*, 2006 U.S. Dist. LEXIS 17254 (D. Me. 2006); *Aroostook Band of Micmacs v. Ryan*, 403 F. Supp. 2d 114 (D. Me. 2005); 30 M.R.S.A. §§ 6204 & 6206(1), 6206-A, 7201-07.

What are the boundaries of the Penobscot Reservation? 30 M.R.S.A. § 6203(8).

Whether discharges from Tribal facilities into navigable waters are internal tribal matters? *State v. Johnson* and *Penobscot Nation v. USEPA* (1st Cir.); 30 M.R.S.A. §§ 6204 & 6206(1).

Whether the federal government has environmental trust responsibilities to regulate the discharges from Tribal facilities? *State v. Johnson* and *Penobscot Nation v. USEPA* (1st Cir.); 30 M.R.S.A. §§ 6204 & 6206(1).

Whether the federal government has environmental trust responsibilities to regulate Maine's water quality standards over Tribal territories? 30 M.R.S.A. §§ 6204 & 6206(1); 25 U.S.C. §§ 1725(a) & (b), 1724(h), 1725(h), 1735.

What is the nature and extent of Tribal sustenance fishing? 30 M.R.S.A. § 6207.

Whether newspapers can proceed against the Passamaquoddy Tribe (Pleasant Point Reservation) under the Maine Freedom of Access Laws to obtain information about the Tribe's proposed LNG project. *Winifred B. French Corp v. Passamaquoddy Pleasant Point Reservation* (Maine Supreme Judicial Court 2006)

Whether parties other than the Passamaquoddy Tribe have standing to claim that the state court lacks jurisdiction over "internal tribal matters." Francis v. Pleasant Point Reservation Housing Authority (Maine Supreme Judicial Court 1998)

Provisions of Settlement Acts Implicated (may not be exhaustive):

MICSA – Maine Indian Claims Settlement Act

25 USC 1722(i) – Definitions - Scope of Penobscot Indian Reservation

25 USC 1724(h) – Agreement on terms for management and administration of land or natural resources

25 USC 1725(a) – Civil and criminal jurisdiction of the State and courts of the State; laws of the State

25 USC 1725(b)(1) – Passamaquoddy Tribe, Penobscot Nation subject to jurisdiction of State as provided in Maine Implementing Act

25 USC 1725(h) – General laws and regulations affecting Indians applicable, but special laws and regulations inapplicable, in State of Maine

25 USC 1725(i) – Eligibility for Federal special programs and services regardless of reservation status

25 USC 1735(b) – General legislation

MIA – Maine Implementing Act

30 MRSA 6202 – Legislative findings and declaration of policy - substantive legal effect

30 MRSA 6203(8) - Scope of Penobscot Indian Reservation

30 MRSA 6204 - Laws of the State apply to Indian Lands

30 MRSA 6206(1) - "internal tribal matters" vs. application of state law/duties applicable to municipalities - this is the most contested provision

30 M.R.S.A 6206-A – Powers of the Houlton Band of Maliseet Indians

30 MRSA 6207(4) - Sustainance fishing within the Indian reservation

Micmac Settlement Act

30 MRSA 7201-7207

ABMSA – Aroostook Band of Micmac Settlement Act

5 (c) (1) and (2) – Condemnation by State of Maine and Political Subdivisions Thereof

6(a) – Federal Recognition

6(b) – Application of Federal Law

Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986

3(d)(1) and (2) – Criteria for Secretary of Interior payment

Appendix 6

Legislative Members of the Tribal-State
Work Group
c/o John Dieffenbacher-Krall
Executive Director
Maine Indian Tribal-State Commission
P.O. Box 186
Hudson, ME 04449
November 14, 2006

The Honorable Beth Edmonds
Maine Senate
3 State House Station
Augusta, ME 04333-0003

The Honorable John Richardson
Maine House of Representatives
2 State House Station
Augusta, ME 04333

Dear Beth and John:

We legislative members of the Tribal-State Work Group created by Executive Order 19 FY 06/07 want to stress the importance of encouraging all members of the House and Senate to attend upcoming legislator orientation programs addressing the Wabanaki, Maine Indian Claims Settlement Act, Maine Implementing Act, and current tribal-state relations.

As we have served on the Tribal-State Work Group, we have realized the urgency of educating ourselves and our fellow legislators concerning our neighbors, the four Wabanaki Tribes, and the pivotal legal agreements that delineate much of our government-to-government relationship. Without a basic knowledge of the history, culture and present-day governments of the Wabanaki and the legal agreements, especially the Maine Indian Claims Settlement Act, that outline our political relationship, legislators will have a difficult time understanding the legislation that we expect will come before the Legislature during the next two years affecting tribal-state relations.

We do intend to recommend to Governor Baldacci in our final report to make some initial changes to the Maine Implementing Act to include the Houlton Band of Maliseet Indians as members of Maine Indian Tribal-State Commission (MITSC). In addition, we anticipate that the Work Group will recommend the creation of a legislative entity to continue our work with a focus on the most contentious issues involving the Maine Implementing Act that have consistently strained tribal-state relations.

The first opportunity available to legislators to learn about the Wabanaki and current tribal-state relations will take place January 9 from 11 – 1 in the State House. The second opportunity will occur during the initial legislative bus tour coordinated in conjunction with the Maine Development Foundation scheduled for January 10 – 12. We urge you to use the power of your offices to inform all members of these opportunities and to encourage their participation.

We appreciate the responsiveness of David Boulter to our suggestions to incorporate this subject matter into the legislator orientation for the 123rd Maine Legislature. We will assist you in whatever manner you deem advisable to make these orientation sessions as well attended as possible.

Very truly yours,

Senator Libby Mitchell

Senator Kevin Raye

Representative Richard Blanchard

Representative Joan Bryant-Deschenes

Representative Joan Nass

Representative Deborah Simpson

Appendix 7

DRAFT

123rd MAINE LEGISLATURE
FIRST REGULAR SESSION-2007

An Act To Amend the Maine Implementing Act To Add Seats for the Houlton Band of Maliseet Indians and State of Maine

Presented by Senator SHERMAN of Aroostook
Cosponsored by

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30 MRSA §6212, sub-§1, is amended to read:

- 1. Commission created.** The Maine Indian Tribal-State Commission is established. The commission consists of ~~9~~ 13 members, ~~4~~ 6 to be appointed by the Governor, subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Houlton Band of Maliseet Indians, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]

Sec. 2. 30 MRSA §6212, sub-§2, is amended to read:

- 2. Chair.** The commission, by a majority vote of its ~~8~~ 12 members, shall select an individual who is a resident of the State to act as chair. When ~~8~~ 12 members of the commission by majority vote are unable to select a chair within 120 days of the first meeting of the commission, the Governor, after consulting with the ~~governors~~ chiefs of the Houlton Band of Maliseet Indians, Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. In the event of the death, resignation or disability of the chair, the commission may select, by a majority vote of its ~~8~~ 12 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation or disability, the Governor of Maine, after consulting with the ~~governors~~ chiefs of the Houlton Band of Maliseet Indians, Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is a full-voting member of the commission and, except

when appointed for an interim term, shall serve for 4 years. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]

Sec. 3. 30 MRSA §6212, sub-§3, is amended to read:

- 3. Responsibilities.** In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]
~~Seven~~ Nine members constitute a quorum of the commission and a decision or action of the commission is not valid unless ~~5~~ 7 members vote in favor of the action or decision. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]

SUMMARY

This bill expands membership in the Maine Indian Tribal-State Commission to create two new seats for the Houlton Band of Maliseet Indians and to add two additional seats for the State of Maine in order to maintain parity between the Tribes and the State. The bill also establishes a new quorum and decision threshold reflecting the increase in its membership. The bill will not take effect until approved by the Legislature, Houlton Band of Maliseet Indians, Passamaquoddy Tribe and Penobscot Nation.

