

# MAINE STATE LEGISLATURE

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Maine Department of Conservation

MAINE LAND USE REGULATION COMMISSION

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## **Guidelines for Selection of Conservation Easement Holders**

Effective Date: December 16, 1993  
Addendum Added: August 18, 1994  
Amended Effective: November 10, 2004

**MAINE LAND USE REGULATION COMMISSION**  
**Guidelines for Selection of Conservation Easement Holders**

**I. Introduction and Purpose**

The Maine Land Use Regulation Commission was established in 1969 to serve as the planning and zoning board for areas of Maine which lack local governments empowered to exercise local land use controls. Those areas today encompass 10.3 million acres, nearly one half the geographic area of Maine. The Commission's principal statutory responsibilities are contained in 12 MRSA, Sections 681 et.seq. The primary responsibilities of the Commission are to prepare a comprehensive land use plan for these areas; to determine the boundaries of areas within the unorganized areas of the State that fall into various land use districts (zoning); to prepare land use standards for each district; to review and act upon applications for development in the unorganized areas of the State; and to carry out an enforcement/compliance program.

In reviewing and acting upon applications for development, the Commission may require, as an enforceable condition of approval, or applicants may propose conservation easements for the protection of significant natural resources as part of a development proposal. Conservation easements convey certain conservation rights in a parcel of land to an appropriate public or land conservation entity, approved by the Commission, to hold and protect forever. It is crucial that such easements be actively monitored and enforced to insure that the conservation values continue to be maintained into the future. *It is important, therefore, that the holder of such easements demonstrate, to the Commission's satisfaction, that it operates for public conservation purposes and has the commitment and capability to monitor and enforce the conservation easements it holds.*

The following considerations are intended to guide the Commission in determining the acceptability of a proposed holder of a conservation easement. These considerations are also intended to provide guidance to an applicant as to what is likely to be an acceptable holder of such an easement.

## **II. Guidelines for Selection**

1. ***Minimum Legal Requirements:*** The organization must qualify as a holder under 33 MRSA, §476, sub-§ 2:

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

- A. *A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or*
- B. *A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property."*

***Demonstration:*** Enabling statute in the case of a governmental body. In the case of a nonprofit corporation or charitable trust, Internal Revenue Service certification and articles of incorporation and bylaws that demonstrate conformance with this definition.

2. ***Public Agencies:*** Since by their very nature, public natural resource agencies are charged by law to protect or manage a public interest, the Commission will give preference to such agencies to hold conservation easements, so long as they meet the purposes and intent of the Commission.
3. ***Compatible Goals and Purposes:*** The organization must have land conservation as a primary goal or purpose and must otherwise have goals and purposes which are consistent with the purpose(s) of the easement and conservation of natural values. The organization may have goals in addition to land conservation so long as its goals, and primary appeal for public support, are not potentially in conflict with the conservation goals of the easement.

***Demonstration:*** Articles of incorporation and bylaws and other official written statements of goals and purposes. Secondary demonstration by documentation of its activities by newspaper articles, correspondence, reports, newsletters, minutes of board meetings, fund-raising literature and appeals for support, etc.

4. ***Board Accountability:*** The agency head or Board of Directors of the organization (not staff, advisory groups, or committees) must commit to assume legal responsibility for monitoring and enforcement of the easement.

***Demonstration:*** Letter from agency head or Board of Directors on behalf of the organization attesting to this commitment and providing the names of the members of the Board of Directors.

5. ***Conflict of Interest:*** The organization must not operate for the benefit of private individuals or corporations, but rather must operate in the public interest. Generally, advocacy groups [e.g. entities whose principal mission is to lobby state government for particular public policy outcomes] are not appropriate holders of easements because of potential conflicts of interests with their responsibilities to hold and enforce easements in the manner prescribed by the Commission. The donor of the easement may not be a board member, founder or have a controlling relationship with the holder. The donor may, however, contribute stewardship funds dedicated specifically to monitoring and enforcement of the subject easement.

***Demonstration:*** Articles of incorporation and bylaws and other evidence of goals and purposes. Disclosure of any donations to the holder by the landowner, that person's family or any entity controlled or funded by them and disclosure of total annual support from all sources combined. Disclosure of all other relationships between holder and landowner.

6. ***Financial Resources:*** The organization must demonstrate adequate financial resources and commitment to use those resources to periodically inspect the easement area and enforce the easement provisions.

