

Appendices

Conservation & Water Access Inquiry Form	Appendix A
Farm Inquiry Form	Appendix B
Major Land Types	Appendix C
LAPAC Definitions	Appendix D
Appraisal Standards for Fee Simple	Appendix E
Appraisal Standards for Conservation Easements	Appendix F
Form for Proposal Budget.....	Appendix G
Model Project Agreement	Appendix H
Guidance for Working Forest Easements	Appendix I

Appendix A

Inquiry Form

Conservation and Recreation Lands and Water Access Projects

POTENTIAL PROJECT INFORMATION:

Property name: _____ **Date:** _____

Property Location: Municipality: _____ County: _____

Landowner: *(please list full name and mailing address of landowner):*

Name: _____

Mailing Address: _____

Town & State: _____

(Tel. #) _____ (Fax #:) _____ (E-Mail) _____

Inquiry Contact Person: *(please list full name and mailing address)*

Name: _____

Mailing Address: _____

Town & State: _____

(Tel.#) _____ (E-Mail) _____

Potential Partners *(e.g. Conservation Commission, Federal Agency, local Land Trust or Non-profit Org.)*

(Mailing Address, telephone #, fax #)

Project Size *(Total acres)* _____ with Shoreland *(Length of frontage)* _____

Major Land Categories: *(Please check all of the land categories that apply.)*

- Recreation Land
- Water Access Land - Inland Coastal
- Areas of Scenic Interest and Prime Physical Features
- Lands Supporting Vital Ecological or Conservation Functions and Values
- Rare, Threatened or Endangered Natural Communities, Plants or Wildlife Habitat
- Farmland and Open Space *

Appendix B

FARM INQUIRY FORM

FARMLAND PROTECTION INQUIRY FORM:

Farm Name: _____ Date: _____

Type of Farm Operation: _____

GENERAL INFORMATION: County: _____ Town: _____

Landowner(s) *[please list full name of all owners]*:

Mailing Address: _____ Phone #: _____

POTENTIAL CONSERVATION PARTNERS

(Please list the name, mailing address, telephone #, and email address of the Land Trust, Town or other conservation partner)

LAND DESCRIPTION: Tax Map/Lot # _____ / _____ Zoning: _____

Total Acres: _____

Fields: _____

Forest: _____

Soil Classification by the USDA Natural Resources Conservation Service:

Prime Farmland _____ acres

Farmland of Statewide Importance _____ acres

Other working farmland not classified as Prime or Statewide Important _____ acres

Crops grown: _____

Building(s): _____

Does the farm have an NRCS Conservation Plan? Y / N (circle)

Does the farm have a Forest Management Plan prepared by a licensed forester? Y / N (circle)

Have you participated in a farm business planning program (i.e. The Maine Farms for the Future Program, NxLevel Tilling the Soil of Opportunity, FasTrack, etc? Y / N (circle)

LAND OWNERSHIP: Deed type: _____ Book/**PAGE** #: _____

When was the property purchased by the current owner? _____

Is there a mortgage, second mortgage or equity loan on any portion of the property? Y / N

If Yes, what is the balance due on the note? \$ _____

Is there an existing boundary survey?: Y / N (circle)

Significant wildlife habitat or other natural features (if any known, please describe): _____

Important Note: The Land for Maine's Future requires that all owners of land being proposed to LMF are willing sellers and have full knowledge that their property is being presented to the Land for Maine's Future Board for consideration. Please have the owner(s) of the property described above sign below.

(owner)

(date)

Appendix C

Major Land Types

The major land categories are established in the Act and are listed here with additional logical sub-categories. Those specifically identified by the Act are noted with an asterisk(*). Those subcategories not listed in the companion legislation are those logical components of the major categories.

Land Types

Recreational Lands

- Lands offering hunting and fishing opportunities *
- Lands having trail corridors or hiking trails
- Lands offering opportunities for nature study
- Lands having cross-country skiing opportunities
- Lands having snowmobile trails
- Lands offering traditional camping or picnicking areas

Water Access Lands

- Coastal beach access for swimming or sunbathing
- Inland beach access for swimming or sunbathing
- Fishing access on streams and lakes
- Fishing access on oceanfront (including clamming and worming)
- Coastal boat launching sites
- Inland boat launching sites
- Canoe access sites (rivers, lakes, ocean)
- Recreational sites (camping or picnic sites) on streams, lakes
- Recreational sites (camping or picnic sites) on the coast

Lands Supporting Vital Ecological or Conservation Functions and Values

- Wildlife habitat *
- Wetlands *
- Lands providing public water supply protection when that purpose is consistent and does not conflict with the natural resource conservation and recreation purposes of this chapter.* (new 2007)
- Lands of importance to fish and wildlife because of their limited occurrence or biological diversity/productivity (e.g., coastal islands, salt marshes, inland wetlands, riparian areas)

- Lands of special importance to specific species in Maine (e.g. deer wintering areas, blue heron rookeries, fish spawning areas)
- Lands essential to maintaining wildlife migration corridors, or shore and seabird nesting habitats
- Lands representative of ecosystem types of Maine and essential to the preservation of the range of natural biological diversity

Rare, Threatened, or Endangered Natural Communities, Plants, or Wildlife Habitat *

- Habitats which are naturally rare due to range limitations
- Habitats of special importance to the restoration of endangered and threatened species (e.g. bald eagle nesting territories, least tern nesting beaches)
- Fragile mountain areas * (e.g. alpine tundra vegetation)
- Peatlands (certain types)
- Old-Growth Forests (representatives of common & rare types)
- Rare wetland types (e.g. fens, cedar swamps, patterned bogs)

Areas of Scenic* Interest and Prime Physical Features*

- Undeveloped shorelines* (coastal, rivers, & lakes)
- Significant, undeveloped archeological sites* (new 2007)
- Mountain viewsheds
- Visual access to water (rivers, lakes, ocean)
- Areas along state highway system
- Headlands
- Waterfalls
- Gorges
- Whitewater rapids
- Mountain ridges
- Beach-dune systems
- Eskers
- Cobble beaches

Farmland and Open Space*

- Prime farmlands
- Unique farmlands
- Multiple-use forestland
- Lands near population clusters available for passive or low-intensity active recreation
- Lands geographically and physically capable of being multi-community parklands
- River corridor greenways

Appendix D

LAPAC Definitions - Land Acquisition Focus Areas and Other Important Priorities

Focus Areas

Please note: Not all of the original “Focus Areas” or “Other Important Priorities” are reflected in the LAPAC Multiplier on **PAGE 34** because they are addressed in other parts of the scoring system.