Appendix 8

DRAFT

Resolve, To Create the Tribal-State Work Group

Emergency Preamble. Whereas, resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this resolve needs to take effect before the expiration of the 90-day period in order for the Tribal-State Work Group originally created by Executive Order 19 FY 06/07 to continue working during and after the First Session of the 123rd Legislature;

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following resolve as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Sec. 1. Tribal-State Work Group established. Resolved: That the Tribal-State Work Group, referred to in this resolve as “the work group,” is established, and be it further

Sec. 2. Work Group membership. Resolved: That the work group consists of 17 members appointed as follows:

1. Two members of the Senate, one belonging to the political party holding the largest number of seats in the Senate and one belonging to the political party holding the 2nd largest number of seats in the Senate, appointed by the President of the Senate;

2. Six members of the House of Representatives, three belonging to the political party holding the largest number of seats in the House and three belonging to the political party holding the 2nd largest number of seats in the House, appointed by the Speaker of the House;

3. Seven members, one appointed by each of the top elected leaders of the five Wabanaki Tribal Governments, the Chief of the Aroostook Band of Micmacs, the Chief of the Houlton Band of Maliseet Indians, the Governor of the Passamaquoddy Tribe at Indian Township, the Chief of the Passamaquoddy Tribe at Pleasant Point and the Chief of the Penobscot Nation, one belonging to the Passamaquoddy Tribal Representative to be appointed by the Joint Tribal Council of the Passamaquoddy Tribe, and one belonging to the Penobscot Tribal Representative appointed by the Chief of the Penobscot Nation;

4. One member appointed by the Governor of Maine;

5. One representative of the Maine Indian Tribal-State Commission; and be it further

Sec. 3. Cooperation and participation of the Attorney General. Resolved: That the Attorney General is requested to have a representative attend all meetings of the work group and respond to requests during the work group's deliberations regarding the Attorney General's opinion concerning the constitutionality and legal interpretation of any possible changes to the Maine Implementing Act or related statutes and agreements; and be it further

Sec. 4. Chair. Resolved: That the first-named Senate member is the Senate chair of the work group and the first-named House of Representatives member is the House chair of the work group; and be it further

Sec. 5. Duties. Resolved: That the work group may hold up to 6 meetings and shall examine the following:

1. The issues identified in the framework document prepared for the Assembly of Governors and Chiefs held May 8, 2006, the minutes for that meeting, Tribal-Maine Issues: Issues That Have Been Litigated or Are in Litigation, and Tribal-Maine Issues: Macro Issues prepared for the May 31, 2006 review of the Maine Implementing Act, Maine Indian Claims Settlement Act and other settlement acts pertaining to the Wabanaki Tribes for the meeting held at Indian Island May 31, 2006, the minutes for the May 31, 2006 meeting and the final report of the Tribal-State Work Group created by Executive Order 19 FY 06/07.

Sec. 6. Staff assistance. Resolved: Upon adequate appropriation by the Maine Legislature that the Maine Indian Tribal-State Commission shall provide necessary staffing services to the work group; and be it further

Sec. 7. Compensation. Resolved: That the legislative members of the work group are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the work group. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a determination of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the work group; and be it further

Sec. 8. Report. Resolved: That no later than January 2, 2008, the work group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 123rd Legislature, the Governor of the State of Maine, the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Indian Township, the Passamaquoddy Tribe at Pleasant Point, and the Penobscot Nation. The work group is authorized to introduce a bill related to its report to the Second Regular Session of the 123rd Legislature at the time of submission of its report; and be it further

Sec. 9. Extension. Resolved: That, if the work group requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension; and be it further

Sec. 10. Work group budget. Resolved: That the chairs of the work group, with assistance from the chair and staff of the Maine Indian Tribal-State Commission, shall administer the work group's budget. Upon notice to the Executive Director of the Legislative Council that all seats on the work group have been filled, the personal services portion of the work group budget shall be paid in full to the Maine Indian Tribal-State Commission. The work group may not incur expenses that would result in the work group exceeding its approved budget. Upon request from the work group, the Executive Director of the Legislative Council shall promptly provide the work group chairs and staff with a status report on the work group's budget, expenditures incurred and paid and available funds; and be it further

Sec. 11. Appropriations and allocations. Resolved: That the following appropriations and allocations are made:

MAINE INDIAN TRIBAL-STATE COMMISSION

Tribal-State Work Group

Initiative: Provides funds for administrative and staffing support for the Tribal-State Work Group.

GENERAL FUND	2005-06	2006-07
Personal Services	\$0	\$4,400
All Other	\$0	\$670
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$5,070</u>

LEGISLATURE

Tribal-State Work Group

Initiative: Provides funds for the legislative per diem and other expenses for 6 meetings of the Tribal-State Work Group.

GENERAL FUND	2005-06	2006-07
Personal Services	\$0	\$9,930
All Other	\$0	\$670
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$9,930</u>

Emergency clause. In view of the emergency cited in the preamble, this Resolve takes effect when approved.

SUMMARY

This resolve establishes the Tribal-State Work Group to continue the work of the body created by Executive Order 19 FY 06/07. The work group is charged with examining potential changes to the Maine Implementing Act and other issues affecting tribal-state relations. It is required to report its findings to the Legislature, Governor of Maine, and Wabanaki Tribes by January 2, 2008.

Appendix II

Remarks of Paul Bisulca Briefing of the Maine Legislature on the Maine Indian Claims Settlement Act, Maine Implementing Act, Maine Indian-Tribal State Commission, and Current Tribal-State Relations January 25, 2007

Honorable members of the 123rd Legislature, good morning. My name is Paul Bisulca and I chair the Maine Indian Tribal-State Commission, which was created as part of the Maine Indian Land Claims Settlement almost three decades ago. We refer to this commission as MITSC.

Many years ago I sat in seat number 6 in this chamber as a representative for the Penobscot Indian Nation, and for about 5 years I regularly attended MITSC meetings, which were then chaired by Bennett Katz, former Senate majority leader at the time of the Land Claims, and later Dick Cohen, former attorney general who oversaw for the state the negotiations and settlement of the Land Claims. I knew both of these men.

With me today are John Dieffenbacher-Krall, executive director of MITSC, and Paul Thibeault, an attorney with Pine Tree Legal Assistance. For the next hour the three of us will explain to you what MITSC is, why we are here today talking about it, and what is the 1980 Settlement between Maine and the Penobscot, Passamaquoddy and Maliseet tribes. Also with us is Linda Sikkema, Director, Institute for State Tribal Relations, National Conference of State Legislatures. Linda comes to us from Colorado and will provide you with a national perspective on State-Tribal relations.

First, let me introduce to you the MITSC Commissioners: for the State of Maine, Greg Cunningham, attorney for Bernstein, Shur, Sawyer & Nelson in Portland; Mike Hastings, Director of Research and Sponsored Programs for the University of Maine; Paul Jacques, Deputy Commissioner, Inland Fisheries and Wildlife; and Karin Tilberg, Senior Policy Advisor for Natural Resources, Office of the Governor. Tribal representatives include Rick Doyle, Chief of the Passamaquoddy Tribe at Pleasant Point; Donald Soctomah, Passamaquoddy Tribal Representative; John Banks, Director of Natural Resources for the Penobscot Nation; and Mark Chavaree, Legal Counsel for the Penobscot Nation.

Nineteen-eighty marked the culmination, through settlement, of an Indian land claim in Maine brought by the Passamaquoddy Tribe, the Penobscot Indian Nation, and the Maliseet Band of Indians. This land claim was characterized by the U.S. Justice Department as “*potentially the most complex litigation ever brought in the Federal courts with social and economic impacts without precedence and incredible litigation costs to all parties.*” (US Senate Select Committee Report, p.157) It was not expected that the settlement of this land claim would exist without problems. In the words of Governor Joe Brennan, “*I do not think anybody can boldly assert that this was the perfect resolution. I think it is a reasonable one, but where there are consequences that may not have been contemplated, I think they have to go back and be resolved.*” (US Senate Select Committee Report pp. 142-143)

The Maine Indian Tribal-State Commission was created by the 1980 Settlement not as a state agency but as an intergovernmental entity to monitor the creation of a new relationship between the State and the Tribes who reside in Maine and to address the unintended consequences about which Governor Brennan spoke. Accordingly, it was charged with continually reviewing, as it determines appropriate, the effectiveness of this Settlement Act and the social, economic and legal relationship between the State and the Passamaquoddy Tribe and the Penobscot Nation. MITSC, in my view, cannot in its continuing review of the settlement be constrained by exact interpretations of the language in the Settlement, although those certainly guide us, but needs to look at how an issue at question fits into the broader understanding of the Settlement – the intent of the Settlement. Paul Thibeault will provide you with an overview of the actual Settlement Act.

MITSC has other responsibilities to:

- promulgate fishing rules and regulations for waters over which it has jurisdiction
- make recommendations about fish and wildlife management policies on non-Indian lands to protect fish and wildlife stocks on lands and waters subject to regulation by the Tribes or MITSC
- make recommendations about the acquisition of certain lands to be included in Indian Territory
- review petitions by the Tribes for designation as an extended reservation
- But, the most important responsibility is to continually review the effectiveness of the settlement and the social, economic and legal relationship between the Tribes and the State.

