



## **DRAFT: Ways to Formalize Indigenous Access to and Use of Lands in Maine**

*A living document that is a work in progress and will grow and expand with our experiences, lessons, and increased connections*

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This document summarizes a variety of tools, transactions, and agreements that non-natives and Wabanaki communities might employ in the effort to increase Indigenous access to land and connection to their cultural resources and traditional places. It is important that these projects begin with relationships, not the tool. Each of these suggestions should be considered within the context of your connections with Wabanaki partners and their expressed needs. It is of utmost importance that non-native allies and Native collaborators are clear and aligned in the outcome they want before any of these uses are adopted and pursued.

**Uses considered here might include activities such as (but not limited to): harvesting of plants such as medicinal plants, sweetgrass, or ash for basket making, or birch for canoes. It might also include private sacred or ceremonial gatherings.**

**Invitation:** A private owner of land in Maine (including land trusts) can issue a written invitation to use land in specific or general ways. Questions that have arisen include liability concerns by the landowner, and long term viability or protection of that access for the user. What if the land is sold? (Refer to Maine Landowner Liability Law, MRSA Title 14 SS 159-A) (See sample from [a private owner in Machiasport](#), and there are likely examples by private owners with specific Tribal members.)

**Written Agreements:** There have been agreements created with public landowners in Maine, such as Acadia National Park, to allow for specific resource gathering and/or ceremonial uses. No examples are shareable from Maine at this time that we know of, but here is an example of an agreement between the Eastern Band of Cherokee Indians and the [Great Smoky Mountains National Park](#).

**Accompanied gathering trips on preserves:** If the Wabanaki harvesters are comfortable with the idea and the land trust is willing, a land trust staff member could accompany a group of gatherers of medicinal plants or sweetgrass, for instance, to assure that other people do not interfere.

**Cultural ceremony closures:** A landowner could choose/offer to temporarily close a preserve or park to allow for private ceremonial uses or harvesting uses. This can be difficult if the land has restrictions on it guaranteeing access to all or to “general public” at all times. (Cadillac Mountain is closed for a drum ceremony once a year, Baxter State Park closes Katahdin Stream Campground during Labor Day weekend for the Katahdin 100).

**Harvest permits:** Permits have been designed and issued by a few forest landowners to allow for the harvesting of brown ash. These permits bring with them questions such as who can or should they be issued to (such as who determines which basket makers are allowed to harvest?), and how that permit is provided and enforced (examples include: [Appalachian Mountain Club](#), The Conservation Fund, Baskahegan Company Inc., Irving).

**Cultural Respect Agreement/Cultural Use Agreement:** First Light is now working with Passamaquoddy attorney Corey Hinton to create a new cultural use agreement for Maine that respects Indigenous perspectives. Key decisions need to be made such as to whom the rights are granted, how rights are enforced, and assurances the Owner wishes to maintain.

These do not have the inviting tone of other options, but would work, and do provide more clarity on longevity of the access as well as on liability questions for owners. These have been used in other states such as [Massachusetts](#) and [California](#) already. [Watch](#) or [read here](#) to learn more about the cultural respect agreement made by the Mashpee Wampanoag Tribe in Cape Cod.

**Co-management of land:** An approach to management of lands in which decisions are collectively made by Indigenous peoples and a non-Indigenous entity (federal or state agencies such as the Forest Service, or conservation non-profits, or individual private landowners). [Examples here](#).

**Lease:** Similar to agricultural leases, which are gaining popularity around Maine, resource harvesting could be formalized as part of a lease. We aren't aware of any such leases in Maine at this time.

**Tribal Land ownership:** Lands that have certain resources, or access to important resource (such as for parking and walking into a site) may be best secured through Wabanaki ownership. Tribal individuals, Governments or NGOs (including Native land trusts) can and do own land, and could have lands turned over to them to manage. Ownership generally comes with an ongoing cost of property taxes and insurance, and if working with a Tribe, needs to be coordinated carefully with the Government to ensure that lands fit with Tribal priorities (examples: [Return of Pine Island to the Passamaquoddy Tribe](#), or [735 Acres of Land Returned to the Penobscot Nation](#)).

#### **Conservation Easements.**

Conservation Easements are one tool used by land trusts and others to formalize uses on land, but there are concerns that this tool may not be a good fit for formalizing Wabanaki cultural uses on lands in Maine.

[Research done in Maine: Under the Maine Conservation Easement Act (33 M.R.S. § 476), a conservation easement must have a purpose of protecting conservation or recreational values of land. Although there are conservation and recreational aspects to the uses envisioned by the parties, to focus on them would seemingly downplay the spiritual and cultural aspects, and perhaps result in a confusing document. Another possibility is a historic preservation easement under 33 M.R.S. § 1551. Again, such an easement would be tantamount to putting a square peg into a round hole, because these kinds of easements typically protect a land with documented historic values, and that often would not be the case for the collaborations that you would be considering. Furthermore, both conservation easements and historic preservation easements focus on protecting the land itself or historic structures, whereas you are primarily attempting to protect and promote certain uses on the land. (analysis by Rob Levin for MCHT, 2018)]

Of note: in the State of California (and maybe elsewhere), state legislation has been changed to specifically include Tribal uses and rights as conservation values that can be “protected” in conservation easements., and to name Tribes as “qualified Holders”.

The collaborators on this document recognize that this list is not complete and welcome the opportunity to change or expand it. Please let First Light know ([firstlightmaine@gmail.com](mailto:firstlightmaine@gmail.com)) if you have any questions, concerns, additions, subtractions, or feedback about this document. We will be stronger as we work together and share the learning.

