

MARCH 18, 1980

STATEMENT OF ATTORNEY GENERAL RICHARD  
S. COHEN REGARDING THE PROPOSED MAINE  
INDIAN LAND CLAIMS SETTLEMENT.

I AM PLEASED TO APPEAR BEFORE YOU THIS MORNING TO EXPLAIN THE PROPOSED SETTLEMENT OF THE LAND CLAIMS SUIT. THE DOCUMENTS I PROVIDED TO YOU LAST WEEK REPRESENT MORE THAN TWELVE MONTHS OF DIFFICULT NEGOTIATIONS WITH TRIBAL NEGOTIATORS AND CONSTITUTE WHAT I BELIEVE TO BE A FAIR AND EQUITABLE RESOLUTION TO THIS COMPLEX AND LONG-STANDING PROBLEM. IN THE FINAL ANALYSIS, I AM CONFIDENT THAT THE PROPOSED SETTLEMENT IS CLEARLY IN THE BEST INTEREST OF THE PEOPLE OF MAINE.

BEFORE EXPLAINING THE AGREEMENT, I THINK I SHOULD OUTLINE THE CIRCUMSTANCES SURROUNDING THE PREMATURE PUBLIC RELEASE OF THE DOCUMENTS. AS I AM SURE YOU CAN APPRECIATE, THE ACTUAL NEGOTIATION OF THE PROPOSED SETTLEMENT HAD TO BE CONDUCTED PRIVATELY. PUBLIC DISCUSSION OF EACH AND EVERY ISSUE WOULD MAKE NEGOTIATING A SETTLEMENT OF A LAWSUIT IMPOSSIBLE. HOWEVER, IN RECOGNITION OF THE CRITICAL LEGISLATIVE ROLE IN ANY SETTLEMENT, IT WAS MY

INTENTION TO FULLY BRIEF YOU, THE MAINE CONGRESSIONAL DELEGATION AND THE WHITE HOUSE BEFORE RELEASING THE PROPOSED AGREEMENT.

UNFORTUNATELY THOSE PLANS WERE UPSET BY THE PREMATURE RELEASE. AS I UNDERSTAND IT, A MEMBER OF THE PENOBSCOT NATION, IN AN EFFORT TO DERAIL THE SETTLEMENT, RELEASED ALL THE DOCUMENTS TO THE BANGOR DAILY NEWS LAST THURSDAY, MARCH 13. COINCIDENTALLY, ON THAT SAME DAY, I WAS IN THE PROCESS OF BRIEFING THE MAINE LEGISLATIVE LEADERSHIP AND HAD ALREADY SCHEDULED A MEETING WITH THE CONGRESSIONAL DELEGATION WHEN I LEARNED OF THE LEAK. AFTER CONSULTATION WITH ALL THE LEADERSHIP, I DECIDED TO PROVIDE COPIES OF THE DOCUMENTS TO YOU BEFORE YOU LEARNED OF THE PROPOSAL THROUGH THE PRESS. I ALSO DECIDED TO RELEASE THE DOCUMENTS TO THE PRESS AT THE SAME TIME WITH A BRIEF STATEMENT PLACING THE PROPOSAL IN THE PROPER CONTEXT.

IT WAS REGRETTABLE THAT THE DOCUMENTS WERE RELEASED IN THIS MANNER AND WITHOUT ADEQUATE PRIOR CONSULTATION WITH YOU. I AM SURE

YOU CAN APPRECIATE, HOWEVER, THAT THE UNAUTHORIZED RELEASE WAS DUE TO CIRCUMSTANCES BEYOND MY CONTROL.