In addition to these responsibilities, MITSC has assumed some of the duties that once fell to the Maine Department of Indian Affairs, which was eliminated with the Settlement. We now respond to numerous public inquiries and staff various state initiatives, and we do that with a part-time executive director and a volunteer chair and commissioners. MITSC is also expected to provide a certain liaison function between the State and the non-MITSC tribes, the Maliseets and the Micmacs. As such, we are sometimes asked to provide information pertaining to those tribes. I should add that there is a bill now in the Legislature to bring the Maliseets into MITSC.

To understand how MITSC was expected to fulfill its responsibilities, I give you two quotes from the 1980 hearing before the U.S. Senate Select Committee on Indian Affairs. Attorney General Dick Cohen, *“I cannot promise you that the adoption of this settlement will usher in a period of uninterrupted harmony between Indians and non-Indians in Maine. But I can tell you, however, that because we sat down at a conference table as equals and jointly determined our future relationship, in my view there exists between the State and the tribes a far greater mutual respect and understanding than has ever existed in the past in the State of Maine.”* (US Senate Select Committee Report, p. 164) Tom Tureen, attorney for the Passamaquoddies and Penobscots, *“It was the State’s view that the destiny of the Maine tribes as much as possible in the future should be worked out between the State and the tribes.”* (US Senate Select Committee Report, p 181-182)

Accordingly, MITSC was structured to have equal numbers of State and Tribal representatives sitting around a conference table as equals continually reviewing the effectiveness of the

settlement and working out future destinies. Furthermore, it was envisioned that a retired state or federal judge would serve as the MITSC chair to provide the expertise necessary to formulate sound recommendations to the State and Tribal governments concerning the unintended consequences that Governor Brennan referred to in 1980. Having a judge as the chair never happened, but we, nevertheless, formulate very good recommendations. At least we think so. Despite the best efforts of some very capable people, MITSC never effectively played a role in guiding Indian policy in Maine in the last twenty plus years. The result has been what I and those previous MITSC chairs, who I mentioned, believe was avoidable litigation and tension between the Tribes and the State of Maine. In 2003, the tribes left MITSC for a 14 month period with the chair and executive director subsequently leaving. John and I came to MITSC near the end of 2005 with the resolve to make MITSC politically relevant and to win back our erstwhile lost constituents.

Presently, a Tribal-State Work Group, formed by an executive order from the Governor, is at work charged with addressing problems that are now affecting tribal-state relations. Since one of the problems is a weak MITSC, the work group will consider ways, to include legislative remedies, to empower this organization. John will discuss the work group in his portion of the orientation and a more detailed explanation of the work group will be provided to the Judiciary Committee later today.

At this point, I should also mention that almost exactly ten years ago a Task Force on Tribal-State Relations formed by the 117th Legislature completed a final report titled, *At Loggerheads – The State of Maine and the Wabanaki*. What you will hear in John's portion of the orientation will essentially mirror the findings in that report – the problems identified ten years ago remain with us. One of the good things that materialized from the 1996 Legislative study was the Annual Assembly of Governors and Chiefs, which recommends that the Governor of Maine and the Tribal leaders discuss, on an annual basis, matters of common interest. The last Assembly was held on May 8, 2006 in Veazie. Again, John will discuss this further.

This orientation will be informative and it will offer to you in a very frank way our consensus-based understandings and views, based on many years of experience dealing with tribal-state relations, relations that originally were in some areas vaguely defined and relations that are now maturing with a need for new definitions. The objective for us is to strive for a relationship that is guided not by the courts but by deliberate public policy with the interest of all citizens in mind. This, we believe is more productive and less wasteful of all parties' resources.

Paul Thibeault will now provide an overview of the Settlement Act. He will be followed by John Dieffenbacher-Krall who will address why we believe MITSC has not been effective, what we are now doing to change the way MITSC functions, and what MITSC is doing that should be of interest to you: why we are here talking about MITSC. Lastly, Linda Sikkema will put all of this in a national perspective.

Remarks of Paul Thibeault
Briefing of the Maine Legislature
Maine Indian Claims Settlement Act, Maine Implementing Act,
Maine Indian-Tribal State Commission, and the Current Tribal-State Relations
January 25, 2007

Thank you, Paul. In this portion of the presentation I will give you an overview of the background and terms of the Maine Indian Claims Settlement. I will briefly describe the legal/political relationship that existed between the tribes, the state and the federal government before the Settlement, what that relationship might have become if there had been no settlement, (including the federal Indian law concepts that would have defined that legal relationship); and then a description of the major provisions of the Settlement, including the unusual jurisdictional structure that it created.

But first I want to make some prefatory comments. As an attorney, I have never represented tribal or state governments. As a Legal Services attorney and Public Defender working in Indian Country, I have represented individual Indian people living in poverty. It has been my experience that when tribal and state governments become embroiled in endless jurisdictional disputes, the people who suffer the most are not the governmental leaders or bureaucrats, and certainly not the lawyers. It is my clients living in poverty, neglected citizens of both their tribes and the State, who suffer most from the inadequacy of government services and lack of economic development. That is why I am here today.

Second, it is often said that the relationship between the State of Maine and the Indian Tribes within its borders is unique. However, it is important to remember that within the context of federal Indian law many tribes have unique relationships with the federal government and the states. These differences are the historical result of treaties, executive orders, special statutes, local court decisions, and various other local factors. Indeed, with more than 560 federally recognized tribes in this country, it might fairly be said that local variations in inter-governmental relationships are the norm rather than the exception.

The historical relationship between the federal government and the Indian tribes situated within the boundaries of Maine and the other original colonies of New England has been very different from the relationship between the federal government and “western” tribes. From the formation of the federal government in 1789, the latter relationship was federalized in nature as the central government of the United States established relationships with “frontier” tribes through treaties and executive agreements. By contrast, the federal government had few if any direct dealings with the tribes in Maine and generally did not extend recognition to those tribes. Instead, the Maine tribes were generally regarded first as colonial and later as state Indians. As a result, when the Maine tribes asserted land claims in the 1970s alleging that their tribal lands had been acquired by the state in violation of the Nonintercourse Act, they first had to overcome the claim by the state that they were not really bona fide Indian tribes at all. This pre-settlement situation in Maine was described in the judicial opinion in Great Northern Paper v. Penobscot Nation in 2001 as follows (legal citations have been deleted):

From the time that Maine was ushered into the United States as a state separate and independent from Massachusetts in 1820, the United States government consistently declined to recognize or to assume responsibility for the Indians residing in Maine... The State of Maine, in turn, undertook the almost exclusive role of assisting and regulating the Indians residing within its borders...

The absence of established tribal sovereignty was evidenced by the state's extensive role in governing the Tribes throughout the history of the State of Maine. Consistent with this role, Maine actively regulated the affairs of Indians within its borders for almost 160 years, creating hundreds of laws that specifically related to the protection and regulation of the Tribes... Indians residing within Maine's borders were subjected to the general laws of the state like "any other inhabitants" of Maine...

Although the Tribes were recognized in a cultural sense, they were simply not recognized by the state or the federal government in an official or "political sense"... Prior to the settlement, the federal government never entered into a treaty with the Tribes nor did Congress enact any legislation mentioning the Tribes... The regulation by state government, coupled with the total absence of congressional regulation, contrasted sharply with many tribes in other states...

For more than a century, this situation went substantially unquestioned. In 1975, however, the Tribes' relationship with the state and the federal government changed substantially as a result of a significant court decision... Early in the 1970s, the Tribes had asserted claims for vast portions of lands in Maine on the basis that the lands in question had been transferred from them in violation of the federal Indian Nonintercourse Act of 1790, which protected "any . . . tribe of Indians".... The Tribes asked the Department of Interior, Bureau of Indian Affairs, to file a protective action on the Tribes' behalf against the State of Maine, to reclaim the lands that had allegedly been transferred in violation of the Act... Consistent with its historic approach to Maine's Tribes, the Department denied the Tribes' request, asserting, among other things, that the federal government had never formally recognized the Tribes and that it had no trust relationship with the Tribes...

The Tribes then sued to force the Department to act on their behalf. Ultimately, the United States Court of Appeals for the First Circuit rejected the Department's views and held that the Indian Nonintercourse Act applied to the Tribes, despite the absence of "specific federal recognition," and that the resulting trust relationship obligated the federal government, at a minimum, to investigate the Tribes' claims and take such action as may be warranted...

The Morton decision had several significant effects on the relationship between the Tribes and the state. First, pursuant to the newly recognized federal trust relationship, a fiduciary duty was imposed upon the federal government, requiring it to act on behalf of the Tribes to investigate the validity of their claims against the State of Maine. Second, the continuation of Maine's jurisdiction over the Tribes began to be questioned because the Tribes could potentially invoke the application of other federal statutes on their behalf...