***Demonstration:*** Letter from bank or other 3rd party showing financial capability. Budget of organization including portion of budget allocated to oversight and enforcement of easement and letter of commitment to use those resources.

7. ***Monitoring:*** The organization must show a commitment to regular inspection and monitoring of the easement no less than once a year by qualified personnel. The holder must agree to make an annual (or more frequent) report of its monitoring activities, in a form prescribed by the Commission.

***Demonstration:*** Letter from agency head or Board of Directors and wording of easement regarding frequency of monitoring. Establishment of program or protocol authorized by the Board of Directors for inspection and enforcement, including use of qualified personnel, periodic reports, responsibilities and authorities, and steps to be taken if noncompliance is found, including mechanism by which organization decides to take enforcement action (e.g. vote of Board of Directors).

8. ***Enforcement:*** The organization must show a track record and/or capacity to enforce conservation easements.

***Demonstration:*** Record of previous enforcement actions or evidence of ability to take action against a landowner, contractor or other potential violator. If the organization has dealt with easement violations before, what action did it take and with what results?

9. ***Back-up Holder:*** The Commission often will require a back-up holder, which shall have the right to enforce the terms of the easement and to have all the rights of the holder, in the event the holder ceases to exist or fails to undertake monitoring, enforcement and other holder responsibilities under the easement. The back-up holder must receive all notifications given to the holder of the easement and must participate in any matter requiring the holder's consent. The Commission may impose, as a condition to a permit or other approval of a project with respect to which the easement is offered, the right to directly enforce the restrictions of the easement, but it shall be the holder's primary responsibility to do so. The back-up holder may be a government entity or conservation organization, in either case with a commitment and capacity that allows the Commission to

have confidence that the responsibilities of the easement holder will be met forever.

10. **Transfers:** The Commission must approve transfer of the easement to another holder.
11. **Compliance with Laws:** The entity holding the easement must demonstrate a satisfactory track record and commitment with regard to knowing and complying with laws applicable to it, including without limitation, with respect to with respect to a charitable organization, 5 M.R.S.A. § 194 et seq.
12. **Commission discretion:** The Commission has the final discretion to decide whether a holder or the terms of a conservation easement are satisfactory for purposes of accepting the easement as a part of a project. These guidelines are for guidance only, are not a rule, are not legally enforceable and are designed to be employed by the Commission to assist it in making these decisions.

**III. Effective Date:** These guidelines for selection of easement holders are applicable after adoption by the Maine Land Use Regulation Commission.

**Originally adopted by the Maine Land Use Regulation Commission on December 16, 1993.  
Amendments adopted by the Commission on November 10, 2004.**

(1)

ADDENDUM

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3

**MODEL CONSERVATION EASEMENT**

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3 **[[Language within double brackets is commentary]]**  
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5 **[Language within single brackets may be considered as changes or needed insertions where**  
6 **appropriate]**  
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10 **MODEL CONSERVATION EASEMENT**  
11 **MAINE LAND USE REGULATION COMMISSION**  
12

13 \_\_\_\_\_, of \_\_\_\_\_, Town of \_\_\_\_\_, State of \_\_\_\_\_, [zip], (hereinafter  
14 referred to as the "Grantor," which word is intended to include unless the context clearly  
15 indicates otherwise, the above-named Grantor(s), [jointly and severally, and their] [and his/her  
16 heirs and assigns] [and its successors and assigns], and any future owners or successors in  
17 interest to the Protected Property, and their executors, administrators and legal representatives,  
18

19 GRANT(s) to [public agency or approved non-profit conservation organization]  
20 \_\_\_\_\_, a [[describe type of Holder]], organized and existing under the laws of the State of Maine,  
21 with a mailing address of \_\_\_\_\_ (hereinafter referred to as the  
22 "HOLDER," which word shall, unless the context clearly indicates otherwise, include the  
23 Holder's successors and/or assigns),  
24

25 and grants to STATE OF MAINE (hereinafter referred to as "THIRD PARTY", which shall,  
26 unless the context clearly indicates otherwise, include the Third Party's successors and assigns),  
27 acting by and through its Department of Conservation with a mailing address of State House  
28 Station 22, Augusta, Maine, 04333,  
29