* **Southern Maine Conservation Lands:** The southern portion of the state (south of Bangor) is richest in biological diversity. It is also the part of the state where development threats to plant and wildlife resources are the greatest and where existing public land holdings are most limited, particularly larger holdings. There are still opportunities to acquire significant public lands protecting critical natural resources while also providing Maine's largest population centers with greater access to expanded recreation opportunities closer to home.

* **Ecological Reserves:** Maine is a state of enormous natural variety. A State Planning Office study and follow-up efforts by the Maine Forest Biodiversity Project (a collaborative effort involving State agencies, landowners, scientists, and environmentalists), have documented that Maine’s existing conservation ownerships do not protect the full range of Maine’s native plants, animals, and natural communities. In order to establish an ecological reserve system that protects all of the natural communities and species found in the State, additional lands will need to be acquired to complement existing sites. Special attention should be given to those areas that include rare species, as well as unique or exemplary natural communities. Ecological reserves can serve as benchmarks which will provide important information about changes to our environment. These sites can be used for scientific research, long-term environmental monitoring, education, and in most cases can also provide important outdoor recreation opportunities.

* **River Systems:** Maine possesses some of the finest river systems in the Eastern United States, many of which remain largely undeveloped. These rivers are important fisheries, possess critical riparian habitat, and provide unparalleled outdoor recreation opportunities. Future acquisition efforts should protect extended corridors on the state's most valued river systems.

*** Undeveloped Coastline:** Maine is famous for its coastline. However, only a small percentage of the coast is in public ownership. In particular, there are significant undeveloped stretches of shore, including coastal wetlands and estuaries, that provide critical habitat to many species of wildlife and offer opportunities for expanded coastal recreation. It is important to take advantage of remaining opportunities before large ownerships become fragmented.

Other Important Land Acquisition Priorities

Northern Forest Conservation Lands: The expanse of undeveloped forest, rivers, lakes, mountains and wetlands that comprise the north woods of Maine is truly unique, providing a sense of wildness and remoteness that is becoming increasingly rare in today's world. It is the part of the State where the majority of public ownership currently exists, and yet many of the region's finest natural treasures and recreational lands have been maintained in private ownership. Some of these areas, most notably the shorelines of lakes and ponds, are coming under increasing development pressures.

The future of the north woods is the subject of great public interest that will likely increase in the years to come. Several large-scale acquisition proposals put forward by conservation groups have precipitated a debate over the appropriate role for public land acquisition in the northern forest. The State has both the opportunity, and the responsibility, to work cooperatively with forest landowners and other interests to develop workable acquisition models that protect the economic, ecological and recreational values of this region. Conservation easements should play an important role in this effort.

In the near term, acquisition efforts in the northern forest should focus on those lands that possess a high concentration of wildlife, recreation, and scenic values and are most threatened with fragmentation and development. Planning efforts coordinated by LMFB should seek to identify these priorities and to develop successful acquisition strategies that could then be utilized in these areas and elsewhere. If large northern forest tracts come on to the market, LMFB should evaluate both the threat and opportunity presented by the land sale, and respond accordingly. The conservation goal for Northern Forest Conservation Lands should be to maintain their natural character, preserve public recreation opportunities, and protect important habitat. To acquire, even conservation easements, over large tracts of northern forest land will likely require federal funding assistance. The Forest Legacy program is well suited to Maine's working forest landscape and allows for state control over acquisition projects. This program, and other appropriate federal funding opportunities, should be actively pursued to achieve the state's northern forest goals.

Trail Systems: A number of trail development efforts in Maine--including the State snowmobile trail network, the Appalachian Trail, and the recently established island trail network--have proven very successful. However, there are additional recreational trail needs

and opportunities that require attention including the development of extended loop hiking trails (2-5 days), as well as the creation of extended interconnected multi-use trail systems for uses such as hiking, biking, skiing, and snowmobiling and ATV riding. In particular, acquisition efforts should focus on opportunities to link existing public land holdings by trail corridors and to acquire ready-made trail corridors such as abandoned railroad beds. Additionally, expanded inland and coastal water trail systems are needed to accommodate small boat use.

Islands: Maine's coastal and inland islands are one of the state's most unique and threatened resources. Islands, particularly coastal islands, have become increasingly sought after for development, threatening bird nesting habitat and other sensitive ecological values. The State, private conservation organizations, and the federal government have successfully protected many valuable islands in recent years. However, additional acquisition efforts are needed to protect those islands identified as having important resource values that remain vulnerable to development and habitat loss.

Significant Mountains: While many of the state's highest peaks are currently in the public domain, there are still a number of significant mountains in private hands that are worthy of public acquisition. Acquisition efforts should focus on those mountain areas with outstanding vistas, established recreational uses, or significant ecological values, as well as those that are in close proximity to population centers.

Appendix E

Appraisal Standards: Fee Simple

SPECIFICATIONS FOR FEE SIMPLE APPRAISALS OF LMF PROJECTS

General Requirements

The Land for Maine’s Future Board requires that all appraisal reports adhere to the Uniform Standards of Professional Appraisal Practices (USPAP). For proposals using other sources of funding (e.g. federal), additional appraisal standards may be required.

The Appraisal Approach

The Direct Sales Comparison Approach should be utilized as the primary method in valuing the property. The Cost Approach and Income Approach should only be used as the primary method of valuation if they are applicable to a specific property. A discussion of why they are being utilized should be included. If any secondary approach to value is used, the results should be compared against the Direct Sales Comparison Approach. If values do not closely agree, the reason for the divergence should be explained fully.

Note: The Board requests that any direct sales comparison valuation be accomplished primarily through comparison with sales between private parties. Sales to nonprofit conservation organizations or to government conservation agencies should be limited to a supplementary role in the analysis. If any comparison sales are employed that involve governmental or non-profit “conservation” buyers, the use of the sale must conform to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA – the so-called “Yellow Book”).

Direct Sales Comparison Approach

- a) Comparable sales should be summarized (at least five comparables should be utilized).
- b) A comparable sales location map should be included.
- c) Sales should be presented in table or grid form, showing adjustment for times, size, location, appeal, soils, improvements (buildings, etc.) and circumstances of the transaction that may affect value (as applicable to type of subject).

- d) Each sale must be discussed in the narrative.
- e) Differences between the regulatory restrictions among comparables must be addressed.
- f) Appraisal practice generally recognizes the principal of a volume discount, i.e. larger parcels sell for less per acre (or front foot) than smaller parcels. Appraisers should strive to find comparables of similar size and when they are not available they should determine from paired analysis or other means an appropriate volume discount.
- g) Appraisers should be sure to pick comparables sales that are similar in size, quality potential and amenity value. In addition to making adjustments for the presence/absence of utilities, appraisals should address qualitative factors such as privacy, quiet, view and usability of water frontage.