The Passamaquoddy legal victory in the Morton case led to the enactment of several eastern land claims settlement acts including the Maine Indian Claims Settlement Act (MICSA). All of these settlements were based on fundamental principles of federal Indian law: that only the federal government has the authority to convey or extinguish tribal rights to aboriginal land or to restrict the historical sovereign powers of Indian tribes.

It is important to realize that prior to the settlement in 1980 the Maine tribes had already won several critical court decisions that established that notwithstanding the long period of time during which the State of Maine had treated them as “State Indians”, their historical sovereignty had not been diminished. The decision in the Morton case led the U.S. Department of the Interior to extend federal recognition to the Passamaquoddy Tribe before the Settlement. Likewise, the Maine Supreme Judicial Court decision in 1979 in *State v. Dana*, recognizing that the State of Maine lacked criminal jurisdiction over crimes committed by tribal members on tribal lands, also pre-dated the Settlement. The federal court opinion in *Bottomley v. Passamaquoddy Tribe*, also decided in 1979, showed that the Maine tribes did not possess a reduced version of tribal sovereignty watered down by local history, but rather that they retained the full attributes of sovereignty as defined by federal Indian Law, including tribal sovereign immunity. In short, if there had been no settlement and instead the land claims had been litigated, even if the tribes had not prevailed on their land claims, it is likely that today the tribes in Maine would possess and exercise the full degree of sovereignty that we usually associate with the “western” tribes.

In the context of the series of court decisions in the 1970s, it is clear that the participation by the tribes in the settlement process was in itself an exercise of inherent sovereignty that had been judicially re-affirmed. With the Settlement, the state was able to regain some part of the control which it had exercised for many years. But it is important to remember that, under federal Indian law, this transfer of authority could happen only because Congress ratified the Maine Implementing Act.

BASIC PRINCIPLES OF FEDERAL INDIAN LAW

What are the basic concepts of federal Indian law that provided the legal context in which the court cases were decided in the 1970s and MICSA was enacted? It starts with the recognition of tribes as separate governments that have a unique place within our federal constitutional framework. Federal recognition of tribes is binding on states. ***What is recognized is that the tribe as a political and legal entity (not merely an ethnic or cultural minority group) has a direct and special relationship with the United States government.*** A central component of that relationship as it has evolved through history is the federal trust responsibility that obligates the federal government to protect tribal resources and act in the best interests of tribes and their members.

Indian tribes and their territories are separate from the states of the union. They do not have the same relationship to the federal government as States. They are not subject to the limitations on government found in the federal Constitution. It is important to recognize that tribes are wholly independent of one another politically. There is no overarching law that binds or obligates one to another. While tribes in Maine share some culture and history, their differences are also profound.

After the American Revolution, Indian tribes became subject to the legislative power of the U.S. and their external powers of sovereignty were terminated (e.g. the power to enter into treaties with foreign nations). Internal sovereignty (powers of local self-government over tribal territory) survived unless expressly limited by treaty or federal legislation; or implicitly limited by nature of the tribes' domestic dependent status.

In general, States do not have jurisdiction over Indians within Indian country unless expressly delegated by Congress. For example, Public Law 280 (1953) delegated to some states broad criminal jurisdiction in Indian Country and limited civil adjudicatory jurisdiction, but not civil regulatory jurisdiction.

Tribes, and not the states, have jurisdiction over crimes committed by Indians against Indians in Indian Country. Tribes also retain their historical jurisdiction over crimes by non-member Indians. This authority was placed in doubt in 1990 by a U.S. Supreme Court decision, but Congress acted immediately to reaffirm historical tribal authority, and the Supreme Court subsequently acknowledged the exclusive power of Congress to delineate the scope of inherent tribal sovereignty.

Tribes and states sometimes have concurrent jurisdiction. Which sovereign will exercise jurisdiction in a particular context may be determined by judicial principles of comity that are based on mutual respect between co-sovereigns, or by tribal-state compacts negotiated on a government to government basis in an atmosphere of good faith and common interests.

In summary, Indian tribes have all those elements of sovereignty that have not been found by the U.S. Supreme Court to be inconsistent with their status as domestic nations or expressly given up or withdrawn in agreements with the federal government. The Maine Settlement could not and did not create the sovereign powers currently exercised by the tribes. As an exercise of plenary Congressional authority in Indian affairs, MICSA modifies those powers, but is not their historical source.

Judicial Canons of Construction in Federal Indian Law

To compensate for the historical disadvantages at which the negotiation process placed the tribes and to help carry out the federal trust responsibility, the Supreme Court has fashioned rules of construction that are sympathetic to Indian interests:

- Treaties and other agreements are interpreted as Indians would have understood them
- Treaties and federal statutes are interpreted in favor of retained tribal self-government and property rights
- Doubts or ambiguities in treaties or statutes enacted for Indians' benefit are resolved in Indians' favor
- Federal Indian laws are interpreted liberally to carry out their protective purposes

Maine Indian Claims Settlement - Basic Elements

The Maine Indian Land Claims Settlement consisted of two basic elements:

Federal Component- Maine Indian Claims Settlement Act-25 U.S.C. §§ 1721 et seq. (MICA)- Enacted by Congress, extinguishing the land claims, compensating the Indians for their claim, and ratifying the Maine Implementing Act.

State Component- Maine Implementing Act- 30 M.R.S.A. §§ 6201 et seq. (MIA)- An agreement between the State and the Indian Tribes that was enacted by the Maine Legislature. This specifies the laws that are applicable to Indians and Indian lands in Maine.

Four years of difficult negotiations led to a settlement out of court. The Passamaquoddy Tribe, Penobscot Indian Nation, and the Houlton Band of Maliseets received \$81.5 million, the largest settlement of its kind and the first to include provisions for the reacquisition of land. Those funds came from the federal government, not the state. To get the money, the tribes had to give up their claim to 12.5 million acres assessed at \$25 billion and relinquish some of the powers of self-government that recently had been reaffirmed in the courts.

The settlement included neither Maliseet People outside of the Houlton Band nor any Micmac People. They also claimed title to parts of what is now Maine, but by the terms of the settlement, under which they received no land or money, their claims were extinguished.

Federal and State Recognition

With the settlement, the Houlton Band of Maliseets obtained federal recognition and the Penobscot Indian Nation and Passamaquoddy Tribe continued to be federally recognized, while forging a new relationship with the State. Federal recognition made the tribes and their members eligible for a variety of federal benefits and programs, including housing, health care, education and resource protection.

As a result of the settlement, the Maine Department of Indian Affairs, which acted as an advocate and liaison with other state agencies, was abolished. The Maliseet People in Maine who are not part of the Houlton Band and the Micmacs were not federally recognized in the settlement. Thus, those Indians in Maine who were left out of the settlement also lost services that had been provided by the State, without gaining any services from the federal government. It was not until 1991 that the Aroostook Band of Micmacs secured federal recognition.

Repeal of State Laws

The terms of the settlement allowed the State to repeal the Maine Department of Indian Affairs and most of the state laws specifically relating to the tribes.

Disposition of Land Claims

MICA ratifies all land transactions in which any Maine Indians lost their lands by treating such transfers of land as though they were done in accordance with the laws of the United States. This has the effect of extinguishing all other Indian land claims in Maine.

Tribal Acquisition of Land

Of the \$81.5 million provided under the settlement, \$54.5 million was established as a Land Acquisition Fund: \$26.8 million each for the Penobscot Indian Nation and the Passamaquoddy Tribe and \$900,000 for the Houlton Band of Maliseets.

The first 150,000 acres of land acquired by the Passamaquoddy Tribe and the first 150,000 acres acquired by the Penobscot Indian Nation are eligible for inclusion as part of their respective territories and are held in trust by the United States for the benefit of the tribes. Land purchased outside these designated areas is owned by the tribes in the same manner as non-Indians.

Trust Funds

Out of the \$81.5 million settlement, a Settlement Fund of \$27 million was established: \$13.5 million each for the Penobscot Indian Nation and the Passamaquoddy Tribe to be held in trust by the U.S. government. The income is distributed quarterly. Interest from \$1 million for each tribe is designated for the benefit of tribal elders over 60 years of age.

Although the Houlton Band of Maliseets received federal recognition under the settlement and \$900,000 for land purchase, it gained no trust fund.

Jurisdictional Issues

As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Indian Nation, the Houlton Band of Maliseets, and (most recently) the Aroostook Band of Micmacs are eligible for all federal Indian benefits. Federal laws concerning Indians apply in Maine unless they are contrary to settlement terms. One of the terms in MICSA is that any federal law enacted after the date of the Settlement for the benefit of Indians which would materially affect the application of the laws of the state shall not apply in the State of Maine, unless Congress makes it specifically applicable to Maine.

