

Section I

The Land for Maine's Future Board & Program

Land for Maine's Future Board & Staff

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Legislative & Policy Objectives

The Land for Maine's Future Fund is managed by a 9 member board, of which six are private citizens and three are state agency commissioners. The program staff is responsible for providing support for Board activities relating to acquisitions.

Recent Policy Objectives through the existing LMF Bonds include:

1. **\$5,000,000 in new funding for LMF projects** was approved by voters in November, 2012.

In this bond, unlike with previous bonds, funds were not earmarked for specific purposes, rather all the purposes for the funds were listed together in the legislation and in the ballot question. These include the following:

Acquisition of land and interest in land for conservation; water access; wildlife or fish habitat including deer wintering areas; outdoor recreation, including hunting and fishing; and working farmland preservation and working waterfront preservation.

The statute authorizing these funds (Ch. 696, Public Laws of 2011) specifies that projects that protect deer wintering areas (DWA) are considered to have special value and must receive preferential consideration during scoring of applications.

Priority DWA are of "at least 500 acres or contiguous with existing conservation land so that the combined acreage constitutes at least 500 acres, have been historically used by deer at some point since 1950 and are capable of providing shelter for deer on the effective date of the Act or within 20 years."

See Appendix J for a copy of Chapter 696, outlining these requirements.

Chapter 696 also requires that state land acquired with those funds be managed by DACF subject to a protocol approved by MDIFW.

2. The Legislature has directed the LMF Board to give preference "to acquisitions ... that achieve benefits for multiple towns and that address regional conservation needs including public recreational access, wildlife, open space or farmland." Since 1999 sites of local and regional significance may be considered and payments may be made directly to cooperating entities (private nonprofit organizations, municipal conservation commissions, local governments, or federal agencies). When title is held by a cooperating entity, they enter into a project agreement that is enforceable by the State to ensure the lands are used for the purposes for which they were acquired.

Needs Assessment

The Board conducted its original needs assessment in 1988, which consisted of public participation meetings and the establishment of priority land categories, including the legislatively mandated land types found in the LMF statute. This list created the foundation of the Land for Maine's Future Program's detailed land classification types:

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

In 1996, Governor King established the Land Acquisition Priorities Advisory Committee (LAPAC). This committee performed a new needs assessment and its recommendations form the basis for some of the scoring process, most notably the "Additional Land Assets" found in the Conservation and Recreation Lands Scoring System on page 20 of this workbook.

Since then, the program has updated its criteria to keep current with emerging needs, public input and legislative action.

As part of its preparation for issuing this workbook, the current LMF Board reviewed the LMF statutory requirements, LMF bond requirements and LAPAC report to develop the priorities and scoring system described herein.

Board Policies & Guidelines

The Land for Maine's Future Board follows well-established policies and guidelines as it conducts its business. The following is a brief summary of the most important of these. Please contact LMF staff with any questions. **Please note that the Board has adopted a new proposal review process which is outlined in the section titled Board Process for Reviewing Proposals.**

Primary Purpose of the Program - The primary purposes of the LMF Program is to conserve land in its undeveloped state, providing public recreational water access, working waterfront protection, and continuing productive farms and farmlands.

Willing Sellers Only - The Board requires proposals to include a signed consent from the owner(s) of land being proposed for consideration.

Matching Funds - A proposal is expected to have a match greater than or equal to 50% of the total eligible project costs. This means that for every \$1 of LMF funds expended, there must be at least \$1 of match funds. The Board considers the level of matching funds in evaluating projects and in making funding allocations.

Matching funds may include stewardship fund contributions. Eligible stewardship fund contributions must equal not more than 20% of the appraised value of the acquired land, and must be held in a designated stewardship account of the state agency or cooperating entity holding title to the land. Use of stewardship funds as match requires the recipient of LMF funds to make a firm commitment of these funds in a form acceptable to the Board.

More information on matching funds can be found in Appendix D – Form for Proposal Budget.

Purchase Price Determined by Appraised Value - Board policy requires that the fair market value of a property or a conservation easement is determined through a qualified independent appraisal and that the acquisition price reflects the appraised value. Appraisals should follow the Appraisal Standards found in Appendix F.