Specifications

The following specifications pertain to all appraisals performed for the Land for Maine's Future projects except for conservation easement appraisals, which have separate specifications (see Appendix F). The specifications listed here are minimums; LMF staff may impose greater requirements for properties with unique or special features that present unusual appraisal difficulties.

Applicants must submit six copies of each appraisal.

Appraisal reports must be presented in narrative rather than in "form" style. At a minimum, appraisal reports should contain the following:

1. Title Page
 - a) land area of subject property
 - b) street and town location
 - c) name of property owner(s)
 - d) effective date of appraisal
 - e) name and address of appraiser
2. Letter of Transmittal
 - a) Standard transmittal letter with specification that landowner or designated represented has had the opportunity to participate in the field inspection of the property.
3. Table of Contents
4. Summary of Important Facts and Conclusions

5. Purpose of Appraisal and Definition of Market Value
6. Area and Neighborhood Analysis (avoid itemization of facts and figures not pertinent to value). Include:
 - a) Description of community (rural, suburb, resort, etc.)
 - b) Population trend
 - c) Reasons for trend, i.e, new industries, outward migration, etc.
 - d) Rate of construction activity in town
 - e) Utilities available in the area
 - f) Brief description of relevant municipal planning
 - g) Immediate neighborhood: enhancing or detrimental factors
7. Area Map
 - a) Must show roads leading to subject to facilitate inspection by LMF staff or Appraisal Review Committee member. Please delineate project boundaries on all maps.
8. Site Map
 - a) A photocopy of a survey map is best. In the absence of a survey, a tracing of the property boundaries from an orthophoto is preferred. Other types of maps provided by the landowner are less reliable but may be accepted if better maps are unavailable.
9. Land Description as Appropriate for Type of Subject Property
 - a) total land area and acreage being appraised
 - b) shape of parcel
 - c) total road frontage
 - d) land cover and topography, ie., wooded, wetlands, mountain summit, etc.
 - e) brooks, rivers, ponds, etc.
 - f) brief soil description and analysis based on USDA Soil Survey, if appropriate
 - g) utilities available to site (how far sewer/water lines)
 - h) is there a local septic ordinance?
 - i) easements and title encumbrances affecting the value
 - j) existing state or local permits?
 - k) gravel, loam, sand, etc. -- commercial value?
 - l) adjacent landowners
 - m) access
 - n) flood hazard

- o) view/visibility
 - p) when timber is a significant component of the value of the land, appraisers are expected to offer an informed discussion of timber values.
10. Improvements
- a) Describe those that are present, discuss condition, present use, and contribution to highest and best use.
11. Assessment
- a) Current assessed valuation (state if property in Tree Growth/Open Space Program) tax rate, and annual tax bill.
12. Zoning
- a) Describe zoning of subject property, including dimensional requirements of applicable zone.
13. Legal Description
- a) Include deed copy in Addenda
 - b) Indicate registry and book and page
 - c) Note any deed restrictions or easements which would affect value
 - d) Note a five year history of conveyance of the property
14. Highest and Best Use
- a) The report shall state the highest and best use that can be legally made of the property for which there is a current market.
15. Certificate of Valuation
16. Addenda
- a) comparable sales maps
 - b) photographs of subject and comparable recent sales
 - c) applicable portion of zoning by-laws
 - d) wetlands or flood plain map (delineate boundaries within project boundaries)
 - e) Site plan sketch if income (Development Approach) is used
 - f) appraiser's qualifications
 - g) limiting conditions

Appendix F

Appraisal Standards: Easements

The Appraisal Process

Standard definitions should be used to explain the appraisal process. The methods that are utilized should be explained and a discussion of why they are being utilized should also be included.

NOTE: The Board requests that any direct sales comparison valuation be accomplished primarily through comparison with sales between private parties. Sales to nonprofit conservation organizations or to government conservation agencies should be limited to a supplementary role in the analysis. If any comparison sales are employed that involve governmental or non-profit “conservation” buyers, the use of the sale must conform to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA – the so-called “Yellow Book”).

I. Before Value Analysis

The Direct Sales Comparison Approach should be utilized as the primary method in valuing the unencumbered property. The Cost of development Approach and Income Approach should only be used if they are applicable. A discussion of why they are being utilized should be included. If any secondary approach to value is used, the results should be compared against the Comparable Sales Approach. If values do not closely agree, the reason for the divergence should be explained fully.

Direct Sales Comparison Approach

- a. Comparable sales (lots and acreage) should be summarized including perimeter sketches (include in Addenda)
- b. A comparable sales map should be included
- c. Sales should be presented in table or grid form, showing adjustment for times, size, location, appeal, soils, improvements (farm and residential) and circumstances of the transaction that may affect value.
- d. Each sale must be discussed in detail in a narrative including such factors as: time, location (desirability, view, etc.), zoning, other regulatory restrictions, frontage, topography (including soil type), utilities, financing, etc.

II. After Value Analysis

The Highest and Best Use of property subject to the proposed restriction should be carefully considered. While agricultural use may often be the highest and best use of the encumbered land, the after value should not be assumed to be synonymous with "Farm Value". A careful discussion of the proposed restrictions should be included in the after value analysis. Make sure that the proposed restrictions including any reserved building rights or access easements are carefully considered as they may affect highest and best use. Again the Direct Comparable Sale Approach is considered to be the best indicator of value. An Income Approach should be used only as a secondary approach.

a. Description of land to be subject to Grant of Development Rights and Conservation Restrictions.

1. A map showing land to be encumbered and all lands to be excluded from the Grant of Development Rights and Conservation Restrictions must be included. Any reserved building rights allowed under the proposed Grant of Development Rights and Conservation Restricts must be included. Any reserved building rights allowed under the proposed Grant of Development Rights and Conservation Restrictions must also be indicated in the appraisal and shown on the map of encumbered land.

b. Direct Sales Comparison

1. Sales should be legally encumbered with similar easements or adjusted to best reflect the easement to be imposed on the subject property.

2. Physically restricted properties such as flood plain land should be adjusted for soil productivity and any factors associated with the proposed easement on the property which affect value. For example, consider the diminution in value to the property by the 90 Day Right of First Refusal, review and approval of grantee requirements, loss of timber, sand and gravel rights and other mineral rights, etc. should be addressed. Also note any specific conservation practices which may be included in the easement that may affect value.