The following areas of jurisdiction are spelled out in the settlement in relation to the Penobscot Indian Nation and the Passamaquoddy Tribe:

- The federal act states that the tribes, their members, and lands or natural resources owned by them or held in trust for them shall be subject to state jurisdiction to the extent provided in the Maine Implementing Act.
- The tribes may adopt constitutions consistent with the Settlement.
- The Indian Child Welfare Act, a federal law designed to protect Indian families and communities from losing their children, applies to them, thereby recognizing the exclusive jurisdiction of the tribes over Indian children living on their reservations.
- The tribes may sue and be sued, but retain sovereign immunity subject to some restrictions.
- The tribes may operate their own courts with exclusive jurisdiction over misdemeanors, minor juvenile offenses, minor civil disputes, divorce, and child custody matters for their members. The

Tribe and Nation are required to apply the State of Maine's definition of criminal offenses and applicable punishments.

- The tribes may make the rules for hunting and trapping in their Indian territories and for fishing on any pond that is entirely within the territory and is less than 10 acres in area. The rules cannot discriminate against non-Indians allowed to hunt and fish in the territories, except that there may be special rules allowing individual members of the Tribe or Nation to hunt, trap, or fish for their own sustenance. The State Commissioner of Inland Fisheries and Wildlife can overrule the Passamaquoddy and Penobscot fish and wildlife regulations, if it can be proved that they cause a significant depletion of fish and wildlife outside the Indian territories.

- The tribes are required to make payments to the state in lieu of taxes, but Indian lands cannot be taken under the state tax laws.

Section 6206(1) of the Maine Implementing Act states as follows:

Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective 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 shall not be subject to regulation by the State.

Tribal-State Commission

The settlement established the Maine Indian Tribal-State Commission about which Paul Bisulca spoke. The Commission faces many challenges, as John will describe in more detail. One major example of the challenges that the Commission faces stems from the profound disagreement that emerged between tribal and non-tribal parties after the Settlement concerning the intent and jurisdictional impact of the “internal tribal matters” provision in the Maine Implementing Act. Differing views of the meaning of that phrase have generated most of the post-Settlement litigation, including cases that are currently pending. No attempt will be made here to fully characterize the contending positions of the parties, but in general it seems that the disputes have centered on the extent to which the Settlement was intended to limit the inherent sovereign powers of the tribes, especially in activities that may involve non-Indians and have potential impact outside of the tribal communities. Parties on both sides of the issue maintain fervently that properly defining the scope of the “internal tribal matters” language is critical to accomplishing the overall purposes of the new inter-governmental relationship that was established in 1980. One factor that makes this issue especially difficult for MITSC is that the contending parties disagree not only about the intended parameters of this critical jurisdictional provision, but also about the basic analytical approach that should be used to determine those parameters, including the legal rules of statutory construction that should be applied.

Conclusion

As Paul Bisulca has noted, and John will elaborate on, the Settlement intended to create new, on-going relationships. It was designed to be flexible and to respond to changing circumstances. The express language of MICSA anticipated and consented in advance to future amendments to the Maine Implementing Act by agreement between the tribes and the state concerning the allocation of jurisdiction, including concurrent jurisdiction. This provision was added as an amendment to MICSA at the request of Secretary of the Interior Cecil D. Andrus in response to concerns that had been raised in a Maine newspaper editorial about the possibility that the Settlement language would “foster an unrelenting chain of legal disputes in the years ahead.” Secretary Andrus explained the amendment’s purpose in a letter dated August 19, 1980 to the Chairman of the Select Committee on Indian Affairs, as follows:

We have examined the language ...and have offered language by way of amendment to the federal bill to clarify this jurisdictional relationship. Based on the understanding which State and tribal officials now have, we fully expect that this relationship will prove to be a workable one. Furthermore, our proposed amendment to the bill would give Congress’ consent to future jurisdictional agreements between the State and the Tribes. Thus, there is flexibility built into this relationship. While we cannot guarantee that there will be no litigation over the meaning of the jurisdictional provisions of the State Act, we can say with certainty that without any agreement there would be a great deal of litigation.

MITSC was created with the express mission to continually review the effectiveness of the Settlement. Unfortunately, as John will discuss in more detail, MITSC has never been allowed to fulfill its legitimate role. As an advocate for poor people, I believe that supporting the strong role that was originally intended for MITSC is in the best interests of the many Native people in Maine who still live in poverty 27 years after the Settlement.

I will be followed by John Dieffenbacher-Krall who will speak more about MITSC and its activities. Thank you.

**Remarks of John Dieffenbacher-Krall
Briefing of the Maine Legislature on the
Maine Indian Claims Settlement Act, Maine Implementing Act,
Maine Indian-Tribal State Commission, and Current Tribal-State Relations
January 25, 2007**

As Paul Bisulca stated in his opening remarks, I will address why MITSC has not been effective, what the Commission is now doing to change the way MITSC functions, and what MITSC is doing that should be of interest to you: why we are here talking about MITSC.

Why MITSC Has Not Been Effective

I have identified ten principal reasons MITSC has not been effective, especially regarding its role to seek resolution of possible unintended consequences that become evident through differences in interpretation of the Maine Implementing Act and to do that without the parties needing to resort to litigation.

1. MITSC Has Not Been Viewed By All Of the Parties To The Settlement Act As A Forum To Settle Disputes Despite The Intent Of The Act

The Tribes regularly bring issues to MITSC for its consideration. The State of Maine does not bring grievances to MITSC and more often has sought resolution of Settlement issues through the courts. Because the State has chosen not to submit issues to MITSC, the Commission's effectiveness and usefulness to all of the parties, their respective governments, and their peoples is degraded.

2. Parties To The Settlement Act Have Bypassed MITSC When Disputes Have Arisen And Gone Directly To Court, A Route All Of The Parties Say They Want To Avoid

MITSC was envisioned by the negotiators of the Settlement Act to be a forum where disputes concerning interpretations of the Act or unforeseen issues regarding jurisdiction or powers of the parties could be settled. MITSC can succeed in this area as demonstrated by our recent involvement in resolving a dispute over the renewal of the Cooperative Agreement Between the U.S. Fish and Wildlife Service and NOAA Fisheries and the Maine Atlantic Salmon Commission. Unfortunately, the history has been for parties to ignore MITSC and proceed directly to court. When MITSC has deliberated upon issues subject to litigation, its findings have been ignored. Perhaps the best example is MITSC's finding that the Maine Freedom of Access Act does not apply in the Great Northern Paper v. Penobscot Nation decision issued May 1, 2001.

3. MITSC Has Not Done Enough To Ensure Its Decisions And Findings Are Implemented

MITSC has undertaken its responsibility to decide questions related to the Settlement Act or issues associated with it. Detailed minutes are kept of its meetings explicating why it has reached certain decisions. MITSC meeting minutes have been used in court proceedings. After

considerable work reaching decisions, MITSC historically has not done much beyond presenting its findings or decisions to the signatories of the Settlement Act. MITSC has felt frustrated and disappointed that decision makers have ignored its findings. Yet MITSC solely has an advisory role in the area of disagreements regarding the meaning of the Settlement Act.

While MITSC does lack official authority in this area, it has not always utilized its stature to the fullest extent. It has also tended to acquiesce when it has been ignored instead of attempting through other forums, especially the public, to educate and to stress the importance of its decisions. If MITSC's goal is to effect political agreement through persuasion, then it must do a better job utilizing those tools that help reach that end.

4. MITSC Has Limited Authority, Mostly Advisory, Especially On The Key Questions Of Implementing Act Language Responsible For Much Of The Litigation Connected To The Act

Though MITSC can and is doing more to make itself politically relevant, it does have limited power in the area of its most important responsibility. None of the parties to the Settlement Act have to abide by MITSC decisions. In the Tribal-State Work Group created by an executive order of Governor Baldacci last July, Work Group members discussed possible ways to enhance MITSC's authority. Some ideas discussed included adding members of the Maine Legislature and possibly others to MITSC to mandating disputed provisions in the Settlement Act be presented to MITSC prior to taking them to court.