Applicants may use a realtor's opinion of value as a means of establishing a value for the purposes of applying for LMF funds. Once a proposal is selected by the Board as a finalist, an appraisal must be conducted in accordance with the LMF appraisal standards described in Appendix F. The Board will typically require appraisals with a valuation date no more than a year old at the time of the Appraisal Oversight Committee's review, unless an executed purchase and sales agreement is in place with a value based on the appraisal. In all instances, appraisals for LMF funded properties must be reviewed and approved by the LMF Appraisal Oversight Committee.

Land for Maine's Future Workbook

Purchases Above Appraised Value Strongly Discouraged - The Board's basic rule is that it will not participate in a transaction where the purchase price exceeds fair market value based on an independent appraisal that is approved by the Appraisal Oversight Committee and accepted by the Board.

However, it is recognized that the market will, on rare occasion, offer opportunities that may require exceptions to the basic rule. **Applicants should be aware that this exception is seldom invoked and consult with program staff prior to making any commitments that would require an exception.**

Board Allocation of Project Funding - The Board's allocation is considered preliminary until the actual value is determined by an LMF Board approved appraisal. The value determined by this appraisal, and other project costs, will guide the amount of funds LMF contributes to the project. In the event that the project changes in scope or size, the Board's approval of funding may differ from the original allocation. Funding awards are at the approval of the LMF Board. Awards are subject to the availability of funds and subject to state budget and finance procedures.

Project Adjustments - The Director and Project Manager must be notified if, at any point prior to closing, a proposal selected as a project finalist has adjustments to its scope and size from what was accepted for funding by the LMF Board. Staff will review and determine what adjustments are appropriate or if the proposed changes require the project to return to the LMF Board for approval.

Project funding may be reduced from the original allocation amount based upon the impact of the project change to the attributes of the original project.

Proposals must return to the LMF Board for reconsideration when:

1. Reductions in size

- Reductions in land are more than 10% of the original total project land area. This includes instances in multi parcel projects
- A parcel is removed from a multi-parcel project.

2. Reductions in scope

If changes in project scope substantially affect public access, recreational opportunities, uses of the land, ecological or conservation attributes.

3. Change in project parcels

Substitute parcels must be reviewed by the Scoring Committee and require Board approval.

Reserved Rights and Title Issues - All reserved rights and issues affecting the property's title encountered during the due diligence process must be reviewed by the Project Manager and Director, including changes to conservation easement terms, mineral ownership, reserved rights,

Land for Maine's Future Workbook

etc. to determine if these could materially affect the conservation values of the property and the investment of public funds.

Providing Public Recreational Access - Public recreational access is a core purpose of the Land for Maine's Future Program. All lands acquired with LMF funding are open to the public. Exceptions include farms and commercial working waterfronts, where public access may not be feasible or desirable. LMF may make grants of up to 5% of the appraised value of land acquired to develop public access facilities, including trails, boat launching sites, parking, camping and picnicking facilities. See Appendix L for more information.

Hunting, Fishing & Trapping – Pursuant to the terms of the respective 2010 and 2012 bonds, hunting, fishing, trapping and public access may not be prohibited on conservation and recreation lands acquired with bond proceeds, except to the extent of applicable state, local and federal laws and regulations. Exceptions include farms and commercial working waterfront properties, or for protection of critical natural resources.

Discriminatory Fees and Access – Public access may not be limited in any way based on the location of a visitor's residence. If entrance or usage fees are established, they must be uniform for all visitors. Generally, the establishment of fees must be allowed in the Project Agreement and approved by the Designated State Agency.

Business Plan Development for Farmland Projects - When development rights on a farm are purchased, LMF may make grants of up to 5% for business plan development and implementation.

Environmental Concerns – Properties that receive LMF funds must be free from all environmental concerns at the time of closing. Prior to closing, all projects must submit a Phase I Environmental Site Assessment (ESA) report to LMF dated within 1 year of closing. The ESA report must include evidence of a records check, site visit(s) documenting uses and conditions of the property with pictures that show ground conditions (snow on the ground is not acceptable) and interviews with persons familiar with the property. Debris, trash, tires or other forms of refuse or encroachments from abutting lands identified in the ESA report must be removed from the property, with documentation provided to LMF staff prior to the release of LMF funds.

Buildings are generally not allowed on LMF properties, except under specific circumstances. Contact LMF staff if you have questions about existing buildings on the property.

For properties pre-acquired for State of Maine ownership, (fee & easement), an ESA may not be necessary. Contact LMF staff with questions.