30 with WARRANTY COVENANT, in perpetuity, the following described Conservation Easement  
31 on land located in \_\_\_\_\_, \_\_\_\_\_ County, Maine, hereinafter referred to as the  
32 PROTECTED PROPERTY, and described on Exhibits A, attached hereto, and shown on a plot  
33 plan attached hereto at Exhibit B, both made a part hereof by reference. [[It is standard practice  
34 for the Holder of the easement to perform a title search before taking the easement. If this isn't  
35 done, the easement could prove to have no value, in light of superior liens or encumbrances that  
36 defeat it. It is important for LURC to ascertain that the Holder has done such a title search  
37 through its lawyer, and to know what the results are of that search, before allowing the  
38 transaction to proceed.]]  
39

40 **PURPOSE**  
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42 **[[IT IS IMPORTANT TO DESCRIBE THE PURPOSE OF THE EASEMENT WITH AS**  
43 **MUCH SPECIFICITY AS POSSIBLE. The purpose should be related to the property's**  
44 **conservation. Certain reserved uses, such as for sustainable forestry, may be acceptable in**  
45 **certain cases, but these should not be the primary purposes of the easement.]]**  
46



1 This Conservation Easement is intended to provide a significant public benefit by protecting and  
2 preserving in perpetuity the natural and undeveloped character of the Protected Property,  
3 including its wildlife habitat and its highly scenic and substantially forested character when  
4 viewed from the public waters of Lake and Stream and  
5 public roads subject only to such uses as are specifically provided for herein.

6  
7 **[[Here, outline purpose, selecting from the following examples, and adding any special  
8 purposes or outstanding features.]]**

9  
10 **NATURAL AREA EASEMENTS:** It is the purpose of this Conservation Easement to  
11 preserve and protect in perpetuity the scenic and natural features of the Protected  
12 Property in a forever wild condition, subject only to changes appropriate to provide  
13 opportunities for low-impact outdoor recreation, nature observation and study, and to  
14 preserve the health of the Protected Property’s forest, wetland, and shoreline ecosystems  
15 ; and to assure its availability to the general public for low impact outdoor recreational  
16 use]. Reference is made to the approved Concept Plan for Grantor's land, of which the  
17 Protected Property is a part, on file at the offices of the Maine Land Use Regulation  
18 Commission in Augusta, Maine, or successor agency.

19  
20 **RESOURCE MANAGEMENT EASEMENTS:** It is the intent of this Conservation  
21 Easement that, except for timber harvesting, silviculture,[agriculture], and other uses  
22 expressly allowed herein, the Protected Property will be forever preserved and protected  
23 in its undeveloped, scenic and natural condition, and that it be available for the  
24 sustainable and environmentally sound growth and harvesting of forest products and for  
25 low-impact outdoor recreation by the general public. Reference is made to the approved  
26 Concept Plan for Grantor's land, of which the Protected Property is a part, on file at the  
27 offices of the Maine Land Use Regulation Commission in Augusta, Maine, or successor  
28 agency.

29  
30 **LIMITED DEVELOPMENT EASEMENTS:** It is the purpose of this Conservation  
31 Easement to preserve and protect in perpetuity the natural, open and scenic character of  
32 the Protected Property and the opportunity for compatible outdoor recreational uses by  
33 the general public. In so doing, it is the purpose of this Easement to foster the  
34 continuation of responsible conservation practices and limited residential and recreational  
35 uses. Reference is made to the approved Concept Plan for Grantor's land, of which the  
36 Protected Property is a part, on file at the offices of the Maine Land Use Regulation  
37 Commission in Augusta, Maine, or successor agency.

38  
39 The following recitals more particularly describe the conservation values of the Protected  
40 Property and the significance of this grant.

41  
42 **[[The following are examples of whereas clauses that help to describe and locate the  
43 property and identify what is worth preserving:]]**

1  
2 WHEREAS, the Protected Property consists of ( ) acres and approximately  
3 ( ) feet of scenic shoreline, that remains in a substantially undisturbed,  
4 wooded natural state; and

5  
6 WHEREAS, the Protected Property comprises the entirety of , a distinct  
7 geographical feature which is an integral part of the landscape; and

8  
9 WHEREAS, the Protected Property contains [describe important natural features and  
10 habitat; for instance: a diverse, natural landscape and geological features including forest, open  
11 meadow, marine intertidal, and freshwater wetlands, gravel and sand beaches, bold, rocky  
12 shoreline, spruce forest and juniper covered ledges, etc; and give approximate acreage of each  
13 feature, if significant.]