5. MITSC Is Provided Insufficient Funding To Fulfill Its Responsibilities

From its initial conception, MITSC has been plagued by the parties who created it badly underestimating the amount of funds necessary for its successful operation. The Maine Implementing Act originally called for MITSC to operate on \$3,000 per year taken from the budget of Inland Fisheries and Wildlife. Fortunately, that provision was deleted in the 1980s. Today, MITSC operates on annual contributions from the State of Maine, Passamaquoddy Tribe, and Penobscot Nation. For many years, the State of Maine has flat funded MITSC at \$34,277. The Tribes have recently flat funded MITSC at \$11,900 from each Tribe. On a per capita basis, the Tribes are contributing about \$5 per Tribal member to support the work of MITSC. The State of Maine is contributing less than 3¢ per person. The Federal Government is contributing nothing. MITSC needs to significantly increase the size of its budget to continue to perform some of the work that once fell to Maine's Department of Indian Affairs and to do the job that the parties to the Settlement have asked it to do.

6. The Parties Failed To Build On The Good Will Engendered From The Negotiation Process

The negotiators of the Settlement Act understood the successful negotiation of the agreement as the beginning of a new era in tribal-state relations. Though racist remarks and threatened violence characterized some of the public and official reaction to the Settlement Act negotiations,

valuable good will and understanding was also built between the parties. Negotiators and the officials who agreed to the Settlement Act hoped the relationship would be strengthened. Instead, the Settlement Act has functioned as an end. In fact, some people are quick to make the statement, "A deal is a deal." What is forgotten is that the deal is to continually review the effectiveness of the Settlement Act. The Settlement Act, or any other agreement, can never substitute for genuine human relations. Any relationship requires nurturing. The good will and atmosphere of optimism that relations can be better has been eroded by the litigation and certain political acts that have transpired since 1980. Now, even when sincere gestures are made to do something to assist other Settlement parties, the offer is often viewed with suspicion and cynicism instead of trust and openness.

7. Maine Has Not Developed An Indian Policy Or Other Supporting Policies Guiding Interactions With The Tribes Outside Of The Settlement Act

The Settlement Act has terribly hobbled tribal-state relations by *De facto* defining nearly every aspect of the relationship. Governor Baldacci recognized this deficiency when he stated at the Assembly of Governors and Chiefs held May 8, 2006, "We have a Settlement Act that arrived due to the need to settle a lawsuit that *De facto* has become the Native American policy for the State." In the environment of tension and litigation that has developed, the executive and legislative branches of State Government have been sidelined from their proper roles in guiding this relationship as State leaders have deferred to the Attorney General's interpretation of the law. The Attorney General has a constitutional responsibility to uphold the laws and constitution of the State of Maine but devising Maine's relationship with the Wabanaki must fall to the executive and legislative branches of State Government.

8. Parties To The Settlement Act, Especially The State, Have Failed To Recognize The Benefits Of A More Harmonious, Productive Relationship

Maine's self-interest alone is served by a better relationship with the Tribes. All the leaders who attended the Assembly of Governors and Chiefs May 8, 2006 lamented the squandering of money on litigation that could be better spent on economic development and services to benefit the parties' respective peoples. Better tribal-state relations would result in less litigation and more cooperation.

I know all of the legislators in this room want to spur economic development. The sleeper economic engines waiting to be awakened in Aroostook, Washington, and Penobscot Counties are the Tribes. Already they employ hundreds of people, making them some of the largest employers in their respective regions. If Maine and the Tribes can increase their cooperation and collaboration, the Wabanaki will be better able to utilize certain advantages afforded to them as federally recognized tribes to attract new businesses both on and off their reservations. The combination of federal contracting preferences and tax advantages that the Tribes can offer probably surpass any incentives that Maine can offer prospective employers. Maine should begin thinking of the Tribes as key partners in its economic destiny.

9. State Of Maine Policy Makers And People Fail To Recognize Or Choose To Ignore The Tribes' Unique Cultures, Histories, Languages, Traditions, and Governments, Hindering Tribal-State Relations

The overwhelming motivation of the Tribes is to preserve their place as unique peoples with their own culture, language, history, spirituality, and traditions. They are not minority groups within the State of Maine. They are aboriginal people, the first people of this land.

Maine does not need to feel threatened by the Tribes' assertion of their right to exist and to survive. From a Tribal perspective, the most important aspects of the Settlement Act were not the 150,000 acres given back to the Passamaquoddy Tribe or Penobscot Nation or the \$13.5 million each Tribe received. It was the recognition by the Federal Government that they are Indian Tribes and that the settlement would not lead to their acculturation and assimilation. Maine would strengthen its relationship with the Tribes if it would recognize and accept the Tribes' need for survival as distinct peoples.

10. Intent, Goals, Prioritization, Commitment

For the State of Maine and the Tribes to have a stronger relationship, each party must desire that outcome. Tribes can speak more clearly to this question through their chief/governor and tribal council. Maine is comprised of many more parts. State Representative Sharon Treat, then House Chair of the Judiciary Committee, said in 1996, "Who is the State anyway? It is more complicated than sitting down with Governors, since the State has three branches of government." (Statement of Sharon Treat, *At Loggerheads The State of Maine and the Wabanaki Final Report of the Task Force on Tribal-State Relations*, January 15, 1997, p. 23.) They need to act with the same intent, whether the executive, legislative, judicial, or attorney general's office. It must be the deliberate intent of the Aroostook Band of Micmacs, Houlton Band of Maliseets, Passamaquoddy Tribe, Penobscot Nation, State of Maine, and US to want better relations.

Resources and energy, which are finite, are best used when goals are mutually agreed upon and understood. The Assembly of Governors and Chiefs held last year set some clear goals and agreed upon actions. That joint type of work must be continued and expanded.

I know you have many, many demands competing for your time. For tribal-state relations to improve, it must be a priority for all involved. Too often issues related to tribal-state relations have been an afterthought. Such prioritization gets predictable results.

If the commitment to a more just, harmonious, mutually beneficial relationship is genuine and strong, relations will improve. Commitment sustains an individual and/or institution during periods of stress and adversity. The Tribes and the State of Maine must recognize there will be periods, though they should be relatively short, when the respective governments may have higher short-term priorities. But with a genuine commitment to tribal-state relations, the work will always resume with a fervor and urgency that it deserves.

What The Commission Is Doing Now To Change The Way It Functions and To Improve Tribal-State Relations

1. Regain Credibility With The Parties

Paul Bisulca has described the need for MITSC to win back its constituents. We have focused on ensuring decisions and/or recommendations we have made, or tasks which we have been assigned, are implemented or completed. Governor Baldacci placed the idea of creating a Tribal College on the agenda of the May 8, 2006 Assembly of Governors and Chiefs. MITSC followed that meeting by working with Tribal and State leaders to hold a forum at the University of Maine with experts knowledgeable in difference aspects of Tribal Colleges to provide more information to decision makers. We helped convene two meetings of Tribal Leaders in the fall of 2006 to facilitate refinement of the idea and helped the Tribes form a Wabanaki Education Task Force to work on the Tribal College idea.

The Penobscot Nation requested we help resolve a dispute blocking renewal of the Atlantic Salmon Cooperative Agreement. We held numerous discussions with the Tribes, Maine Atlantic Salmon Commission, Attorney General's Office, Federal natural resource agencies, and MITSC Commissioners to resolve the dispute. Our understanding is the differences have been resolved and the agreement stands ready to be signed.

The Passamaquoddy Tribe asked MITSC to become involved to support the work of the Sipayik Criminal Justice Commission. MITSC has attended meetings with Legislative and Dept. of Corrections leadership and ensured agreed upon actions have taken place.

2. Secure Adequate Funding

When the Tribes suspended their participation in MITSC in 2003, they stopped supporting it financially. Both Tribes have paid their 2006 assessments and both intend to pay their 2007 contributions. The State of Maine has flat-funded MITSC at the level of \$34,277 for several years at the same time MITSC has become far more active. We requested \$40,000 in the Supplemental Budget to fill a budget deficit caused in part by work we performed staffing and otherwise supporting issues resulting from the May Assembly of Governors and Chiefs. Governor Baldacci has committed to increasing our funding by \$25,000 in fiscal year 2007. We sought a \$38,000 increase in our annual State appropriation for each year of the 2008-2009 biennium to support our projected workload. The Governor's budget continues to fund MITSC at \$34,277 per year. MITSC is also exploring financial support from the Federal Government. We have met with Representatives Allen and Michaud, have requests to meet with Senators Collins and Snowe, and continue to press for supplemental federal support for MITSC's work.

**What MITSC Is Doing That Should Be Of Interest To You:
Why We Are Here Talking About MITSC**

Pressure has been building to address certain provision of the Maine Implementing Act causing conflict between the Tribes and the State of Maine. Previous Maine Governors have refused to even hear Tribal concerns regarding contentious language in the Maine Implementing Act. Governor Baldacci has rejected the “deal is a deal” stance in favor of discussing the disputed provisions of the Maine Implementing Act. At the Assembly of Governors and Chiefs held May 8, 2006, he said, “Let’s review it, then make recommendations, work on them, come back with recommendations. I don’t think we have looked at it in 25 years.”