3. Enhancement value of abutting land under related ownership and estate value of land to be encumbered shall be considered. Due to limited market transactions involving restricted land, greater adjustments for time and location may have to be made.

4. Include a discussion of the comparable sales and point out any circumstances that could have an affect on value. All comparable should be carefully confirmed with knowledgeable parties. This is especially true if the transaction included the sale of conservation restrictions to the Board or an applicant of the Board.

5. Consideration of enhancement of reserved lots or adjacent lands under related ownership.
6. Discussion of “estate” value of farm in the foreseeable future.

SPECIFICATIONS FOR NARRATIVE APPRAISAL REPORTS FOR VALUING CONSERVATION RESTRICTIONS

Applicants must submit six copies of each appraisal.

Components of narrative “before and after” conservation restriction appraisal reports should include but not be limited to, the following. In addition, the reports should be to the standards of the Uniform Standards of the Professional Appraisal Process and of Section 1.170 A-13(c)(3) of the Internal revenue Code.

1. Title Page
 - a) land area of subject property and area to be restricted, identify any reserved building rights
 - b) street and town location
 - c) name of property owner(s)
 - d) effective date of appraisal
 - e) name and address of appraiser(s)
2. Letter of Transmittal
 - a) Standard transmittal letter with specification that landowner or designated representative has participated in the filed inspection of the property.
3. Table of Contents
4. Summary of Important Facts and Conclusions
5. Purpose of Appraisal and Definition of Value
6. Area and Neighborhood Analysis

The appraiser should present all findings and conclusions about the external influences (social and economic) which could affect the value of the subject. The presentation should be analytical and related to the valuation problem at hand.

Avoid itemization of facts and figures not pertinent to value.

Include:

- a) Description of community (rural, suburb, resort, etc.)
- b) Population trend
- c) Reasons for trend, i.e. new industries, outward migration, etc.
- d) Rate of construction activity in town
- e) Utilities available in the area

- f) Comprehensive Plan for the town?
 - g) Immediate neighborhood - dominating influence/detrimental factors?
7. Area Map
- a) Must indicate location of subject property as exactly as possible (a DeLorme map is suggested) Delineate approximate parcel boundaries on map.
8. Location Map
- a) Must show roads leading to subject to facilitate inspection by LMF Staff or review appraiser (a USGS topographic map or DeLorme map is suggested)
9. Land Description
- a) Total land area and acreage being appraised
 - b) Shape of parcel
 - c) Total road frontage
 - d) Land cover and topography i.e.. Wooded, pasture, wetlands, croplands
 - e) Streams, rivers, etc.
 - f) Soil description and analysis from USDA Soil Survey, include NRCS Farm plan if available.
 - g) Utilities available to site (how far from sewer/water lines)
 - h) Is there a local septic ordinance?
 - i) Easements
 - j) Gravel, loam, sand, etc. - commercial value?
 - k) Adjacent landowners
 - l) Access
 - m) Flood hazard
10. Improvements - include agricultural and residential improvements - condition, present use and contribution to highest and best use.
11. Other components being appraised - public access rights, hunting and fishing rights, etc.
12. Assessment
- a) Current assessed valuation (state if property is in Tree Growth/Farmland & Open Space Program) tax rate and annual tax bill.
13. Zoning
- a) Zoning of subject property, including dimensional requirements
 - b) Include pertinent section from by-laws, if possible (in Addenda)

14. Legal Description
 - a) Include deed copy in Addenda
 - b) Indicate registry and book and page
 - c) Note any deed restrictions or easements which would affect value
 - d) Note a five year history of conveyance of the property

15. Highest and Best Use
 - a) The report shall state the highest and best use that can be legally made of the property for which there is a current market. In the appraisal of vacant land, the terms “highest and best use” and “feasible use” should be synonymous. Highest and Best Use should be applied to both the Before and After Analysis.

16. Certificate of Valuation of Before and After and the resultant Value of the Conservation Restriction.

17. Addenda
 - a) Comparable sales maps
 - b) Photographs of subject and Comparable sales.
 - c) Zoning By-Laws
 - d) Wetlands or Flood Plain Map
 - e) Site plan sketch
 - f) Appraiser’s qualifications
 - g) Limiting conditions
 - h) A copy of proposed conservation easement (note reserved building rights)

Appendix G

Form for Proposal Budget

The following form should be used to present the budget for the proposed project. Please consult with LMF staff with any questions and prior to modifying the form. Proposals with incomplete budget information will not be accepted for Board consideration.

	\$
Total Project Costs (including Match)	
Value of fee lands to be purchased or if prequired, value of land already purchased (<i>w/in 2 yrs</i>)	_____
Value of easements to be purchased or if prequired, value of easements already purchased (<i>w/in 2 yrs</i>)	_____
Stewardship endowment contribution (if any)	_____
All other costs	
Appraisal	_____
Title, legal and closing	_____
Land survey	_____
Environmental hazard survey	_____
Baseline documentation (<i>easement only</i>)	_____
Natural resource survey	_____
Other (<i>specify</i>)	_____
TOTAL	_____
Match	
Value of interest in land to be contributed	
Purchased fee/easements	_____
Fee/easement Donations	_____
Bargain sale components	_____
Cash contribution	_____
Stewardship endowment contribution	_____
Total Tangible Match (<i>must be =>70% of total match</i>)	_____ (____%)

All other costs *(see above - specify)* _____ (____%)

Total Intangible Match *(must be <30% of total match)* _____ (____%)

TOTAL MATCH *(tangible + intangible)*

Percent of Total Project Costs *(must be =>33% of total project costs)* _____ (____%)

Amount requested from LMF

Percent of total *(must be <67% of total project costs)* _____ (____%)

NOTES:

1. Be clear if land values are based on estimates or appraisals. Discuss the basis in the narrative of the application. Values on parcels offered for match must be based on an appraisal.
2. Some costs are outside of “Total project costs” and will be covered by the LMF, including:
 - Natural areas survey by MNAP
 - Archeological survey by MHPC
 - “5%” grants for minor capital improvements and farm business planning
 - LMF’s legal costs
3. Identify costs as actual incurred or estimated. Discuss the basis in the narrative of the application
4. If applicant anticipates requesting LMF support for “all other costs”, contact LMF staff for reasonable estimates of specific line items (e.g. appraisal, legal)
5. The value of lands or interest in lands acquired within 2 years of the date of project application maybe used as tangible match when the property interests have a direct relationship to the project. This value must be validated by an independent appraisal.