14  
15 WHEREAS, the Protected Property remains in a substantially undeveloped and  
16 undisturbed, natural [wooded, wetland, grassland, etc.] state which provides habitat for [list  
17 common and special species ]; and

18 WHEREAS, according to the [recite any studies indicating habitat value,  
19 Conservation Plan, author/date] the following wildlife is found on the Protected Property in  
20 season: , and the area is designated as an area of  
21 statewide/regional/local significance for such species; and

22  
23 WHEREAS, the Protected Property is habitat for [is a nesting site of] [list special  
24 species:] , a species listed as endangered / threatened / watch list under the Maine  
25 Endangered Species Act, and/or under the Federal Endangered Species Act]; and

26  
27 WHEREAS, the Protected Property is in close proximity to [recite any nearby parks,  
28 public lands, other conservation easement areas, important natural areas or preserves, special  
29 ecological or geographical features, areas that draw tourists]; and

30  
31 WHEREAS, this Conservation Easement makes the Protected Property (including any  
32 trails on the Protected Property) available for non-intensive, public outdoor recreation that is  
33 consistent with the preservation of its natural features; and

34  
35 WHEREAS, this Conservation Easement is granted not as a gift but pursuant to the terms  
36 of [a Lake Concept Plan or other development permit approved by the Maine Land Use  
37 Regulation Commission] and in consideration for and mitigation of certain development that will  
38 be or has been authorized by the Commission.

39  
40  
41 NOW THEREFORE the Grantor and Holder have established this Conservation  
42 Easement affecting the Protected Property consisting of the following terms, covenants,  
43 restrictions and affirmative rights, which shall run with and bind the Protected Property in  
44 perpetuity:

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**TERMS, COVENANTS AND RESTRICTIONS**

**1. SUBDIVISION AND GENERAL LAND USES**

The Protected Property may shall remain in one unified ownership and may not be divided, subdivided, partitioned or otherwise separated into parcels or lots [or, subject to applicable zoning and permitting approvals, specify number of lots, possibly location on an exhibit, or require Holder and Third Party approval for any division]. Furthermore, no portion of the Protected Property may be used to permit increased development or discharge of any pollutant or transfer of development rights on land not subject to this conservation easement or for any other purpose.

Structural development, commercial, residential, industrial, energy generation, quarrying, mining, gravel extraction, landfill, and waste disposal activities are prohibited on the Protected Property, unless expressly stated to the contrary herein. Without limiting the generality of the foregoing, houses, apartment buildings, multi-family housing units, docks, piers, campgrounds, condominiums, trailer parks, mobile homes, permanent outdoor high-intensity lights, motels or hotels, billboards, antennae or apparatus for telecommunications and/or radar, use of aircraft except in an emergency, junk yards, and commercial and industrial uses of all kinds , are specifically prohibited on the Protected Property.

**2. STRUCTURES**

As of the date of this Grant, there are no structures on the Protected Property except for boundary markers, [include here any other known structures currently on property \_\_\_\_\_ (the location of which structures is shown on Exhibit \_\_\_\_\_ and a description of which is provided in the Baseline Documentation maintained by Holder)]. No additional structures, temporary or permanent, are allowed on the Protected Property, other than for purposes of primitive trails for use by the general public, except that Grantor reserves the right to preserve and maintain the aforesaid structures that are already located on the Protected Property, and to replace and relocate the same with the Holder’s prior written consent. [add any exceptions to the foregoing prohibition]

**3. SURFACE ALTERATIONS**

1  
2 As of the date of this Grant, there are no man-made, surface alterations on the Protected  
3 Property, except trails, land management roads as shown on Exhibit\_\_\_\_ and described in the  
4 Baseline Documentation maintained by Holder, and primitive campsites. [Add any other known  
5 surface alterations here]. No additional filling, drilling, excavation or alteration of the surface of  
6 the earth, no removal of soil or minerals, and no changes in the topography, surface or sub-  
7 surface water are allowed on the Protected Property, except for the following: [add any  
8 exceptions to the foregoing prohibition].  
9

