

Appendix H

Guidance for Working Forest Easements

In early 2001, an LMF Board easement subcommittee was formed to identify

- the essentials for any easement funded by the Lands For Maine's Future Program (LMF)
- elements that are desirable but not always necessary, and
- cautions related to various elements

The following guiding principles were adopted by the LMF Board on May 9, 2001. The Board recognizes that this is a working document, and that amendments and refinements are likely as experience dictates. The Board has also adopted a set of drafting guidelines for this type of easement that every potential applicant should read before preparing the easement. The guidelines describe both the required process for developing these easements and the recommended provisions to implement the intent of the policy objectives below. A copy of the guidelines is available on the LMF website.

There are two types of working forest easements – strip easements (primarily along water bodies), and landscape easements. Some elements are appropriate for one type and not the other. The Board further recognizes that in many cases, (e.g. ecological reserves, key recreation areas, boat launches and parking areas) fee purchase is probably a better tool and should be used alone or in concert with an easement.

The basic intention of a working forest easement is to protect both the natural values and economic values of the forest, along with its potential to provide traditional recreation opportunities for the public. Each easement will vary depending on the property involved and the goals of the grantor and grantee. Each easement should define existing conditions, contain a clear statement of goals, remedies for non-compliance and outline a process by which the landowner and easement holder can meet to review the easement and its implementation, ideally annually. It should enable the parties to mutually determine acceptable amendments to the easement to reflect changes in science or society while remaining faithful to the original goals.

For working forest easements funded by the LMF, the Board will require:

1. No additional (or very limited and clearly defined) additional non-forestry or non-recreation related development. Prohibition of commercial, industrial and residential uses

except for forestry and recreational uses, while allowing for existing types and scales of non-forestry uses to continue when consistent with easement goals.

2. Strict limits on division of the property, with the goal of maintaining large enough parcels to be a) cost effective to manage for timber production and recreation and b) cost effective for the holder to monitor compliance with easement terms. Allowable subdivision may include limited divisions of very large tracts and small subdivisions to correct boundary issues with abutters.
3. Rights for the public to use the property for traditional pedestrian recreational uses such as fishing, hiking, hunting, snowshoeing and nature observation. Central to this is extinguishing the landowner's right to enjoy or provide exclusive, private use. (Certain areas may be designated off limits to the public to protect fragile ecological or archaeological resources, privacy related to buildings, or public safety. A process should be established to incorporate additional areas at the mutual consent of the landowner and holder and to identify and close areas such as active harvest operations that involve safety hazards.)
4. An enforceable commitment to maintain (or enhance) the property's potential to provide a perpetual yield of fiber and timber. Recognizing the duration (forever) of an easement and the inability to predict the future of current forest uses, the emphasis here is on *potential* to provide, not a requirement to provide. Clear language must be included that defines sustainable management (taking into account forest history, productivity and potential for natural catastrophe), stipulates specifically how it shall be measured, and provides for independent review to determine if ongoing forest management meets these requirements. Remedies for non-compliance should be clear, stringent and easily enforceable.

On a case by case basis, depending on size of the easement, conditions on the land or other factors, additional easement elements may significantly strengthen the value to the public as listed below. Whenever additional protections of forest conditions or rights to provide public use are included in an easement, the Board will require of the holder an estimate of annual costs for monitoring or management and how it plans to cover them.

1. The Board recognizes that protection of ecological sustainability is very important. Additional protection of sensitive, rare or representative ecological features may be desirable. As part of the LMF proposal process, the potential holder will have assessed the ecological values of the property. Grantor and grantee should consider fee acquisition of areas of high ecological value in addition to the easement, or more stringent protections of certain natural communities, habitats or ecological health.

2. Requirements to include additional protections of visual quality, recreational features and/or riparian zones, or restrictions on intensive forest management practices such as herbicides and plantations.
3. Limitation of mining on the property to surface deposits of gravel, sand and shale for purposes of road construction and maintenance on the property only. Include caps on the number and size of borrow pits and establish reclamation procedures. In some cases (e.g. large landscape easements) it may be appropriate to allow mining of subsurface minerals. In such cases, strict limitations on areas disturbed and associated development should be stipulated to protect the main values of the working forest, undeveloped forest land and traditional public recreation, including associated aesthetics.
4. Rights to manage public recreation on the property. Clear goals for such management should be stated in the easement.
5. The right to construct, maintain, relocate and/or limit trails, parking, signs, and other structures on the property for motorized and/or non-motorized recreation.
6. The right to provide to the public vehicular use of certain roads across the property or to specific features (e.g. trail heads, water bodies) on the property. This may apply to motorized (e.g. snowmobile) trails, as well.

Such rights should not necessarily be required on strip easements. Since their primary aim is to keep water frontage undeveloped, water access is probably sufficient. Rights of way to the water or boat launches at specific locations may be stipulated or purchased in fee where appropriate.

When vehicular use is required, rights and obligations to maintain roads and trails must be addressed. The easement should define standards to which private roads and trails will be maintained as well as how maintenance costs are to be divided between the landowner and the holder.

7. Road access to the property. In many cases in the Maine woods, vehicle access may be customary, but not guaranteed by law. The Board should acquire access to properties under easement whenever possible.