BEFORE DISCUSSING THE DETAILS OF THE AGREEMENT, I THINK IT WOULD BE USEFUL TO REVIEW THE HISTORY OF THE LAND CLAIMS CASE AND RELATED LITIGATION INVOLVING INDIAN RIGHTS IN MAINE. WHILE I UNDERSTAND THAT GOVERNOR BRENNAN, WHEN ATTORNEY GENERAL, PROVIDED NUMEROUS MEMORANDA TO THE LEGISLATURE, I SUSPECT THAT THROUGH THE PASSAGE OF TIME SOME OF THE EVENTS AND ISSUES HAVE BECOME BLURRED

THE LAND CLAIM CASE IS BASED ON A CLAIM BY THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION AND THE HOULTON BAND OF MALISEET INDIANS THAT THE LAND IN MAINE ORIGINALLY POSSESSED BY THEM WAS TAKEN IN VIOLATION OF THE INDIAN TRADE AND INTERCOURSE ACT. THE TRADE AND INTERCOURSE ACT, WHICH WAS ORIGINALLY ENACTED IN 1790 AND WHICH HAS BEEN A PART OF FEDERAL LAW EVER SINCE, PROVIDES IN ESSENCE THAT NO ONE MAY ACQUIRE LAND FROM AN INDIAN TRIBE EXCEPT PURSUANT TO A TREATY UNDER THE CONSTITUTION OF THE UNITED STATES. THE PASSAMAQUODDYS AND PENOBSCOTS CLAIM THAT MASSACHUSETTS, OF WHICH MAINE WAS A DISTRICT UNTIL 1820, ACQUIRED THEIR LANDS

THROUGH A SERIES OF ILLEGAL AGREEMENTS IN 1794, 1796 AND 1818. THE PENOBSCOTS ALSO CLAIM THAT MAINE ILLEGALLY PURCHASED SOME LAND FROM THEM IN 1833. THE MALISEET INDIANS DO NOT, SO FAR AS WE KNOW, LOOK TO ANY PARTICULAR DOCUMENTS BUT CLAIM GENERALLY THAT THEIR LANDS WERE TAKEN FROM THEM THROUGH SETTLEMENT BY NON-INDIANS. THE SIZE OF THE TOTAL AREA IN QUESTION HAS NEVER BEEN PRECISELY DEFINED BUT COULD INVOLVE MOST OF THE EASTERN HALF OF MAINE, INCLUDING THE ST. JOHN RIVER BASIN, BUT NOT INCLUDING THE IMMEDIATE COASTAL AREAS OF THE STATE.

CHRONOLOGICALLY THE LAND CLAIMS BEGAN IN 1972 WHEN THE PASSAMAQUODDYS AND PENOBSCOTS FIRST REQUESTED THE UNITED STATES DEPARTMENT OF INTERIOR TO SUE THE STATE OF MAINE ON BEHALF OF THOSE TRIBES FOR RECOVERY OF THEIR LANDS. AT THAT TIME THE DEPARTMENT OF INTERIOR REFUSED, ARGUING THAT IT HAD NO TRUST OBLIGATION TO THOSE INDIANS AND HENCE NO RESPONSIBILITY TO PURSUE A LAND CLAIM SUIT ON THEIR BEHALF. THEREAFTER THE TRIBES SUED THE DEPARTMENT OF INTERIOR IN THE UNITED STATES DISTRICT COURT SEEKING THE JUDICIAL DECLARATION OF SUCH TRUST RESPONSIBILITY. THE STATE OF MAINE INTERVENED IN THE SUIT AS A DEFENDANT ALONG

WITH THE UNITED STATES.

AT THE SAME TIME THAT THE SUIT WAS INITIATED THE TRIBES OBTAINED A COURT ORDER COMPELLING THE UNITED STATES TO SUE MAINE IN ORDER TO TOLL THE THEN APPLICABLE STATUTE OF LIMITATIONS. THE UNITED STATES SUED THE STATE IN MID-1972 ASKING FOR \$300,000,000 IN DAMAGES FOR THE PASSAMAQUODDY TRIBE AND THE PENOBSCOT NATION. THOSE CASES WERE ORDERED HELD IN ABEYANCE PENDING THE OUTCOME OF THE PRINCIPAL SUIT BY THE TRIBES AGAINST THE SECRETARY OF INTERIOR. IT SHOULD ALSO BE NOTED THAT IN ADDITION TO CLAIMING THAT THE LANDS WERE TAKEN ILLEGALLY, THE SUITS ALSO ALLEGED THAT (1) MAINE HAD HISTORICALLY MISMANAGED TRIBAL TRUST FUNDS, (2) MAINE HAD DENIED THE INDIANS THEIR CONSTITUTIONALLY PROTECTED CIVIL RIGHTS, INCLUDING THE RIGHT TO VOTE, (3) MAINE HAD BREACHED THE ORIGINAL TREATIES WITH THE TRIBES AND HAD FAILED TO DELIVER GOODS REQUIRED BY THE TRIBES, AND (4) MAINE HAD ILLEGALLY TAKEN OR SOLD LAND RESERVED TO THE INDIANS BY THOSE TREATIES. IT IS THOSE ORIGINAL SUITS AGAINST THE STATE WHICH ARE THE SUBJECT OF THE PROPOSED AGREEMENT.