Governor Baldacci, in agreement with the five Wabanaki Leaders, signed an Executive Order July 10, 2006 creating the Tribal State Work-Group. He charged the Work-Group with “study(ing) differences in the interpretation and understanding of the Settlement Acts. The Work Group shall develop recommendations for how the 123rd Legislature might reconcile the issues in a manner that benefits both the Tribes and the State.” The Executive Order created a 13 member group comprised of two State Senators, Libby Mitchell and Kevin Raye, four State Representatives, Dick Blanchard, Joan Bryant-Deschenes, Joan Nass, and Deb Simpson, representatives from the five Tribal Governments, a representative from the Governor’s Office, Daryl Fort, and Paul Bisulca. The group met three times and issued a report December 6, 2006.

The Work Group recommends in its report adding the Maliseets to MITSC, holding the legislative orientation taking place right now, and continuing its work to address the provisions of the Maine Implementing Act subject to repeated dispute and litigation. Representative Blanchard has sponsored a legislative resolve to continue the Work Group with hopefully the same membership and expand it to include two more House members and both Tribal Representatives.

MITSC asks you to be open to the possible changes that the Tribal-State Work Group may propose. All the parties will gain if the Maine Implementing Act is amended to produce a document more universally understood and accepted.

Linda Sikkema will now speak and help place these issues that we have outlined in a national perspective.

Appendix III

Does a Multi-Tribal College Have a Role in Serving Wabanaki Educational Needs? September 13, 2006

Bangor Room, Memorial Union, University of Maine, Orono

Host: Chief James Sappier, Penobscot Nation

Speakers & Presenters: Dr. Edna Mora Szymanski, Provost, UMaine; Paul Bisulca, Chair, Maine Indian Tribal-State Commission (MITSC); Fenna Hanes, Senior Director of Programs, New England Board of Higher Education (NEBHE); Dr. Gerald Gipp, Executive Director, American Indian Higher Education Consortium; Dr. Darren Ranco, Asst. Professor of Native American Studies & Environmental Studies, Dartmouth College; Christine Legore, Director of Distance Learning, University of Maine System

People in Attendance: Chief Brenda Commander, Houlton Band of Maliseet Indians; Norma Bisulca, University of Maine @ Augusta; David Hart, Director, Mitchell Center, UMaine; Margo Lukens, Dept. of English, UMaine; Wayne Newell, Passamaquoddy Tribe; Tony Brinkley, Dept. of English/Franco-American Center, UMaine; Durward Huffman, Maine Community College System; Kirk Francis, Chief-elect, Penobscot Nation; John Banks, Penobscot Nation & MITSC; Daryl Fort, Office of Governor John Baldacci; Peter Cook, University of Maine System Office; Paul Thibeault, Pine Tree Legal; Rick Doyle, Governor-elect, Passamaquoddy Tribe @ Pleasant Point; Donald Soctomah, Passamaquoddy Tribal Representative-elect & MITSC; Gillian Jordan, University College of Bangor; John Bear Mitchell, Wabanaki Center, UMaine; Gail Dana, Wabanaki Center, UMaine; Maria Girouard, Wabanaki Center, UMaine; John Daigle, Parks Recreation & Tourism, UMaine; Donna Loring, Penobscot Tribal Representative-elect, Penobscot Nation; Mary Cathcart, NEBHE & Margaret Chase Smith Center, UMaine; Michael Hastings, MITSC; Greg Cunningham, MITSC; Mike Sockalexis, Penobscot Tribal Representative; Rep. Richard Blanchard, HD 14; Senator Elizabeth Schneider, SD 30; John Maddaus, College of Education & Human Development, UMaine; Mark Sanborn, Penobscot Nation; Tribal Council Member Brian Altvater, Passamaquoddy Tribe @ Pleasant Point, Mark Chavaree, Penobscot Nation and MITSC

Minutes recorded by John Dieffenbacher-Krall

Chief Sappier opened the meeting with an invocation. Provost Edna Szymanski welcomed the group to the University of Maine. She expressed her pleasure in providing meeting space for the important endeavor of expanding Wabanaki higher education opportunities.

Paul Bisulca delivered the following remarks. I am Paul Bisulca, Chair of the Maine Indian Tribal-State Commission, and on behalf of the commission I also would like to welcome you and thank you for participating in this meeting today.

One of the responsibilities of the Commission is to monitor the social relationship between the State and the Tribes of Maine. Education is one aspect of this social relationship. As you know from your letter of invitation, Governor John Baldacci asked Maine's Indian leaders to consider the issue of potentially locating in Maine a hub campus for a multi-tribal college. All five Wabanaki leaders on May 8th approved the concept of this issue as it was outlined by the United South and Eastern Tribes and the New England Board of Higher Education in a feasibility study published on November 30, 2005. Chief Sappier then volunteered to convey in a resolution to USET the sentiment of Maine's tribal and state governors and chiefs.

Why a Tribal College? In order to achieve cultural preservation and improved retention of Indians in institutions of higher learning.

In a meeting on July 24, it was clear that additional thought needed to be given to this idea of a tribal college in Maine before proceeding any further. Chief Sappier then accepted the Commission's recommendation and offer to assemble certain individuals with specific backgrounds who could help us to understand the various facets of this issue and to consider it in greater detail prior to making a final decision. This means that following today's meeting and with the benefit of our discussion, Maine's Governors and Chiefs will be asked to reaffirm their commitment to this initiative.

Before we begin our discussion, there will be four presentations. I thank Fenna Hanes, Dr. Gerry Gipp, Dr. Darren Ranco, and Christine LeGore for their willingness to do this. Our time is extremely short, so I ask that everyone hold his or her questions until after each presentation.

New England Board of Higher Education (NEBHE)/United South and Eastern Tribes (USET) *A Feasibility Study Toward Developing a Multi-Tribal College* – overview Fenna Hanes, Senior Director, Office of Programs, NEBHE
(See attached PowerPoint presentation)

Tribal Colleges – What are they, how they are created, typical partnerships with existing higher education institutions, funding – Dr. Gerald Gipp, Executive Director, American Indian Higher Education Consortium (AIHEC) (See attached PowerPoint presentation)

Tribal College Models – Dr. Darren Ranco, Asst. Professor of Native American Studies & Environmental Studies, Dartmouth College
(See attached PowerPoint presentation)

Distance Learning Issues – Christine Legore, Director of Distance Learning, University of Maine System
(See attached PowerPoint presentation)

Post Presentation Discussion/Remarks

Wayne Newell remarked it was wonderful to have this culmination of things that have been discussed informally over many years. I want to make a point about the issue of student

preparedness. The issue of preparedness tends to focus on academic preparedness. We also need to look at cultural and language issues. Institutions also need to examine what they need to do to prepare themselves for the entrance of more Indian students.

Tony Brinkley stated that the needs of Native American students have never been discussed in his presence during the numerous meetings he has attended during his association with the University of Maine. In practice, there is a real value to ownership, of having an institution focused on teaching Indian students. He reminded the group that the University of Maine has practical experience helping create new institutions of higher learning citing the birthing of the American University in Bulgaria.

Paul Thibeault agrees with Darren Ranco that a Tribal College can be viewed as an expression of Tribal self-determination. He sees several curriculum needs including natural resources, law enforcement, education and social work.

Durward Huffman told the group that Maine community colleges are occupationally focused. They have passed a resolution that 80% of their programs and classes will be focused on occupational preparation.

Penobscot Tribal Representative-elect Donna Loring stated we are at an interesting stage and an opportune time. We need to look at Tribal needs. Distance learning is perfect for meeting some of those needs. We need to have a larger vision. I would like to see the Tribes looking to the future. We need to be creative.

Gail Dana declared it was gratifying to hear so many people in the same room speak about the need to advance higher education for Native people. I have never heard this before. I would call for a decision-making process in which the Tribes work deliberately together to pursue this.

John Bear Mitchell relayed he was a victim of being pulled into the effort of exhorting Tribal members to get more education to qualify for jobs back at the reservation only to find none available upon their return. He knows of many instances of Tribal members encouraged to apply for jobs only to find they don't get them. How can there be changes made at the community level not through words but actions?

Gerald Gipp told the group Tribal College presidents would say a primary purpose of the institution is preserving the sovereignty of Tribes. Ownership of the institution is critically important as it allows the tailoring of courses to meet student needs. Mainstream institutions will never provide what Tribal Colleges can.

Governor-elect Rick Doyle said let's use this initiative to retain Tribal members on the reservation, not just to get more of them in school.