Appendix H

Model Project Agreement

LAND FOR MAINE'S FUTURE FUND
PROJECT AGREEMENT
(Pursuant to P.L. 1999 c. 514, Sec. A-6 and/or
P.L. 2005 c. 462, Sec. B-5, as applicable)
[Conservation Easement Version]

Cooperating Entity: *

Project Name and Location: *

Designated State Agency: *

Premises Covered by this Agreement:

(1) The * Property, being a conservation easement over lands located on the * side of *, Town of *, * County, Maine, hereinafter called the "Protected Property", and as more fully described in a * Deed from * and * to the *, dated * and recorded * in the * County Registry of Deeds in Book *, Page *; and see also plan by *, File No. *, dated * and recorded in said Registry in Plan Book *, Page *.

[Delete Item 2 if no match lands] (2) Match Lands: The * Property by deed dated *, and recorded in the * County Registry of Deeds ("*") on * in Book *, Page *, and depicted on a Plan of Land * prepared by *, dated *, a copy of which is on file with the Land for Maine's Future Fund application and with the Maine Department of * and *. This parcel is offered as Match Land. See Item 4 below for other conditions pertaining to this parcel.

All of the foregoing hereinafter referred to as "the Premises".

Scope (Description of Project): * *(Include reference to conservation easement)*

Project Cost:

LMF Contribution to Cooperating Entity: \$*
Cooperating Entity: \$*

The following are hereby incorporated into this Agreement:

1. General Provisions
2. Project Application and Attachments by reference
3. Project Boundary Map
4. Other: *(Include reference to conservation easement)*

[Delete following language if no match lands. Substitute applicable language]

That portion of the "Premises" designated as the Match Parcel above is subject to the management restrictions and covenants of this Project Agreement, but is not subject to the Project Agreement General Provisions Part II, section Paragraph H subsection (iv).

The Land for Maine's Future Board, represented by its Chair, (hereinafter LMFB), and the State of Maine, Department of **[insert agency name]**, represented by its Commissioner, as the Designated State Agency (hereinafter DSA), and the Cooperating Entity, mutually agree to perform this Agreement in accordance with Title 5, Maine Revised Statutes Annotated, Section 6200 et seq., as amended, and augmented by **[insert P.L. 1999 c. 514, Sec. A-6 or P.L. 2005 c. 462, Sec. B-5 as applicable]**, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, assurances, and certifications incorporated herein by reference and hereby made a part hereof.

Subject to the terms hereof and to the availability of funds for this purpose, LMFB hereby agrees, in consideration of the agreements made by the Cooperating Entity herein, to obligate to the Cooperating Entity the amount of money referred to above, and to tender to the Cooperating Entity that portion of the obligation which is required to pay the LMFB's share of the costs of the above described project. The Cooperating Entity hereby agrees, in consideration of the agreements made by the LMFB herein, to provide the matching funds, and lands, if applicable, and to implement the project described above in accordance with the terms of this Agreement.

The following special project terms and conditions are added to this Agreement:

1. Under the terms of the Conservation Easement, the Protected Property, including any structures located thereon, must remain as a single parcel, under one ownership, and may not be divided into parcels or lots, except for boundary adjustments to resolve bona

fide boundary disputes, subject to the approval of the DSA, or as may be approved under Part II, section H subsection (i) of this Agreement. In order to grant any such approval under this provision, the DSA and LMFB must find that the proposed division of the Premises furthers the conservation purpose and objectives of the project as defined in this Agreement and its attachments.

2. The Cooperating Entity shall not prohibit hunting, fishing, or trapping on the Premises, except to the extent of applicable state, local or federal laws and regulations. (*note: preceding may not be applicable of farm projects*)

3. Under the terms of the Conservation Easement, the Cooperating Entity agrees that any fees or charges imposed for public access to or use of the Protected Property shall be reasonable and comparable to those charged in Maine for similar facilities, and any such fees must be approved in advance and in writing by the DSA.

4. The Conservation Easement or any interest therein may not be sold or transferred without prior written approval of the DSA and LMFB as provided under Part II, section H subsection (i) of this Agreement, and then only to a federal, state, or local government agency or a non-profit conservation organization which is a "qualified organization" under Section 170(h) of the United States Internal Revenue Code, and a "qualified holder" under Title 33, Maine Revised Statutes Annotated, Section 476(2), subject to the condition that the qualified organization expressly agrees to assume the rights and obligations of the Cooperating Entity provided for by this Agreement.

5, 6, etc. *[Other terms to be inserted as needed]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of *, 200*.

THE LAND FOR MAINE'S FUTURE BOARD

By: _____
George Lapointe, Its Chair

**STATE OF MAINE
Department of ***

By: _____
*
Its Commissioner

COOPERATING ENTITY

*

By: _____

Print Name:

Title:

STATE OF MAINE

County of *

Date: *

Then personally appeared the above-named *, duly authorized *
(title) of *

[Insert name of Cooperating Entity] and acknowledged the foregoing
to be his/her free act and deed in his/her capacity and the free act
and deed of said *.

Before me,

Notary Public/Attorney at Law

Print Name: _____

My Commission Expires:

Seal:

**LAND FOR MAINE'S FUTURE FUND
PROJECT AGREEMENT GENERAL PROVISIONS**

Part I – DEFINITIONS

1. The term "DSA" or "Agency" as used herein means the Designated State Agency as shown on Page 1 of the Project Agreement.
2. The term "Director" as used herein means the Commissioner or agency head of the DSA or any representative lawfully delegated the authority to act for such Director.
3. The term "Premises" as used herein means the lot or parcel or parcels of land as described and shown on Page 1 of the Project Agreement.
4. The term "Project" as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the Project Agreement, and as described on Page 1 of the Project Agreement.
5. The term "Cooperating Entity" as used herein means a political subdivision or instrumentality of the State of Maine or a non-profit conservation corporation which will implement the Project as provided in this Agreement.

Part II – CONTINUING ASSURANCES

The Cooperating Entity specifically recognizes that Land for Maine's Future Fund project assistance creates an obligation to acquire, use and maintain the conservation easement described in this Project Agreement consistent with Title 5, M.R.S.A., Section 6200 et seq., as amended, and augmented by [***P.L. 1999 c. 514, Sec. A-6, and P.L. 2005 c. 462, Sec. B-5 delete as applicable***], and the following requirements:

A. LEGAL AUTHORITY: The Cooperating Entity warrants and represents that it possesses the legal authority to apply for the grant and to otherwise carry out the project in accordance with the terms of this Agreement, and has either marketable title to the Conservation Easement on the Protected Property or a binding Agreement to acquire the same. A resolution or similar action has been duly adopted by the governing body of the Cooperating Entity authorizing the filing

of the application and implementation of the Project, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Cooperating Entity to act in connection with the application and to provide such additional information as may be required by the LMFB or the DSA and to enter into this Agreement.