THE SUIT BY THE TRIBES AGAINST THE UNITED STATES, KNOWN AS PASSAMAQUODDY V. MORTON, PROCEEDED TO JUDGMENT IN THE DISTRICT COURT WITH THAT COURT CONCLUDING THAT THE UNITED STATES DID IN FACT HAVE A TRUST RESPONSIBILITY TO THE TRIBES BY VIRTUE OF THE TRADE AND INTERCOURSE ACT. THAT DECISION WAS APPEALED TO THE CIRCUIT COURT OF APPEALS WHICH AFFIRMED THE DECISION THAT THE UNITED STATES HAD A TRUST RESPONSIBILITY TO THE TRIBES BUT LEAVING OPEN THE QUESTION OF WHETHER MAINE OR MASSACHUSETTS HAD IN FACT EVER VIOLATED THE ACT.

AFTER THE DECISION OF THE COURT OF APPEALS IN <sup>1975</sup> 1976, THE UNITED STATES DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF INTERIOR UNDERTOOK TO EVALUATE THE VALIDITY OF THE LAND CLAIMS. IN LATE 1976 THE UNITED STATES DEPARTMENT OF INTERIOR ANNOUNCED ITS INTENTION OF RECOMMENDING TO THE JUSTICE DEPARTMENT THAT IT PURSUE THE LAWSUIT AGAINST MAINE AND AGAINST ALL PERSONS OCCUPYING LAND CLAIMED BY THE PASSAMAQUODDY TRIBE OR PENOBSCOT NATION. AS MOST OF YOU RECALL, THOSE ANNOUNCEMENTS PRECIPITATED THE POSTPONEMENT OF STATE AND LOCAL BOND ISSUES, CREATED TURMOIL IN THE REAL ESTATE AND TITLE BARS, AND AROUSED WIDESPREAD PUBLIC

CONCERN. I THINK IT IS FAIR TO SAY THAT IN LATE 1976 AND EARLY 1977 THE EXISTENCE OF THE LAND CLAIMS SUIT CONSTITUTED A SERIOUS LEGAL, ECONOMIC AND SOCIAL PROBLEM TO MAINE CITIZENS.

BECAUSE OF THE OBVIOUS TURMOIL CREATED BY THE CLAIM, THE UNITED STATES GOVERNMENT INITIATED A SERIES OF EFFORTS TO SETTLE THE SUIT. THE FIRST SUCH EFFORT INVOLVED JUDGE WILLIAM GUNTER, A RETIRED GEORGIA STATE SUPREME COURT JUSTICE WHO IN MARCH 1977 WAS APPOINTED AS SPECIAL REPRESENTATIVE OF THE PRESIDENT TO INQUIRE INTO THE SUITS. JUDGE GUNTER EXAMINED THE MATTER, MET WITH THE PARTIES AND IN THE FALL OF 1977 PROPOSED A SETTLEMENT WHICH CALLED FOR A PAYMENT OF \$25,000,000 TO THE TWO TRIBES PLUS A PROPOSAL THAT THE STATE PROVIDE 100,000 ACRES OF PUBLIC LAND TO THE TRIBES. THIS PROPOSAL WAS REJECTED BY ALL PARTIES AND DID NOT BECOME THE BASIS FOR SETTLEMENT.

