

## **An Act to Amend the Laws Governing Conservation Easements**

### **Proposed Minor Amendment to Maine Conservation Easement Act**

**Prepared by**

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#### **Summary of Issue:**

Maine Coast Heritage Trust (MCHT) and members of the land conservation community (under the group called First Light) have been working with Wabanaki Nations in Maine to return land, access, and caretaking responsibility to traditional lands and resources. One small piece of this effort identified by MCHT, supported by the Wabanaki Alliance and the Wabanaki Commission on Land and Stewardship, is clarifying that federally recognized Tribal governments in Maine have access to the same legal tools as land trusts and municipalities to care for Wabanaki lands including culturally important sites. We understand these minor changes as providing more tools for the Wabanaki Nations to engage in land return, stewardship, and care throughout Wabanaki territory across the state of Maine.

This proposed amendment to the Maine Conservation Easement Act would do two things that are meant to clarify rather than change the statute:

1.) expand the definition of “conservation easement” to include easements that preserve the historical, architectural, archaeological or cultural aspects of a property. In a way, the statute already speaks to these values by including them in the definition of a qualified holder in 476(2)(B). The amendment simply copies the phrase at the end of 476(2)(B) and pastes it into 476(1). In a sense, this is simply aligning the two different provisions of the statute so they both include this category of values. This is language similar to the State of California, where Tribes there have used it to expand their access and land holdings.

2.) expand the definition of “holder” to include federally recognized Indian tribes. Although it is likely that the statute, by referring to any “government body empowered to hold an interest in real property,” already includes federally recognized tribes, this amendment would explicitly include such tribes within the definition. The term “federally recognized Indian tribe” is used in several other Maine statutes.

Staff from MCHT, First Light, the Wabanaki Alliance, and the Wabanaki Commission on Land and Stewardship have been communicating on this issue for several months and agree that it should be passed as soon as possible.

## Title 33: PROPERTY

### Chapter 7: CONVEYANCE OF REAL ESTATE

#### Subchapter 8-A: CONSERVATION EASEMENTS

##### **§476. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1985, c. 395, §3 (NEW).]

**1. Conservation easement.** "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality

; or preserving the historical, architectural, archaeological or cultural aspects of real property.

[PL 1985, c. 395, §3 (NEW).]

**2. Holder.** "Holder" means:

A. A governmental body empowered to hold an interest in real property under the laws of this State or the United States

, including federally recognized Indian tribes ; or [PL 1985, c. 395, §3 (NEW).]

B. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property. [PL 1985, c. 395, §3 (NEW).]

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**3. Real property.** "Real property" includes without limitation surface waters.

[PL 2007, c. 412, §1 (AMD).]

**4. Third-party right of enforcement.** "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, nonprofit corporation or charitable trust, which, although eligible to be a holder, is not a holder.

[PL 1985, c. 395, §3 (NEW).]