10  
11 **4. VEGETATION MANAGEMENT**  
12

13 No standing timber may be cut or removed from the Protected Property except as specifically  
14 provided in this Easement or as necessary to the uses of the Protected Property specifically  
15 provided herein, or as allowed by prior written consent of Holder. [Holder may engage in  
16 commercial timber harvesting activities and related forest management activities on the  
17 Protected Property in an environmentally sound and sustainable manner, provided that the same  
18 are undertaken in accordance with a forest management plan, prepared by a registered  
19 professional Maine Forester, which plan has been approved in writing by Holder as preserving  
20 the health and biological diversity of the forest, preserving habitat flora and fauna, maintaining  
21 forest sustainability, preserving wetlands and minimizing erosion and sedimentation. All timber  
22 harvesting and related operations must comply with all applicable laws, including without  
23 limitation any applicable Lake Concept Plan or other applicable regulations of the Land Use  
24 Regulation Commission. No timber harvesting, skid trails or land management roads may occur  
25 within \_\_\_\_\_ feet of \_\_\_\_\_ Lake, \_\_\_\_\_ Stream or other surface waters  
26 as shown on Exhibit \_\_\_\_\_.]

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**5. WILDLIFE AND WATER QUALITY PROTECTION**

In order to assure the preservation of the high quality scenic, natural and ecological character of the Protected Property, the following specific restrictions, subject to any more restrictive local, state, and federal laws and regulations, are imposed on the Protected Property:

A. Overboard discharge or direct discharge of treated or untreated black or grey water waste into salt or fresh surface waters on or about the Protected Property is strictly prohibited.

B. It is forbidden to dispose of or store rubbish, garbage, debris, abandoned vehicles or equipment, parts thereof, or other unsightly, offensive, hazardous, toxic or other waste material on the Protected Property, except that organic compost, blowdowns, and by-products of on-site forest management permitted by this Conservation Easement may be used or disposed of on the Protected Property in a manner consistent with the conservation purposes of this Easement, and other waste generated by allowed uses on the Protected Property may be stored temporarily in appropriate containers for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

C. The use of herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances must be controlled and limited so as not to have an adverse effect on the wetland, flora, fauna or other habitats associated with the Protected Property and must be used in accordance with all applicable laws and regulations.

**6. RECREATIONAL EASEMENT**

Grantor agrees to take no action to prohibit or discourage daytime, non-motorized and non-destructive public use of the Protected Property [or designate area(s) such as trails or other public recreation areas depicted on Exhibit \_\_\_\_]. [The public may also access the Protected Property by motor vehicle on \_\_\_\_\_ road and parking will be allowed along the roadside or in an unpaved parking area shown on Exhibit \_\_\_\_] Grantor has the right to make reasonable rules and regulations for different types of public use, and to control, limit or prohibit, by posting and other means, any of the following: night use, camping, loud activities, open fires, use of motorized vehicles and equipment, all for purposes of protecting public safety, protecting the conservation values of the Protected Property and preventing unreasonable interference with Grantor’s reserved rights hereunder and other lawful uses of the Property, provided that such rules and regulations are subject to Holder’s prior written consent except in cases of emergency..

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2  
3 Grantor and Holder claim all of the rights and immunities against liability for injury to  
4 the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, et seq. as  
5 amended and successor provision thereof (Maine Recreational Use Statute), under the Maine  
6 Tort Claims Act, and under any other applicable provision of law and equity.  
7

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9 **7. DEFINITIONS**

10  
11 For all definitions of the terms in this Conservation Easement and its attachments, reference is  
12 hereby made to laws and regulations of the Maine Land Use Regulation Commission in  
13 existence on the date hereof, which definitions are hereby incorporated by reference, unless the  
14 context otherwise requires. In addition, the following terms shall have the following meanings,  
15 unless the context otherwise requires:  
16

17 **A. Gross Covered Ground Area:** The term "gross covered ground area" of a  
18 structure means the "footprint," or surface area of the earth occupied or covered by such  
19 structure, calculated on the basis of the exterior dimensions of the perimetric walls or bounds of  
20 such structure, and includes, in addition, the surface area of the earth occupied or covered by any  
21 attached porches or decks, whether enclosed or open-air, but does not include the ground area  
22 used by subsurface waste disposal systems, roadways or completely underground facilities.  
23

24 **B. Not Prominently Visible:** By use of the phrase "not prominently visible" from  
25 "public vantage points" the parties do not intend to require that a structure be made completely  
26 invisible from public view points, which include without limitation any public trail, road, water  
27 body, or other place where the public has a right to be, but that reasonable measures be taken so  
28 that the structure is designed, sited, covered with natural colored stains or building materials  
29 and/or screened with sufficient intervening vegetation, so that it is not readily noticeable during  
30 daylight hours from said vantage points. The adequacy of vegetative screening and other  
31 measures taken to control visibility is to be determined in the reasonable discretion of the Holder.  
32