IN THE LATE FALL OF 1977 THE WHITE HOUSE APPOINTED A SPECIAL WORK GROUP TO RE-EXAMINE THE CLAIM. AFTER EXTENDED NEGOTIATIONS WITH THE TRIBES, THE WORK GROUP CAME TO MAINE IN FEBRUARY 1978 AND PUBLICLY REPORTED ON A NEW PROPOSAL FOR SETTLEMENT. THIS PROPOSAL CONTEMPLATED A FEDERAL PAYMENT OF \$25,000,000, A STATE

PAYMENT OF \$25,500,000 TO BE MADE OVER 15 YEARS, AND 300,000 ACRES OF PRIVATE LANDS, FOR WHICH LANDOWNERS WOULD BE REIMBURSED \$5.00 PER ACRE BY THE FEDERAL GOVERNMENT. THE TOTAL VALUE OF THIS PROPOSAL TO THE TRIBES WAS ROUGHLY \$90,000,000. AGAIN, THIS SECOND PROPOSAL WAS REJECTED BY THE STATE AND DID NOT BECOME THE BASIS FOR SETTLEMENT.

FINALLY, IN OCTOBER 1978 THE WHITE HOUSE ANNOUNCED A THIRD SETTLEMENT PLAN THROUGH THEN SENATOR WILLIAM HATHAWAY. THIS SETTLEMENT CONSISTED OF A \$27 MILLION PERMANENT TRUST FUND, A \$10 MILLION LAND ACQUISITION FUND TO BUY 100,000 ACRES OF LAND AND \$25 MILLION IN GRANTS AND LOANS, ALL TO BE PROVIDED BY THE FEDERAL GOVERNMENT. THE TOTAL VALUE OF THIS PROPOSAL WAS ROUGHLY \$62 MILLION. NO PAYMENT FROM THE STATE WAS PROPOSED BY THE WHITE HOUSE. THIS PROPOSAL WAS AGREED TO BY GOVERNOR LONGLEY, ATTORNEY GENERAL BRENNAN, SENATOR MUSKIE, SENATOR HATHAWAY, REPRESENTATIVE COHEN AND REPRESENTATIVE EMERY. THE TRIBES, HOWEVER, NEVER ACCEPTED THE PLAN AND ULTIMATELY REJECTED IT ON THE GROUND THAT THEY HAD BEEN LED TO BELIEVE THEY WERE ENTITLED TO MORE UNDER THE TERMS OF THE FEBRUARY 1978 WORK GROUP PROPOSAL.



WHEN I TOOK OFFICE IN 1979 ONE OF MY FIRST TASKS WAS TO FAMILIARIZE MYSELF WITH THE LAND CLAIMS CASE AND TO INDEPENDENTLY EVALUATE IT. TO THAT END I CONFERRED WITH MY OWN STAFF AND ALSO ENGAGED JAMES ST. CLAIR, ONE OF THE MOST RESPECTED TRIAL ATTORNEYS IN THE COUNTRY, TO REVIEW THE CASE. MY CONCLUSION WAS THAT IF THE MATTER WENT TO TRIAL THE STATE AND ITS CITIZENS WOULD PROBABLY PREVAIL. NEVERTHELESS, MY ADVISORS AND I RECOGNIZED THAT WE WERE DEALING IN PROBABILITIES AND THAT THERE WAS A SERIOUS CHANCE THAT THE STATE AND SOME OF ITS CITIZENS MIGHT HAVE SOME SUBSTANTIAL LIABILITY. WHILE I CANNOT STATE WITH PRECISION THE DEGREE OF RISK, GIVEN THE COMPLEXITY OF THE SUIT AND THE SIZE OF POTENTIAL LIABILITY, I CONCLUDED THAT THERE WAS AND IS A REAL AND SERIOUS RISK THAT COULD NOT BE IGNORED.

IN ADDITION, I CONCLUDED THAT ANY TRIAL ON THE MERITS WOULD BE ENORMOUSLY COSTLY AND TIME CONSUMING WITH LEGAL AND EXPERT WITNESS FEES RUNNING THE STATE ALONE MORE THAN \$1 MILLION. I ALSO CONCLUDED THAT DURING THE PENDENCY OF THE 5 TO 6 YEARS WHICH IT WOULD TAKE TO REACH THE SUPREME COURT, THE STATE AND ITS CITIZENS WOULD MOST PROBABLY EXPERIENCE SERIOUS ECONOMIC AND

SOCIAL DISRUPTION WITH TITLES AND BOND ISSUES IN TURMOIL DURING THAT PERIOD. WITH THOSE POSSIBILITIES FACING THE STATE, I CONCLUDED THAT I HAD AN OBLIGATION TO EXPLORE A SETTLEMENT. THAT UNDERTAKING CULMINATED IN THE PROPOSAL WHICH YOU HAVE SEEN.

