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July 18, 1980

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Native American Rights Fund  
178 Middle Street  
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Dear Tom:

The following is a draft for Sections 5, Y, and 6(d) - (h). Please give me a call Monday so that we can reach agreement. If we agree, feel free to share it with the State at your meeting on Tuesday. I have drafted a new Section 6(h) omitting the last sentence in the State's draft. The last sentence of 6(h) is covered by 6(a) - which confers full State jurisdiction except as otherwise provided in Section 6 as I see it. If I misunderstand the issue I am willing to accommodate in some other way. But lands beneficially held by the Band in Indian territory are - to a limited extent as provided in Section 6(b) - exempt from State jurisdiction.

In Section 5(d), beginning line 1, p. 13, strike the rest of the section and provide:

"The Secretary is authorized and directed to  
expend, with the consent of the affected Tribe,  
Nation or Band, the principal and any income  
accruing to the respective portions of the Land

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Acquisition Fund for the purpose of acquiring land for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. Land acquired within the Passamaquoddy Indian Territory and Penobscot Indian Territory shall be held in trust by the United States in trust for the respective Tribe or Nation, provided that land acquired for the Houlton Band of Maliseet Indians within such Indian Territories shall be held by the respective Tribe or Nation in trust for the Houlton Band of Maliseet Indians. Land outside the boundaries of Indian Territory as defined in the Maine Implementing Act or subsequent State legislation shall be held in fee simple by the respective Tribe, Nation or Band, and the United States shall have no further trust responsibility with respect thereto; provided however that should the Houlton Band of Maliseet Indians at any time cease to hold fee title to any such lands acquired for it under this Act, title to such lands shall automatically revert, one-half to the Passamaquoddy Tribe and one-half to the Penobscot Nation. Except for the

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provisions of this section, the United States shall have no other authority to acquire lands in trust for the benefit of Indians or Indian tribes in the State of Maine."

Section Y -

(a) The Passamaquoddy Tribe, Penobscot Nation or Houlton Band of Maliseet Indians may elect to adopt the provisions of the Act of June 18, 1934, 25 U.S.C. 461 et seq., provided that such election shall in no way diminish or affect the civil, criminal or regulatory jurisdiction of the State of Maine as provided in this Act and the Maine Implementing Act.

(b) If the Passamaquoddy Tribe, Penobscot Nation or Houlton Band of Maliseet Indians elects not to adopt the provisions of the Act of June 18, 1934, 25 U.S.C. 461, said Tribe, Nation or Band may organize for their common welfare, and adopt a written constitution to govern the affairs of the Tribe, Nation or Band when it

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is acting in its governmental capacity. Such constitution and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act and shall be filed with the Secretary of the Interior.

(c) Any business corporation created by the Passamaquoddy Tribe, Penobscot Nation, or the Houlton Band of Maliseet Indians for the purpose of conducting part or all of the proprietary affairs of such tribe, nation, or band shall not constitute a corporation within the meaning of Section 11 of the Internal Revenue Code of 1954, as amended, for purposes of federal taxation, provided, however, that any business corporation created by the Passamaquoddy Tribe, Penobscot Nation or Houlton Band of Maliseet Indians or any member thereof shall be subject to the laws of the State of Maine.

Section 6(h) -

"The consent of the United States is hereby given to the State of Maine to enact appropriate legislation implementing any agreement with the Houlton Band of Maliseet Indians relating to (1) the enforcement or

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application of civil, criminal or regulatory laws of the State over lands owned by the Band; (2) allocation or determination of governmental responsibility of the State and the Band over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Band; or (3) the allocation of jurisdiction between tribal courts and State courts."

I have re-read the Act, and all agreed-upon technical clarifications, and think a few (I hope minor) modifications are needed to incorporate the "trust-on-a-trust" concept:

1. Add the words "as provided herein" at the end of Section 2(b)(4), since to a very limited extent lands of the Houlton Band will be exempt from State civil and tax laws.

2. In new Section 5(e)(3), Vollmann draft 7/10, strike "the Houlton Band of Maliseet Indians" in the preamble; and strike (vi), and add after (v):

"The consent of the Passamaquoddy Tribe or Penobscot Nation shall be required for the transfers authorized in this section of any lands held in trust

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for the benefit of the said Tribe or Nation, except that only the consent of the Houlton Band of Maliseet Indians shall be required for any transfer authorized in this section of any lands to which said Band holds any beneficial title."