B. FINANCIAL ABILITY: The Cooperating Entity warrants and represents that it has the funds and the commitment to finance the cost share of acquisition together with all other costs of the Project, including for monitoring and management, except the Land for Maine's Future Fund share stated on the cover page of this Agreement.

C. USE OF FUNDS: The Cooperating Entity shall use moneys granted by LMFB only for the purposes of acquisition/access improvement of the Project as approved by LMFB and provided for herein.

D. USE AND MAINTENANCE OF PREMISES: The Cooperating Entity shall assure that the Protected Property shall be forever used, operated and maintained as prescribed in the Conservation Easement and this Agreement and all applicable laws, including without limitation Title 5, M.R.S.A. Section 6200 et seq., as amended and augmented by [*P.L. 1999 c. 514, Sec. A-6 or P.L. 2005 c. 462, Sec. B-5 delete as applicable*]. Permits and licenses necessary for the implementation of this Agreement or use of the Protected Property shall be obtained and complied with by the Cooperating Entity. All costs of acquisition or implementation of the Project and ownership and management of the Conservation Easement shall be paid by the Cooperating Entity, except as to the cost share to be provided by LMFB as specified herein.

E. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS: The Cooperating Entity shall keep a permanent record in the Cooperating Entity's property records, available for public inspection, to clearly document that the property described in this Project Agreement, and the signed and dated Project boundary map made part of this Agreement has been acquired with Land for Maine's Future Fund assistance and that it cannot be converted to uses other than those specifically provided by this Agreement without the prior written approval of the LMFB and the Director of the DSA..

Financial records, supporting documents, statistical records, monitoring records and all other records pertinent to this grant and the Project shall be retained by the Cooperating Entity and may be inspected by representatives of LMFB and the DSA during normal business hours.

F. ANNUAL REPORTING REQUIREMENTS: On each anniversary of this Agreement, the Cooperating Entity shall report on an annual basis on a monitoring form as approved by LMFB. The form shall be sent to: 1) the Director of the DSA; and (2) the Director of LMFB. For the purposes of this Agreement, the anniversary date for reporting purposes shall be the date of recording of this instrument in the applicable registry of deeds.

G. RIGHT OF ENTRY: Under the terms of the Conservation Easement, the DSA, its employees, agents and representatives, shall have the right to enter the Premises at all times and in any manner without prior notice to assure compliance with the terms of this Agreement and any applicable laws.

H. PROVISIONS IN THE EVENT OF TRANSFER:

i. PRIOR NOTICE AND APPROVAL: In the event of any intended sale or transfer, in whole or in part, of the Conservation Easement or any interest therein, the Cooperating Entity shall provide at least sixty (60) days prior written notice of the same to the DSA and LMFB and shall obtain written consent from the same prior to such transfer.

ii. DISSOLUTION: In the event of dissolution of the Cooperating Entity, at least sixty (60) days prior written notice of such shall be provided to: (1) the Director, DSA; and (2) Director, LMFB. Prior written consent to the transfer and disposal of the Conservation Easement shall be obtained from LMFB as with a conveyance of the Conservation Easement under Subsection H(i) unless the DSA requires that the Cooperating Entity transfer title to the Conservation Easement to the DSA or a successor designated by the DSA under Subsection I(d).

iii. SUCCESSORS AND ASSIGNS: Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Cooperating Entity shall incorporate the terms of this Agreement by reference in any deed or other instrument by which the Cooperating Entity sells or transfers any interest in all or a portion of the Conservation Easement. In the event that the LMFB or the DSA ceases to exist, the rights and responsibilities of that party shall automatically be vested in any successor agency designated by the Legislature. Failing legislative designation, the successor agency shall be as determined by the Governor.

iv. SHARE IN PROCEEDS: In the event of any sale, transfer, termination or condemnation of any or all of the Conservation Easement or disposal of the Conservation Easement pursuant to dissolution (hereinafter "transfer"), the Cooperating Entity shall

pay to the Land for Maine's Future Fund, or to another fund designated by the LMFB, a share of the proceeds of the transfer. For the purposes of this Agreement, this share is defined as the product of:

- (a) the ratio of the value of the LMF's contribution to the value of the Conservation Easement as a whole as of the date of this Agreement, hereby established as ___%, multiplied by
- (b) the appraised value of the Conservation Easement, or portion thereof, which value shall be determined as the amount by which the fair market appraisal value of the Protected Property unrestricted by this Conservation Easement is reduced by the terms and conditions imposed by this Conservation Easement as of the date of transfer.

The LMFB may waive receipt of any proceeds, provided that the said funds are applied to conservation of a substitute property as approved by the LMFB. This payment to the fund shall not relieve the transferee of the continuing obligations to hold, manage and use the Premises under the terms of this Agreement.

The State's share of proceeds shall be paid to the LMF at the time of the transfer, sale, condemnation or dissolution.

I. ENFORCEMENT ALTERNATIVES: In the event that the Cooperating Entity does not meet one or more of its obligations under this Agreement or the deed restrictions and covenants by which it holds title to the Conservation Easement, or in the event of dissolution of the Cooperating Entity, the DSA may exercise, in its sole discretion, any of the following remedies following written notice and thirty (30) days opportunity for the Cooperating Entity to cure the default:

- (a) any of the remedies or rights set forth in the Cooperating Entity's deed to the Conservation Easement;
- (b) the right to require specific performance on the part of the Cooperating Entity;
- (c) the right to a return of the State's share of proceeds as defined in Section H (iv); and
- (d) any other rights or remedies available at law or in equity including, but not limited to, the right to require that the Cooperating Entity perform remedial work and transfer title to the Conservation Easement to the DSA or a successor designated by the DSA under such terms and conditions as the court may require. In the event that the DSA exercises any of the rights available to it upon default of the Cooperating Entity, the Cooperating Entity shall reimburse the DSA for its costs of

enforcement and collection, including reasonable attorneys fees.

In addition to the foregoing remedies, it is understood and agreed that the Project creates a public charitable trust entitled to all the protections thereof under state law.

J. AMENDMENT: This Agreement may not be amended, in whole or in part, except with the written consent of all of the parties hereto.