THE SETTLEMENT BEFORE YOU INVOLVES THREE BASIC ELEMENTS. FIRST, THERE IS AN AGREEMENT BETWEEN THE STATE AND THE TRIBES SPECIFYING THE LAWS THAT WILL APPLY TO THE HISTORIC RESERVATIONS AND THE NEWLY ACQUIRED LANDS. THE AGREEMENT WILL BE OFFERED IN THE FORM OF A PRIVATE AND SPECIAL LAW TO BE ENACTED BY THE LEGISLATURE. BECAUSE THIS LAW WILL, UNDER THE UNITED STATES CONSTITUTION, REQUIRE APPROVAL BY CONGRESS, IT MUST PRECEDE ANY OTHER ACTION.

SECOND, AS PART OF THE SETTLEMENT CERTAIN LANDOWNERS HAVE AGREED TO SELL, AT FAIR MARKET VALUE, 300,000 ACRES OF LAND TO THE TRIBES. THE LAND WILL COME NOT JUST FROM PAPER COMPANIES, BUT ALSO FROM NUMEROUS SMALLER LANDOWNERS. THE PERIOD OF TIME FOR ACQUIRING THE LANDS WILL BE SPECIFIED IN THE AGREEMENT AND THE LEGAL STATUS OF EACH PIECE WILL BE EXPLICITLY SET FORTH. THE LOCATION OF THOSE LANDS IS STILL UNDER NEGOTIATION AND WHEN

THE TRIBES AND LANDOWNERS HAVE REACHED FINAL AGREEMENT WE WILL HAVE A COMPREHENSIVE MAP PREPARED AND DISTRIBUTED TO YOU.

THIRD, UNDER THE SETTLEMENT CONGRESS WOULD EXTINGUISH ALL ABORIGINAL INDIAN CLAIMS TO LAND IN THE STATE OF MAINE. IN RETURN, THE TRIBES WOULD RECEIVE COMPENSATION CONSISTING OF A \$27 MILLION TRUST FUND FOR THE PASSAMAQUODDY AND PENOBSCOT TRIBES AND A \$54.5 MILLION LAND ACQUISITION FUND FOR THE PASSAMAQUODDY, PENOBSCOT AND MALISEETS TO ENABLE THEM TO BUY UP TO 300,000 ACRES OF LAND. THE FEDERAL LAW WILL ALSO RATIFY THE STATE LAW THEREBY GIVING LEGAL VALIDITY TO THE JURISDICTIONAL AGREEMENT.

SINCE I HAVE PREVIOUSLY PROVIDED A DETAILED OUTLINE OF THE SETTLEMENT DOCUMENTS TO YOU, I DO NOT THINK IT NECESSARY TO REPEAT IN MY REMARKS TODAY ALL THE ITEMS IN THAT OUTLINE. HOWEVER, I THINK A FEW IMPORTANT POINTS SHOULD BE HIGHLIGHTED.

FIRST, THE PROPOSAL BEFORE YOU INVOLVES NO STATE LAND OR MONEY. CONTRARY TO SOME RUMORS, NO STATE PUBLIC LOTS WILL BE SOLD OR GIVEN TO THE TRIBES BY THE SETTLEMENT. WE PROPOSE THAT THE FEDERAL GOVERNMENT FUND THIS SETTLEMENT AS IT HAS ELSEWHERE THROUGHOUT THE UNITED STATES. IN FACT, THE PRESIDENT HIMSELF, IN PROPOSING

A SETTLEMENT THROUGH SENATOR HATHAWAY IN 1978, AGREED THAT MAINE'S HISTORIC FINANCIAL SUPPORT OF THE MAINE TRIBES RELIEVED THE STATE OF ANY OBLIGATION TO FUND THIS SETTLEMENT.

