



# Natural Resources Council of Maine

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## Memorandum

**From:** Nick Bennett, Staff Scientist, Natural Resources Council of Maine

**To:** Distinguished members of the Environment and Natural Resources Committee

**Re:** LD 2094, An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

**Date:** February 27, 2020

As lawmakers continue to consider LD 2094, we would like to share with you some of the concerns that we raised in our testimony Neither For Nor Against the bill.

Over the more than two decades I have worked for NRCM, our organization has worked closely with Maine tribes on a broad range of initiatives to restore and protect Maine's natural resources, including the landmark Penobscot River Restoration Project, legislation that restored fish passage for alewives on the St. Croix River, the law and regulations that protect Maine from mining pollution, legislation to reduce toxic pollution to Maine rivers and protect sustenance fishing in tribal waters, and increased protections for hundreds of miles of Maine's rivers and streams.

NRCM deeply values these collaborative efforts with Maine tribes. Speaking personally, working with colleagues who are members of Maine tribes or work as environmental professionals in their governments to protect Maine's environment have been among the most meaningful experiences of my career.

As stated in our testimony on LD 2094, NRCM has significant concerns with the sections of the bill that would eliminate all state land use and environmental laws and rules on current and future trust lands (Section 11 and Section 5(6), respectively). Our concerns have not been lessened by listening to and reviewing testimony from the LD 2094 public hearings. As such, NRCM believes the Legislature should proceed cautiously with LD 2094 until lawmakers clearly understand what land use and environmental laws would apply on tribal lands if the bill were enacted, and how those laws and standards would compare with the State laws and rules that currently protect the state's natural resources. We believe environmental land use laws and rules should not be any less protective on current and future tribal trust lands than they are in the rest of Maine.

NRCM has also reviewed the Penobscot Indian Nation's land use ordinance and comprehensive plan available at <https://www.narf.org/nill/codes/penobscot/ch10.PDF>. As mentioned by some individuals who presented during public hearings, the Penobscot's land use ordinance and comprehensive plan does include some provisions that appear more protective of Maine's natural resources than their state counterparts. For example, the setbacks from waterbodies described on pages 2-11 and 2-12 of the plan

appear more protective than LUPC or DEP standards when considering impacts of timber harvesting. The setbacks are wider and include no-cut buffers, which state setbacks generally do not; thus, these provisions would be more protective of water quality and riparian zone habitat.

However, the land use ordinance and comprehensive plan also contain the following concerning statements on mining:

#### Mineral Deposits

1. Conduct additional evaluations of those lands appearing to have significant minerals potential; and

*NOTE: Since completion of the Economic Development Plan, the Penobscot Nation's policy includes leasing minerals to mining companies in areas of high potential, including charging rental fees and retaining net smelter royal ties (emphasis in original). (Page 3-4); and*

#### Mineral Resources

The geologic environment in Alder Stream Township is highly favorable for the occurrence of base metal massive sulfide deposits (copper, lead, zinc) with a precious metal gold silver association. Geochemical, geophysical and core drilling data obtained from prior exploration and Penobscot Nation mineral assessment work support this conclusion. The potential for discovery of a commercial, marketable metals deposit is high and is reflected in corporate interest in the property dating back to the 1970's. Since the inception of Penobscot Nation ownership in 1980, several major corporations have expressed interest in obtaining the mineral lease in Alder Stream...

Metals exploration in the Township is expected to continue to be conducted in the immediate future by the Penobscot Nation and possibly by a mineral corporation under a lease/royalty arrangement in the longer term.

We respectfully ask lawmakers to explore with representatives of Maine's tribes whether they would adopt Maine's mining law (Title 38 Section 490-LL *et seq.*) and the Department of Environmental Protection (DEP)'s Chapter 200 mining rules. Similarly, lawmakers might wish to ask whether the tribes have the capacity to administer this law and the mining rules.

There are other areas of Maine law and regulation that do not appear to have any corollary in the Penobscot Indian Nation's land use ordinance and comprehensive plan and where Maine standards are more protective of natural resources than federal standards. These include laws and rules related to hazardous waste, stormwater, and large-scale development (including the Site Location of Development Law and Natural Resources Protection Act).

NRCM was not able to find any ordinances or comprehensive plan for the Passamaquoddy or Maliseet tribes that were comparable to those of the Penobscot Indian Nation. This does not mean that such ordinances and plans do not exist, but NRCM was unable to find them.

Before enacting LD 2094, NRCM believes the Legislature should fully understand the bill's consequences regarding environmental and land use laws and regulations. We believe the Judiciary Committee and Environment and Natural Resources Committee should ask DEP and other state agencies to describe the

Maine laws and rules that would no longer apply should the bill pass and what, if any, federal or tribal standards would replace them. Lawmakers also should understand what Maine laws and regulations the tribes are willing to adopt and the tribes' capacities to implement and enforce those protections. NRCM also has process concerns about land use and environmental decisions in the future. Large-scale developments such as mines have the potential to affect jurisdictions outside of tribal lands. Maine citizens are currently able to comment on regulations, developments, and governmental processes in neighboring states. NRCM has done so frequently on projects that could affect Maine's environment. Lawmakers should address and understand what opportunities non-tribal members would have to comment on and potentially influence tribal environmental and land use decisions in the future.

In closing, we urge lawmakers to move judiciously on LD 2094, asking detailed questions of staff at agencies that currently oversee environmental and land use laws and rules. The Legislature should ensure that tribal land use laws and rules will be as protective as Maine's and that tribes have the capacity to implement these laws and rules.