LAND FOR MAINE'S FUTURE FUND
PROJECT AGREEMENT
(Pursuant to P.L. 1999 c. 514, Sec. A-6 and
P.L. 2005 c. 462, Sec. B-5, as applicable)
[Fee Version]

Cooperating Entity: *

Project Name and Location: *

Designated State Agency: *

Premises Covered by this Agreement:

(1) The * Property, being fee ownership of lands located on the * side of *, Town of *, * County, Maine, and as more fully described in a * Deed from * and * to the *, dated * and recorded * in the * County Registry of Deeds in Book *, Page *; and see also plan by *, File No. *, dated * and recorded in said Registry in Plan Book *, Page *.

[Delete Item 2 if no match lands]

(2) Match Lands: The * Property by deed dated *, and recorded in the * County Registry of Deeds ("*") on * in Book *, Page *, and depicted on a Plan of Land * prepared by *, dated *, a copy of which is on file with the Land for Maine's Future Fund application and with the Maine Department of * and *. This parcel is offered as Match Land. See Item 4 below for other conditions pertaining to this parcel.

All of the foregoing hereinafter referred to as "the Premises".

Scope (Description of Project): *

Project Cost:

LMF Contribution to Cooperating Entity: \$*
Cooperating Entity: \$*

The following are hereby incorporated into this Agreement:

1. General Provisions
2. Project Application and Attachments by reference
3. Project Boundary Map
4. Other: **[Delete following language if no match lands. Substitute applicable language]**

That portion of the "Premises" designated as the Match Parcel above is subject to the management restrictions and covenants of this Project Agreement, but is not subject to the Project Agreement General Provisions Part II, section Paragraph H subsection (iv).

The Land for Maine's Future Board, represented by its Chair, (hereinafter LMFB), and the State of Maine, Department of **[insert agency name]**, represented by its Commissioner, as the Designated State Agency (hereinafter DSA), and the Cooperating Entity, mutually agree to perform this Agreement in accordance with Title 5, Maine Revised Statutes Annotated, Section 6200 et seq., as amended, and augmented by **[insert P.L. 1999 c. 514, Sec. A-6 or P.L. 2005 c. 462, Sec. B-5 as applicable]**, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, assurances, and certifications incorporated herein by reference and hereby made a part hereof.

Subject to the terms hereof and to the availability of funds for this purpose, LMFB hereby agrees, in consideration of the agreements made by the Cooperating Entity herein, to obligate to the Cooperating Entity the amount of money referred to above, and to tender to the Cooperating Entity that portion of the obligation which is required to pay the LMFB's share of the costs of the above described project. The Cooperating Entity hereby agrees, in consideration of the agreements made by the LMFB herein, to provide the matching funds, and lands, if applicable, and to implement the project described above in accordance with the terms of this Agreement.

The following special project terms and conditions are added to this Agreement:

1. The Premises, including any structures located thereon, must remain as a single parcel, under one ownership, and may not be divided into parcels or lots, except for boundary adjustments to resolve bona fide boundary disputes, subject to the approval of the DSA, or as may be approved under Part II, section H subsection (i) of this Agreement. In order to grant any such approval under this provision, the DSA and LMFB must find that the proposed division of the Premises furthers the conservation purpose and objectives of the project as defined in this Agreement and its attachments.

2. The Cooperating Entity shall not prohibit hunting, fishing, or trapping on the Premises, except to the extent of applicable state, local or federal laws and regulations.

3. The Cooperating Entity agrees that any fees or charges imposed for public access to or use of the Premises shall be reasonable and comparable to those charged in Maine for similar facilities, and any such fees must be approved in advance and in writing by the DSA.

4. The Premises or any interest therein may not be sold or transferred without prior written approval of the DSA and LMFB as provided under Part II, section H subsection (i) of this Agreement, and then only to a federal, state, or local government agency or a non-profit conservation organization which is a "qualified organization" under Section 170(h) of the United States Internal Revenue Code, and a "qualified holder" under Title 33, Maine Revised Statutes Annotated, Section 476(2), subject to the condition that the qualified organization expressly agrees to assume the rights and obligations of the Cooperating Entity provided for by this Agreement.

5, 6, etc. */Other terms to be inserted as needed /

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of *, 200*.

THE LAND FOR MAINE'S FUTURE BOARD

By: _____
George Lapointe, Its Chair

STATE OF MAINE
Department of *

By: _____
*
Its Commissioner

COOPERATING ENTITY

*

By: _____

Print Name:

Title:

STATE OF MAINE

County of *

Date: *

Then personally appeared the above-named *, duly authorized *
(title) of *

[Insert name of Cooperating Entity] and acknowledged the foregoing
to be his/her free act and deed in his/her capacity and the free act
and deed of said *.

Before me,

Notary Public/Attorney at Law

Print Name: _____

My Commission Expires:

Seal:

**LAND FOR MAINE'S FUTURE FUND
PROJECT AGREEMENT GENERAL PROVISIONS**

Part I – DEFINITIONS

1. The term "DSA" or "Agency" as used herein means the Designated State Agency as shown on Page 1 of the Project Agreement.
2. The term "Director" as used herein means the Commissioner or agency head of the DSA or any representative lawfully delegated the authority to act for such Director.
3. The term "Premises" as used herein means the lot or parcel or parcels of land as described and shown on Page 1 of the Project Agreement.
4. The term "Project" as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the Project Agreement, and as described on Page 1 of the Project Agreement.
5. The term "Cooperating Entity" as used herein means a political subdivision or instrumentality of the State of Maine or a non-profit conservation corporation which will implement the Project as provided in this Agreement.

Part II – CONTINUING ASSURANCES

The Cooperating Entity specifically recognizes that Land for Maine's Future Fund project assistance creates an obligation to acquire, use and maintain the property described in the Project Agreement consistent with Title 5, M.R.S.A., Section 6200 et seq., as amended, and augmented by [*P.L. 1999 c. 514, Sec. A-6, and P.L. 2005 c. 462, Sec. B-5 delete as applicable*], and the following requirements:

A. LEGAL AUTHORITY: The Cooperating Entity warrants and represents that it possesses the legal authority to apply for the grant and to otherwise carry out the project in accordance with the terms of this Agreement, and has either marketable title to the Premises or a binding Agreement to acquire the same. A resolution or similar action has been duly adopted by the governing body of the Cooperating Entity authorizing the filing of the application and implementation of the Project, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Cooperating Entity to act in connection with the application and to provide such

additional information as may be required by the LMFB or the DSA and to enter into this Agreement.

B. FINANCIAL ABILITY: The Cooperating Entity warrants and represents that it has the funds and the commitment to finance the cost share of acquisition together with all other costs of the Project, including for monitoring and management, except the Land for Maine's Future Fund share stated on the cover page of this Agreement.