SECOND, THE TOTAL COST OF THIS SETTLEMENT IS CONSISTENT WITH THE WHITE HOUSE PROPOSAL OF FEBRUARY 1978. THAT PROPOSAL HAD A TOTAL VALUE TO THE TRIBES OF APPROXIMATELY \$90,000,000. IN ADDITION, IT WAS THAT PROPOSAL BY THE WHITE HOUSE, WHICH I UNDERSTAND WAS ENDORSED BY THE PRESIDENT, WHICH INDICATED THAT 300,000 ACRES WAS A FAIR LAND SETTLEMENT FOR THE MAINE TRIBES. THE FIGURES IN THE CURRENT PROPOSAL WERE NOT CREATED OUT OF WHOLE CLOTH, BUT WERE BASED ON AN EARLIER PROPOSAL BY THE WHITE HOUSE.

THIRD, CONTRARY TO SOME RUMORS, NO LAND WILL BE TAKEN BY EMINENT DOMAIN TO SELL TO INDIANS FOR THIS SETTLEMENT. THE LANDS TO BE ACQUIRED BY THE TRIBES WILL BE FROM WILLING SELLERS AT FAIR MARKET VALUE. ALL THESE LANDS HAVE NOT YET BEEN AGREED UPON BUT WHEN THEY ARE, YOU WILL BE ABLE TO REVIEW THEM BEFORE APPROVING THE LEGISLATION IMPLEMENTING THE AGREEMENT.

FOURTH, CONTRARY TO SOME REPORTS THE PAPER COMPANIES WILL NOT MAKE AN UNFAIR PROFIT BY THIS SETTLEMENT. THE PROPOSED

FEDERAL BILL MERELY PROVIDES THAT THE SELLERS PAY NO CAPITAL GAINS TAXES, IF AND ONLY IF THEY REINVEST ANY MONEY RECEIVED WITHIN THREE YEARS IN LIKE PROPERTY. IF NO REINVESTMENT IS MADE THE SELLER PAYS ALL CAPITAL GAINS TAXES. IT SHOULD BE NOTED THAT ABSENT THIS PROVISION THERE MIGHT BE NO AGREEMENT SINCE THERE WOULD BE SERIOUS TAX DISINCENTIVES TO COMPANIES SELLING LANDS WHICH HAVE A VERY LOW TAX BASIS. SINCE IT IS IN OUR INTEREST TO ENCOURAGE LANDOWNERS TO SELL LAND TO THE TRIBES IN ORDER TO FACILITATE THE SETTLEMENT, IT IS ONLY FAIR THAT THEY NOT INCUR SUBSTANTIAL TAX LIABILITIES WHEN DOING SO.

FIFTH, THE TOTAL COST OF THIS SETTLEMENT IS COMPARABLE TO OTHER SETTLEMENTS THROUGHOUT THE COUNTRY. FOR EXAMPLE, CONGRESS ENACTED AND THE PRESIDENT SIGNED A BILL TO SETTLE THE RHODE ISLAND LAND CLAIM THAT PROVIDED \$3 MILLION TO SETTLE A CLAIM OF ROUGHLY 3,000 ACRES. IF THAT PAYMENT WERE EXTRAPOLATED TO MAINE A FAR LARGER SETTLEMENT WOULD BE CALLED FOR HERE THAN THAT WHICH IS BEFORE YOU. IN NEW YORK, THE CONGRESS IS NOW CONSIDERING A BILL SUPPORTED BY THE ADMINISTRATION TO PAY \$8 MILLION TO SETTLE A CLAIM LESS THAN ONE PERCENT OF MAINE'S AND FOR A TRIBE ONE-TENTH AS LARGE.

IN ALASKA, CONGRESS AGREED TO PAY \$1 BILLION AND GAVE 40,000,000 ACRES OF FEDERAL LAND TO SETTLE A CLAIM. THE PROPOSAL BEFORE YOU IS CERTAINLY NOT OUT OF LINE WITH THOSE SETTLEMENTS.