3. In Section 6(b), on page 16, lines 11 and 12, strike "subsection (d)" and add "subsections (d) and (h)", to cover the new 6(h) attached.

If we adopt the "trust-on-a-trust concept", the pertinent committee reports should state something like the following:

Lands to be acquired for the  
Houlton Band of Maliseet Indians

After the negotiations toward settlement had substantially solidified into a concrete proposal of \$27 million and 300,000 acres, the Houlton Band of Maliseet Indians formally asserted an aboriginal land claim in northern Maine. The Passamaquoddy Tribe and Penobscot Nation decided to contribute 1.67 percent of the land acquisition fund to acquire lands for the Band. Also, the United States, the State and the tribes agreed that the Band should be recognized as an Indian tribe by Congress, and hereafter entitled to all federal services and benefits because of its status as an Indian tribe.

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The two tribes and the State had already identified lands to be included within the Passamaquoddy and Penobscot Indian Territories, and their settlement arrangement had been that lands outside these Indian Territories would not be held in trust or subject to restrictions on alienation. The Maine Implementing Act was passed by the State legislature so providing shortly after the tribes and State became aware of the Maliseet claim. So that lands could be acquired in trust for the benefit of the Houlton Band, it was decided to provide in Section 5(d) of the federal bill that lands could be acquired within the Passamaquoddy Indian Territory and Penobscot Indian Territory and held in trust for the Passamaquoddy Tribe and Penobscot Nation by the United States, with the respective Tribe or Nation in turn holding the lands in trust for the Houlton Band. Thus, lands so held within the Indian Territory of either the Tribe or Nation will be restricted against alienation and not subject to State real or personal property taxes. However, payments in lieu of taxes will be made under Section 6208 of the Maine Implementing Act, and all other provisions of that Act affecting Indian Territory will pertain to these lands. (The Committee understands that the State and the Tribes agree that lands

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within the Passamaquoddy Indian Territory and Penobscot Indian Territory held in trust by those tribes for the Houlton Band are not considered "lands held in common with any other person or entity" under Section 6205 of the Maine Implementing Act.)

Since the Indian Territory of the Passamaquoddy Tribe and Penobscot Nation had been identified in the State legislation with the needs of those two tribes in mind, no land in eastern Aroostook County had been included in either Indian Territory. This created a particular problem in acquiring lands for the Houlton Band, since the vast majority of Band members live in the vicinity of Houlton, Maine. Also, since - unlike the Passamaquoddy Tribe and Penobscot Nation - the Band has no State reservation, it has greater need for lands near where its members live. However, time did not permit legislative adjustment to this problem.

The acquisition of lands for the Band within the existing Indian Territories is hoped by the State and the Band to be a temporary expedient for this problem. The Committee



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understands that responsible leaders of the State intend to work with the Band to locate suitable lands close to their homes in eastern Aroostook County for ultimate acquisition in trust for the Band, and that the State and the Band will use their best efforts to have those lands identified, included within Indian Territory, and acquired. New State legislation must be enacted to accomplish this. Lands within existing Indian Territory can be exchanged pursuant to Section 5(e)(3) of the bill when this is done. And under Section 6(h) of the bill, the State and the Band are afforded latitude to adjust jurisdictional relationships by agreement.

Lands within the Indian Territories may be held in trust indefinitely for the Houlton Band. However, since the lands to be acquired for the Band were contributed to the settlement package by the other two tribes agreeing to a reduction, if for any reason the Houlton Band does cease to hold title to any lands acquired for it under the Act, full title, fee or equitable as the case may be, to them would be held by its trustee, the Passamaquoddy Tribe or Penobscot Nation.

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Otherwise, neither the Passamaquoddy Tribe nor the Penobscot Nation will exercise any active trust responsibility for these lands as long as they are beneficially owned by the Houlton Band. While formal governmental authority over the lands will be held by the Passamaquoddy Tribe and Penobscot Nation, the Tribe and Nation have irrevocably agreed that any legislative ordinance or other governmental action by the Houlton Band relative to those lands shall without further action become automatically the action of the respective Tribe or Nation that serves as trustee for the lands in question.

Please telephone me when you have reviewed these suggestions.

Best personal regards,

Sincerely,

Reid Peyton Chambers

RPC/bcm