Public Notice of Intent to Purchase - The Board publishes a notice of a vote to acquire property 10 days in advance of the meeting. Notices are placed in a general circulation newspaper and a local newspaper describing the property to be voted on and inviting all members of the public to submit comments in writing or to appear before the Board with comments about the proposed acquisition.

Land for Maine's Future Workbook

Public Participation Welcome at All Meetings - All Board meetings are open to the public and include opportunity for public input. Meetings are publicly announced well in advance on the LMF website, DACF website, and State of Maine public meetings calendar. Also when projects come before the Board for their final allocation, public notices are printed in applicable newspapers and on the LMF website.

Municipal and County Approval - Municipal approval is required for LMF funding when property interests representing more than 1% of a municipality's state valuation are considered for acquisition. Board policy is to encourage applicants to seek municipal input on all acquisitions. Within unorganized territories, approval of the appropriate county commissioners is required if the land value of a proposed project constitutes more than 1% of the state valuation within that county. The year of the appraisal will determine the year of the municipal valuation used.

No Fee Acquisition of Lands for Timber Production - By statute, LMF is prohibited from funding the fee acquisition of land for which the primary use value has been or will continue to be commercially harvested or harvestable forest land. This does not prohibit the acquisition of conservation easements in which the rights to harvest timber are retained by the land owner.

Addressing Land and Easement Management Costs - The Board requires all applicants to address stewardship and management costs as part of a proposal. LMF statute requires that applicants provide estimates of the management costs associated with the project over the first 10 years of ownership.

Press Releases - All press releases or media advisories announcing any phase of an acquisition with LMF funds must be coordinated with the LMF staff. Media coverage is encouraged.

LMF Signage - Applicants are responsible for ensuring appropriate signage acknowledging LMF support is located and maintained on all conserved properties. LMF signs will be provided at closing.

Project Ownership - As part of the proposal, the applicant must specify how the project's ownership will be held.

When a project involves an easement that is to be held by a local entity (a "cooperating entity", per LMF statute, includes land trusts and municipalities), language should typically be added to the easement giving the State of Maine third party enforcement rights on the terms of the easement. If this is not done, a Project Agreement between the cooperating entity and the State of Maine will define the terms of the project and be recorded with the easement (see Appendix G). Because all projects have differences, the description of project goals and management expectations may change from project to project.

Similarly, where a project is owned in fee by a cooperating entity, a Project Agreement (see Appendix G) is signed between the entity and the State of Maine to define the terms of the project

Land for Maine's Future Workbook

and recorded with the deed. The deed must also include reference to the fact that the parcel has been acquired as part of an LMF funded project.

Pre-Acquired Properties - Lands acquired within 2 years prior to the date of the project proposal deadline may be considered for reimbursement when the pre-acquisition was conducted on behalf of the sponsoring agency **or** the sponsoring agency was aware of and supported the pre-acquisition. LMF contribution will be no more than the Board approved amount, not to exceed the actual purchase price or appraised value whichever is less. Any appraised value approved by the LMF Board in excess of the purchase price may be used as match. All other LMF due diligence and policy requirements apply to pre-acquired properties. Only in rare circumstances will the Board consider reimbursement for a pre-acquired easement. Contact LMF staff with questions.

Board Process for Reviewing Proposals - The Board establishes the deadline by which proposals must be received. A potential applicant must be in contact with the appropriate sponsoring state agency no less than eight weeks in advance of this deadline. A copy of the proposal must be sent to the sponsoring agency.

The process of proposal review includes the following:

- LMF staff review proposals to determine whether they are complete and to identify problems.
- LMF staff scores proposals.
- Board reviews proposals and staff scores.
- Board hears presentations from applicants and provides adjusted scores to staff.
- Board meets to review their adjusted scores, consider Other Board Considerations (see page 12), and makes final adjustments to scores.
- The Board enters executive session to select finalists and makes preliminary funding allocations.
- The Board then votes in a public session to select finalists.

Threshold Criteria

The Land for Maine's Future Board follows established policies and guidelines when it makes decisions on which projects to fund. These "threshold criteria" supplement policies and guidelines that are found in Section I on page 10. Threshold refers to the Board's expectation that all proposals meet the following minimum requirements. In rare cases, a proposal that does not meet these criteria will be considered.

Willing Seller: The owner(s) has agreed in writing to allow the sponsoring agency or cooperating entity to consider the purchase of his/her property.