FINALLY, THE LEGAL RELATIONSHIP BETWEEN THE STATE AND THE TRIBES IS UNIQUE AND MAY BECOME A MODEL TO WHICH OTHER STATES MAY LOOK IN THE FUTURE. IT IS BASED ON THE PRINCIPLE THAT ALL MAINE LAWS MUST APPLY TO ALL LAND AND CITIZENS WITHIN THE STATE AND THAT WE MUST LIVE UNDER ONE SYSTEM OF LAWS WHICH GOVERNS US ALL. WITHIN THIS GENERAL FRAMEWORK, THE SETTLEMENT RECOGNIZES A LEGITIMATE MEASURE OF TRIBAL AUTONOMY ON MATTERS BASICALLY RELATING TO INTERNAL TRIBAL OPERATIONS. IN THOSE FEW INSTANCES WHERE SPECIAL POWERS WILL BE EXERCISED BY THE TRIBES, SUCH AS IN THE REGULATION OF HUNTING AND FISHING, THOSE POWERS ARE SUBJECT TO THE RESIDUAL SUPERVISORY AUTHORITY OF THE STATE. ANYONE REMOTELY FAMILIAR WITH INDIAN-STATE JURISDICTIONAL ISSUES IS AWARE OF THE FACT THAT THROUGHOUT THE COUNTRY, STATES AND TRIBES ARE IN CONTINUAL BATTLES OVER WHETHER STATE TAX, ENVIRONMENTAL, LAND USE, CRIMINAL AND OTHER LAWS APPLY ON INDIAN LANDS. IN MOST CASES THE

INDIAN TRIBES ARE WINNING THOSE LAWSUITS. THIS SETTLEMENT GAINS FOR THE STATE A MEASURE OF CONTROL OVER INDIAN LANDS UNLIKE THAT IN ANY OTHER STATE. IN ADDITION, IT WILL AVOID THE SERIOUS ACRIMONY BETWEEN INDIAN AND NON-INDIAN COMMUNITIES, AS WELL AS THE CONTINUOUS AND CONFUSING LITIGATION, WHICH HAS OCCURRED IN OTHER STATES.

BEFORE CLOSING, LET ME ADD A BRIEF ADDITIONAL COMMENT ON THE AMOUNT OF FEDERAL MONEY CALLED FOR UNDER THE PROPOSED SETTLEMENT. 81 MILLION DOLLARS IS A SUBSTANTIAL SUM OF MONEY BY ANY MEASURE, ESPECIALLY IN THESE TIMES WHEN WE ARE ALL AWARE OF THE LIMITS ON THE STATE AND FEDERAL BUDGETS. THIS FIGURE MUST, HOWEVER, BE CONSIDERED IN THE CONTEXT OF THE POTENTIAL LIABILITY IN THIS CASE TO THE STATE AND ITS CITIZENS, INCLUDING AS MUCH AS 12.5 MILLION ACRES OF LAND AND TRESPASS DAMAGES WHICH IT HAS BEEN ESTIMATED COULD AMOUNT TO 25 BILLION DOLLARS. IN ASSESSING THE REASONABLENESS OF ANY SETTLEMENT, IT IS IMPOSSIBLE TO IGNORE THE EXTENT OF THE POTENTIAL LIABILITY.

MY DECISION TO RECOMMEND THIS SETTLEMENT TO THE PEOPLE OF THE STATE OF MAINE AND TO THEIR ELECTED REPRESENTATIVES WAS NOT ONE WHICH I MADE LIGHTLY. RATHER, IT WAS MADE AFTER A VERY

CAREFUL ANALYSIS OF THE LAND CLAIM, THE RISKS INVOLVED IN PROCEEDING TO TRIAL ON THAT CLAIM AND THE LEGAL STATUS OF INDIANS IN OTHER PARTS OF THE COUNTRY. WHEN VIEWED AGAINST THAT BACKDROP, I BELIEVE THE PROPOSED SETTLEMENT PACKAGE IS SOUND AND PRUDENT. AS YOUR ATTORNEY GENERAL, I WOULD NOT BE STANDING BEFORE YOU TODAY IF I WERE NOT CONVINCED THAT THE PROPOSED SETTLEMENT IS TRULY IN THE BEST INTERESTS OF ALL OF THE PEOPLE OF OUR STATE.