33 **C. Normal High Watermark:** The term "normal high watermark" means that line  
34 which is evident from visible markings, changes in the character of soils due to the prolonged  
35 action of the water or changes in vegetation, and which distinguishes between predominantly  
36 aquatic and predominantly terrestrial land. In places where the shore or bank is of such character  
37 that the high watermark cannot be easily determined (rock slides, ledges, rapidly eroding or  
38 slumping banks), the normal high watermark will be estimated from places where it can be  
39 determined by the above method. Setbacks from the normal high watermark will be determined  
40 by horizontal measurement to the nearest point of the structure or activity.  
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**8. NOTICES**

Any notices or requests for the consent or approval of Holder must be also made to Third Party, which must join in any such consent or approval as may be required of Holder in order for the same to be effective. Any such notices required or contemplated hereunder must include, at a minimum, sufficient information to enable Holder and Third Party to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof. Notices to any party must be in writing and will be sufficient if served personally or sent by certified mail, return receipt requested, addressed as follows:

To Grantor:

To Holder:

With a copy to Third Party:

or to such other authorized person as any party may from time to time designate by written notice to the others.

**9. COSTS AND TAXES, RESPONSIBILITY**

Grantor is responsible to pay and discharge when due all property taxes, assessments and other costs, charges, liens and encumbrances lawfully imposed upon or in connection with the Protected Property and to avoid the imposition of any liens or encumbrances that may affect Holder's rights hereunder.

Grantor acknowledges that Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain or keep up the Protected Property. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, and will indemnify, defend and hold harmless the Holder and Third Party from any claims for damages which arise therefrom, except for harm proximately caused by their negligent act or misconduct, or as may arise out of their workers' compensation obligations.

1    **10.    HOLDER'S AFFIRMATIVE RIGHTS**

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3           A.     Holder has the right to enforce this Conservation Easement by proceedings at law  
4 and in equity, including the right to prevent any activity on or use of the Protected Property that  
5 is inconsistent with the purpose of this Conservation Easement, and to require the restoration of  
6 any area or feature damaged by such inconsistent activity to a condition in compliance herewith.  
7 Holder shall provide Grantor with 30 days' prior notice of and opportunity to cure any breach,  
8 except where emergency circumstances require enforcement action without such delay. Holder  
9 may not bring an enforcement action against Grantor for injury to or change in the Protected  
10 Property resulting from changes beyond the control or responsibility of Grantor, such as fire,  
11 flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency  
12 conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from  
13 such causes. If a Court (or other decision-maker chosen by mutual consent of the parties)  
14 determines that this Conservation Easement has been breached, Grantor will reimburse Holder  
15 for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, out-of-  
16 pocket costs and any other payments ordered by the Court or decision-maker.

17  
18           B.     Holder has the right to enter the Protected Property for inspection and  
19 enforcement purposes, at any time and in a reasonable manner that is consistent with the  
20 conservation purposes hereof.

21  
22           C.     Holder has the right to require that Grantor's reserved rights be exercised in a  
23 manner that avoids unnecessary harm to the conservation values to be protected by this grant.

24  
25           D.     Holder has the right to conduct a professional boundary survey of the Protected  
26 Property or any part thereof, which survey will be at Grantor's cost if it is required to determine  
27 that there is a violation of this Conservation Easement.

28  
29           E.     [[Holder may reserve other negotiated rights here, such as trail maintenance  
30 rights, the right to require mowing of an open area, the right to mow and charge the owner, the  
31 right to conduct scheduled supervised tours upon reasonable notice (but this right should not  
32 impair Holder's right to inspect the Protected Property at any time), the right to manage primitive  
33 camping areas or other public recreation areas, the right to erect a sign or boundary markers  
34 informing the public and abutters that the land is privately owned and/or under Holder's  
35 protection, etc.]]

36  
37           F.     Holder has the right but not the duty to manage public recreational use of the  
38 Protected Property, to the extent such use is permitted hereby, in the absence of Grantor's  
39 managing such use.