C. USE OF FUNDS: The Cooperating Entity shall use moneys granted by LMFB only for the purposes of acquisition/access improvement of the Project as approved by LMFB and provided for herein.

D. USE AND MAINTENANCE OF PREMISES: The Cooperating Entity shall assure that the Premises shall be forever used, operated and maintained as prescribed in this Agreement and all applicable laws, including without limitation Title 5, M.R.S.A. Section 6200 et seq., as amended and augmented by [*P.L. 1999 c. 514, Sec. A-6 or P.L. 2005 c. 462, Sec. B-5 delete as applicable*]. Permits and licenses necessary for the implementation of this Agreement or use of the Premises shall be obtained and complied with by the Cooperating Entity. All costs of acquisition or implementation of the Project and ownership and management of the Premises shall be paid by the Cooperating Entity, except as to the cost share to be provided by LMFB as specified herein.

E. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS: The Cooperating Entity shall keep a permanent record in the Cooperating Entity's property records, available for public inspection, to clearly document that the property described in this Project Agreement, and the signed and dated Project boundary map made part of this Agreement has been acquired with Land for Maine's Future Fund assistance and that it cannot be converted to uses other than those specifically provided by this Agreement without the prior written approval of the LMFB and the Director of the DSA..

Financial records, supporting documents, statistical records, monitoring records and all other records pertinent to this grant and the Project shall be retained by the Cooperating Entity and may be inspected by representatives of LMFB and the DSA during normal business hours.

F. ANNUAL REPORTING REQUIREMENTS: On each anniversary of this Agreement, the Cooperating Entity shall report on an annual basis on a monitoring form as approved by LMFB. The form shall be sent to: 1) the Director of the DSA; and (2) the Director of LMFB. For the purposes of this Agreement, the anniversary date for reporting purposes shall be the date of recording of this instrument in the applicable registry of deeds.

G. RIGHT OF ENTRY: The DSA or LMFB, its employees, agents and representatives, shall have the right to enter the Premises at all times and in any manner without prior notice to assure compliance with the terms of this Agreement and any applicable laws.

H. PROVISIONS IN THE EVENT OF TRANSFER:

i. PRIOR NOTICE AND APPROVAL: In the event of any intended sale or transfer, in whole or in part, of the Premises or any interest therein, the Cooperating Entity shall provide at least sixty (60) days prior written notice of the same to the DSA and LMFB and shall obtain written consent from the same prior to such transfer.

ii. DISSOLUTION: In the event of dissolution of the Cooperating Entity, at least sixty (60) days prior written notice of such shall be provided to: (1) the Director, DSA; and (2) Director, LMFB. Prior written consent to the transfer and disposal of the Premises shall be obtained from LMFB as with a conveyance of the Premises under Subsection H(i) unless the DSA requires that the Cooperating Entity transfer title to the Premises to the DSA or a successor designated by the DSA under Subsection I(d).

iii. SUCCESSORS AND ASSIGNS: Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Cooperating Entity shall incorporate the terms of this Agreement by reference in any deed or other instrument by which the Cooperating Entity sells or transfers any interest (including leasehold interest) in all or a portion of the Premises. In the event that the LMFB or the DSA ceases to exist, the rights and responsibilities of that party shall automatically be vested in any successor agency designated by the Legislature. Failing legislative designation, the successor agency shall be as determined by the Governor.

iv. SHARE IN PROCEEDS: In the event of any sale, transfer, or condemnation of any or all of the Premises or disposal of the Premises pursuant to dissolution (hereinafter "transfer"), the Cooperating Entity shall pay to the Land for Maine's Future Fund, or to another fund designated by the LMFB, a share of the proceeds of the transfer. For the purposes of this Agreement, this share is defined as the product of:

- (a) the ratio of the value of the LMF's contribution to the value of the Premises as a whole as of the date of this Agreement, hereby established as XX%, multiplied by

- (b) the appraised value of the transferred Premises or portion thereof at the time of the transfer, unencumbered by this Agreement or other encumbrances recorded after the date of this Agreement (excluding value attributable to authorized improvements to the Premises made after the date of this grant and not paid for by the State).

The LMFB may waive receipt of any proceeds, provided that the said funds are applied to conservation of a substitute property as approved by the LMFB. This payment to the fund shall not relieve the transferee of the continuing obligations to hold, manage and use the Premises under the terms of this Agreement.

The State's share of proceeds shall be paid to the LMF at the time of the transfer, sale, condemnation or dissolution.

I. ENFORCEMENT ALTERNATIVES: In the event that the Cooperating Entity does not meet one or more of its obligations under this Agreement or the deed restrictions and covenants by which it holds title to the Premises, or in the event of dissolution of the Cooperating Entity, the DSA may exercise, in its sole discretion, any of the following remedies following written notice and thirty (30) days opportunity for the Cooperating Entity to cure the default:

- (a) any of the remedies or rights set forth in the Cooperating Entity's deed to the Premises;
- (b) the right to require specific performance on the part of the Cooperating Entity;
- (c) the right to a return of the State's share of proceeds as defined in Section H (iv); and
- (d) any other rights or remedies available at law or in equity including, but not limited to, the right to require that the Cooperating Entity perform remedial work and transfer title to the Premises to the DSA or a successor designated by the DSA under such terms and conditions as the court may require. In the event that the DSA exercises any of the rights available to it upon default of the Cooperating Entity, the Cooperating Entity shall reimburse the DSA for its costs of enforcement and collection, including reasonable attorneys fees.

In addition to the foregoing remedies, it is understood and agreed that the Project creates a public charitable trust entitled to all the protections thereof under state law.

J. AMENDMENT: This Agreement may not be amended, in whole or in part, except with the written consent of all of the parties hereto.

Appendix I

Guidance for Working Forest Easements

In early 2001, an LMFB 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 (<http://www.maine.gov/spo/lmf>).

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.

It is our understanding that 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 intentions of the grantor and grantee. However, 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 allow 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:

A-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.

A-2. Strict limits on subdivision, 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.

A-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.)

A-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 our 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 sustained yield (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. Language should also stipulate that Best Management Practices (BMPs) be utilized in all forest management operations.

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.

B-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 application 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.

B-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.

B-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.

B-4. Rights to manage public recreation on the property. Clear goals for such management should be stated in the easement.

B-5. The right to construct, maintain, relocate and/or limit trails on the property for motorized and/or non-motorized recreation.

B-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 stipulated, 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.

B-7. Road access to the property. The Board should keep in mind that 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. However, it may be more cost effective for relevant state agencies to keep a list of key access roads and include them in future negotiations with landowners who control access between public roads and the property.