Paul Bisulca proposed that Tribal leaders have a meeting in two weeks to further discuss the Tribal College idea and to make a decision on how to proceed. Paul Bisulca asked all Tribal leaders in the room to engage their communities to get a take on what each community wants to

do on the issue. The expectation is to meet sometime during the week of September 25. Paul asked Tribal leaders if they wished to comment on the Tribal College concept.

Chief Brenda Commander stated for us (the Maliseets) a Tribal College would be an expression of hope. Our Tribal members are hesitant about leaving the reservation. During the 1970s, 1980s we were lucky to have even one member graduate from high school. Our students are discouraged from seeking higher education. Maliseets have many young children. A Tribal College could be something of interest to these kids. We established our own Head Start. The children do language, singing, drumming. The Head Start graduation is a big event for our people. I am more for the Tribal College than in the past.

Appendix IV

REPORT: SWEAT LODGE AT BOLDUC PRISON BY: JAMIE BISSONETTE

On May 18, the first Sweat Lodge Ceremony in Maine took place at Bolduc Minimum Security Prison near the Maine State Prison at Bolduc.

In the weeks leading up to the 18th, Denise and Brian Altvater dedicated much time to making all of the arrangements to the prison. They prepared a list of items that would need to be brought into the prison including the food prepared ahead for the feast after the Ceremony. Denise worked with the DOC to get all of these things approved. Denise collected all of the information and had all of the guests approved while Brian chopped the wood, cut and prepared the poles, gathered the rocks, and assembled kindling, cedar, mats, tarps and water. Without the dedication and commitment of Denise and Brian Altvater this Ceremony would not have taken place.

Two days before the Ceremony, Dave and Melissa Gehue traveled down from Nova Scotia. On the 17th Dave, Melissa, Denise, Brian, Tim Shaw (Penobscot) and Jamie Bissonette were trained as volunteers at the Maine State Prison at Warren. There was a very good spirit and cooperation from the Department of Corrections every step of the way. Arnie Neptune and his wife Jane came up on the 18th. Arnie had thought he would not be able to participate in the Ceremony because of his age and his health. When he arrived, he decided he wanted to enter the Lodge. One of the inmates shared clothing with Arnie so he could do this.

On the day of the Sweat Lodge Ceremony the weather was a huge barrier. It was 39 degrees and pouring down rain. The ground was soaked. Even so, we arrived at the prison expecting that the five volunteers would have to do all of the preparation work for the Lodge. We were greeted by the Superintendent, he explained that if the weather was too bad, we could reschedule. We explained that we would go ahead. To our surprise, the six men who were prepared to participate in the Lodge were released to assist in the preparations. This was as it should be.

The preparation went very well. Because Brian had prepared so carefully keeping all the wood in water tight plastic containers, the fire lit easily despite the heavy rain. Even though it was cold, we all worked efficiently.

Dave Gehue taught the men how to bend the poles and placed each pole in the ground. After the fire was lit, two of the men stepped back to look and said, "It has been so long since we have stood by a fire, or even seen one." There were smiles all around. Dave led the Ceremony. During the Ceremony, Denise led the women in song.

After the Ceremony, the men did not look the same. And they told us they did not feel the same. We prepared fry bread, real butter (another thing the men remarked that they had not seen in a long time), fruit, and molasses cake. It was deeply appreciated. The men made coffee for us

which was appreciated because it was so cold.

The men helped Brian clean up and we left the Lodge, the altar and the stones for the men.

The DOC never searched us, the truck or the men. They were supportive and kind, a few stopped by to look and ask a question or two. There was a good feeling and we all felt that it was a very good day.

Appendix V

June 20, 2007

Commissioner Martin Magnusson
Department of Corrections
111 State House Station
Augusta, Maine 04333-0111

Re: Exercise of Native American Religion in correctional facilities

Dear Commissioner Magnusson:

As you are aware, the Judiciary Committee has before it LD 507, An Act Recognizing Native American Religion in Maine Prisons and Jails. Passamaquoddy Tribal Representative Donald Soctomah introduced this bill to ensure Native American prisoners can exercise their religious rights. We agree with the bill's proponents that the State must accommodate Native Americans' exercise of their religious rights as well as others confined in the Maine prison system. The Judiciary Committee has voted to carry over LD 507 to give the Department of Corrections an opportunity to work with the Tribes to find mutually acceptable accommodations of the prisoner's religious rights.

The Religious Land Use and Institutionalized Persons Act (RLUIPA), Title 42 US Code Chapter 21C prohibits any government from imposing a substantial burden on the religious exercise of a person residing in or confined in an institution, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The United States Supreme Court has upheld RLUIPA against a facial challenge to the Act's constitutionality in Cutter v. Wilkinson, 544 U.S. 709 (2005). The Court recognized that the correctional institutions' need to maintain order and safety would not be overridden by RLUIPA's required accommodation of religious observances.

We encourage your Department to continue negotiations with the Sipayik Criminal Justice Commission to develop accommodations system-wide consistent with RLUIPA. Apart from the Sipayik Criminal Justice Commissions ongoing talks with Department officials, we understand a complaint has been filed in the federal court on behalf of the Sacred Feathers group comprised of some Native American prisoners housed at the Warren Prison. We hope that your ongoing discussions with the Sipayik Criminal Justice Commission and consultation with the other four Wabanaki Tribal Governments will forge an agreement and successful implementation that, **in addition to addressing system-wide issues, may facilitate resolution of at least some**

of the specific claims in the Sacred Feathers lawsuit. We are heartened by the information that a sweat lodge ceremony is scheduled to take place in May at the Bolduc Prison, and we encourage your Department's efforts to continue the dialogue with Tribally sanctioned groups, Wabanaki Governments, and Native American inmates.

We note that although LD 507 contemplates accommodation of specific Native American religious practices, RLUIPA has a much broader application. If we decide it is necessary to enact legislation at the State level, we may be inclined to follow the broader model, but still mention the Native American religious practices as those are the activities, when prohibited in the prisons, that have been the motivation for the legislation.

We look forward to progress reports on the negotiations. We hope that agreement can be reached soon. We will be taking up LD 507 again by the beginning of December, and we will be asking for your Department's participation in our deliberations.

Please feel free to contact us if you have any questions or need additional information.

Thank you for your assistance in this important matter.

Sincerely,

Sen. Barry J. Hobbins
Senate Chair

Rep. Deborah L. Simpson
House Chair

Cc: Rep. Donald Soctomah
Denise Altwater, Chair, Sipayik Criminal Justice Commission
Paul Bisulca, Chair, MITSC
John Dieffenbacher-Krall, Executive Director, MITSC
Dale Thistle, Esq.

Appendix VI

Comments of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC) in Support of the Penobscot River Restoration Project Presented September 20, 2006

Secretary Kempthorne and members of the panel, my name is John Dieffenbacher-Krall, Executive Director, of the Maine Indian Tribal-State Commission (MITSC). MITSC was created as a result of the Maine Indian Claims Settlement Act (MICSA) and the Maine Implementing Act (MIA). As you probably know, MICSA and MIA represent the legal embodiment of the agreement reached between Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation with the Federal and State governments to settle the land claims made by the three Tribes. I appear today on behalf of the Commission to offer my strong support of the Penobscot River Restoration Project (PRRP) as a model of increasing cooperation among federal agencies and states, tribes and local communities in working cooperatively to achieve mutual environmental goals.

§6207(3)(c) of MIA charges MITSC in part to “consider and balance the need to preserve and protect... the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes.” §6207(4) states “Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.” In part due to the five main stem dams on the Penobscot River, the Penobscot Nation cannot utilize fishing rights which belong to it. The successful completion of the Penobscot River Restoration Project would remove two main stem dams and provide a bypass to the Howland Dam creating the conditions for the return of thousands of sea-run fish now blocked from reaching Penobscot Nation waters. Restoration of these fisheries would signify the Federal and State governments faithfully adhering to their responsibilities to preserve and protect these fishery resources.

We commend the spirit of cooperation and explicit acknowledgement of each party’s interests that led to the Penobscot River Restoration Project. MITSC concurs that discussion, attentive listening and addressing real concerns can yield satisfying results as compared to litigation. We are actively promoting parties to share their concerns and negotiate before initiating litigation.

While the PRRP has achieved many important things to date, including a better working relationship among stakeholders with an interest in the Penobscot River, it will ultimately be judged by the successful removal of the main stem dams and the bypass of the Howland Dam. MITSC appeals to the Federal officials assembled here today to share with President Bush and all 535 members of Congress the need to appropriate sufficient money in fiscal year 2007 to get the work done. The good will and cooperation that has been built could be lost should the Federal Government fail to provide the needed funds for this project.

Thank you for considering our comments.