Adequate Title: Clear title is required. If clear title is not available at the time of application then the applicant is required to obtain clear title prior to closing.

Appraised Value: The owner is willing to accept an offer at or below fair market value based on an appraisal that conforms to Land for Maine's Future appraisal standards (see Appendix F). The appraisal valuation date should be less than a year old at the time of the Appraisal Oversight Committee review, unless an executed purchase and sales agreement is in place with a value based on the appraisal.

Match: A proposal is expected to have matching funds greater than or equal to 50% of the total eligible project costs. This means that for every \$1 of LMF funds, there must be \$1 of match value. Of the total match amount, the ratios of match type must be the following:

- no more than 30% of the match can be the value of services customarily associated with land acquisition (e.g. appraisal, survey, title work, legal work, ecological and archeological inventory); and
- 70% must be in the form of land, cash or other tangible assets. It is the responsibility of the applicant to document the value to be used as match via appraisal. For a match parcel to qualify as match the sponsoring state agency must hold the real estate interest or, if the interest is held by a cooperating entity, the interest must be covered by a project agreement with the sponsoring state agency.

For example, if a proposed property has an estimated total project cost of \$200,000 (including land and all other eligible costs), it would be eligible for up to \$100,000 in LMF funds, and there would have to be a match of at least \$100,000. Of this \$100,000 match, up to 30% or \$30,000 could be services needed for the land acquisition, and at least 70% or \$70,000 would have to be in donated land value, cash, or other tangible asset.

Land for Maine's Future Workbook

The value of lands or interest in lands acquired within 2 years of the date of project proposal may be used as tangible match when the property interests have a direct relationship to the project.

Contributions to a dedicated stewardship/management endowment of the state agency or cooperating entity that will hold title (or easement) may be considered as tangible match. Match requirements allow use of these contributions with a statutorily cap of 20% of the appraised value of the land to be acquired. Access improvements may be considered as tangible assets for match purposes with a cap at 5% of appraised land value. Engineering, permitting, and wetland delineation can also be considered as match under the 5% access improvement allowance. To qualify as match, stewardship commitments to the endowment of a cooperating entity must be documented by applicant in a manner acceptable to the Board.

With the exception of the caps on the stewardship endowment and access improvement, all other match percentages are calculated based on total project costs, which are the combined land or easement cost, plus all other costs customarily associated with the acquisition of land or interest in land.

Ownership & Sponsorship: An applicant is required to have sponsorship of a State agency (Department of Inland Fisheries & Wildlife, Department of Agriculture, Conservation and Forestry, Maine Historic Preservation Commission, or the Department of Marine Resources). For projects of regional or local significance applicants must have an agreement with the sponsor regarding ownership and management. To accomplish this, applicants must contact the appropriate sponsoring state agency no less than eight weeks in advance of submitting a proposal.

Applicant's Capacity: An applicant must demonstrate the capacity to undertake the project with a reasonable prospect of bringing it to a successful conclusion. Non-profit applicants must submit their most recent financial audit if one exists and the most recent financial statement that represents the organization's current financial condition. The Board may consider all relevant factors including without limitation: organizational debt, fund raising ability, past land conservation activity and transactions, track record with LMF projects, organizational history, scope of conservation vision, and evidence of success in building and sustaining land protection campaigns.

In addition, the Board will consider whether or not the proposed title or easement holder has the ability, experience, and resources to manage the property appropriately.

Relationship to Local Comprehensive Planning Efforts: For locally significant projects, the project must be consistent with an adopted comprehensive plan (if one exists) meeting the standards of the Growth Management Act (30-A MRSA sections 4301-4349) with evidence that the municipality had adopted strategies to implement the plan. For strongest Board consideration, a project should be an explicit component of a larger integrated effort by the applicant and municipality to achieve the conservation, recreation, and other goals of the comprehensive plan.

Land for Maine's Future Workbook

A project proposed within a locally designated growth area must be able to demonstrate that the project doesn't diminish the intent of the designation.

Other Board Considerations:

- Does the property increase geographic distribution of LMF investments?
- Does the property provide benefit to people from multiple towns and/or address regional conservation needs?
- Does the property serve as an anchor parcel for conservation in an area of the state without existing conservation lands?
- Does the budget include >50% in matching funds?
- Are >50% of matching funds secured (in hand)?
- Does the relative cost of the property (LMF contribution or estimated value?) align with the values offered by the property? (a good bang for the buck?)
- Will the property require an average or low level of ongoing management needs? In the case of conservation easements, sufficient matching funds are needed to monitor and enforce the easement. The Board will evaluate whether the proposal includes an adequate contribution, as identified by the sponsoring state agency, to the State's conservation stewardship or easement monitoring endowment fund.
- Does the applicant have a good track record of completing projects to LMF standards or is this the applicant's first application to the LMF program?
- Is this a new applicant?
- Does applicant demonstrate financial & staff capacity to adequately steward the property?
- Does the project design result in a good investment of public funds and a good resource for the public?
- Does the applicant demonstrate that the property is under threat from losing public access or conversion to a use that would minimize the value of the resources present?
- Does the project have a high level of readiness? (3 or more steps completed) and minimal complicating factors (access, sub-division, outstanding mineral rights, structures, etc.)

These items include:

Current appraisal (acceptable for Board review)

Final easement or fee acquisition conditions completed

Cost Share commitment established

Signed option or purchase and sales agreement

Pre-acquired and held by a third party in coordination with the sponsoring state agency.

Readiness scale.

Level 1 - 4 items completed

Level 2 - 3 items completed

Level 3 - 2 items completed

Level 4 - 1 item completed

Level 5 - 0 items completed

Project Requirements

Completion Requirements for Approved Projects - Once the Board selects finalists, a series of due diligence steps (Appendix N) must be completed to the satisfaction of the Board. In addition to these steps, the Board may place specific conditions which must be addressed before LMF funds are released.

Applicants are responsible for the following:

- Appraisal to determine fair market value. All appraisals for acquisition of fee or easement must be reviewed and accepted by the Appraisal Oversight Committee and its recommendation must be approved by the full Board. See appraisal standards in Appendix F.
- If acquisition involves easement purchase, easement is drafted in a form consistent with the Model Easement (prior to appraisal). See Appendix H Guidance for Working Forest Easements and Appendix I Guidance for Agricultural Conservation Easements.
- Applicant prepares draft Purchase and Sales Contract with all appurtenant conditions, to be reviewed and approved by LMF staff.
- Elected officials approve (organized townships) if project represents >1% of state valuation or County Commissioners approve (unorganized townships) if >1% of county valuation.
- LMF will publish public notice of intent to purchase and schedule Board vote, for the purpose of receiving public comment.
- Complete title work, including title insurance. The property may not be encumbered by any lien, mortgage or other obligation that in the Board's exclusive judgment could interfere with the conservation purposes of the project. This includes outstanding mineral rights.
- Applicant conducts Phase I Environmental Site Assessment (ESA). The ESA should be scheduled so that it is no more than 1 year old at the time of release of LMF funds. ESA reports older than one year will need an update.
- Complete an acceptable boundary survey and provide GIS-compatible electronic version of survey (so called "Shape" or ".SHP" files).
- Based on legal interest to be held, LMF staff, applicant and DSA representative develop the LMF project agreement.
- Documentation of matching funds provided by applicant as presented in the proposal (NOTE: if a stewardship endowment has been included as match, this documentation must include a letter from the applicant's governing body that this commitment has been fulfilled);
- Evidence of Corporate Authority to accept LMF funds (if other than state agency).
- Certificate of good Corporate Standing (if non-governmental entity).
- Vendor Form to facilitate payment to recipient of LMF funds.
- Joint Ownership Release (if needed)
- Close on project.
- Typically after closing, ecological and archeological surveys are undertaken to assess any features of the property that may require special management.

List of Contacts/Cooperating Entities

As an applicant begins to develop a proposal, he/she may seek information sources, conservation partners, and the required sponsorship from State agencies associated with the acquisition and management of public lands. The organizations listed below will assist you in this effort. If you need any further guidance, contact the Land for Maine's Future Program at (207) 287-7576.

Dept. of Agriculture, Conservation and Forestry

Land for Maine's Future staff

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Conservation & Recreation Lands

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Conservation & Recreation - Farmland and Open Space

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Water Access

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Land for Maine's Future Workbook

Maine Natural Areas Program

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Maine Dept. of Inland Fisheries & Wildlife

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Maine Dept. of Marine Resources

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Maine Historic Preservation Commission

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Land Trusts and Non-Profit Organizations

For the name of the land trust nearest your property, please contact the Maine Land Trust Network (www.mltn.org) or the Land for Maine's Future Program.

Land for Maine's Future Workbook