1 **11. THIRD PARTY RIGHTS AND ENFORCEMENT; APPLICABLE LAWS**

2  
3 The Grantor grants to the Third Party the same entry, inspection, approval, management  
4 and enforcement rights as are granted to the Holder under this Conservation Easement.  
5 However, the Parties hereto intend that the Holder shall be primarily responsible for the  
6 monitoring and enforcement of this Conservation Easement, and that the Third Party intends to  
7 assume such responsibility only if the Holder fails to properly monitor and enforce. However,  
8 the Third Party may at any time exercise, in its own name and for its own account, all the rights  
9 of monitoring and enforcement granted the Holder under this Easement. The Third Party shall  
10 also have access to the Protected Property, and to any and all records of the Holder relevant to  
11 the Protected Property. Annual monitoring reports will be filed by the Holder with the Third  
12 Party.

13  
14 Notwithstanding that Third Party has executed this Conservation Easement, nothing  
15 herein may be construed as approval of or as a substitute for approval or regulation of any  
16 activities under the regulatory jurisdiction of the Maine Land Use Regulation Commission or  
17 other State regulatory body. Nothing in this Conservation Easement may be construed to permit  
18 an activity otherwise prohibited or restricted by state, local or federal laws or regulations, all of  
19 which laws and regulations Grantor shall have a responsibility to comply with.

20  
21  
22 **12. ADDITIONAL CONSERVATION EASEMENT REQUIREMENTS**  
23 **UNDER MAINE LAW AND U.S. TREASURY REGULATIONS**

24  
25 A. This Conservation Easement is created pursuant to The Uniform Conservation  
26 Easement Act at Title 33, Maine Revised Statutes, 1989, Sections 476 through 479-B, inclusive,  
27 as amended, (or successor provisions thereof) and shall be construed in accordance with the  
28 laws of the State of Maine.

29  
30 B. Even though this Conservation Easement results in no tax deduction, it is  
31 established exclusively for conservation purposes as contemplated by the Internal Revenue Code  
32 of 1986, as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section  
33 170(h)(1)-(6) and Sections 2055 and 2522, and under Treasury Regulations at Title 26 C.F.R.  
34 §1.170A-14 *et seq.*, all as amended, (or successor provisions thereof).

35  
36 C. The Holder is qualified to hold conservation easements pursuant to Title 33,  
37 Maine Revised Statutes Annotated, Section 476(2)(B), as amended, (or successor provisions  
38 thereof) and is a Qualified Organization under Section 170(h)(3), as amended (or successor  
39 provisions thereof), to wit: a publicly funded, non-profit, section 501(C)(3) organization having a  
40 commitment and the resources to protect the conservation purposes of the donation and enforce  
41 the restrictions hereof.

1 D. The Third Party is qualified to hold third party rights of enforcement on  
2 conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section  
3 476(2)(A), as amended (or successor provisions thereof).  
4

5 E. This Conservation Easement is assignable, but only after notice to and approval  
6 by Third Party, and only to an entity that satisfies the requirements of Section 170(h)(3) of the  
7 Internal Revenue Code of 1986, as amended (or successor provisions thereof) and Section 476(2)  
8 of Title 33 of the Maine Revised Statutes Annotated (1989), as amended (or successor provisions  
9 thereof), and that agrees, as a condition of transfer, to monitor, enforce and otherwise uphold the  
10 conservation purposes and terms of this grant.  
11

12 F. Grantor agrees to notify Holder prior to undertaking any activity or exercising any  
13 reserved right that may have a material adverse effect on the conservation purposes of this grant.  
14

15 G. In order to establish the present condition of the Protected Property and its natural  
16 and scenic resources so as to be able to properly monitor future uses of the Property and assure  
17 compliance with the terms hereof, Holder and Grantor have prepared an inventory of the  
18 Property's relevant features and conditions (the "Baseline Documentation or Data"), and have  
19 certified the same as an accurate representation, to the extent known, of the condition of the  
20 Protected Property as of the date of this grant. A copy of the Baseline Documentation shall be  
21 submitted to and shall be subject to the approval of the Third Party.  
22

23 H. The Protected Property may be used to secure the repayment of debt, provided  
24 that the right of the Holder and Third Party to enforce the terms, restrictions and covenants  
25 created under this Easement shall continue and not be extinguished by foreclosure of any  
26 mortgage or any publicly or privately placed lien. The restrictions of this Conservation  
27 Easement, and Holder's and Third Party's right to enforce them shall be superior to any mortgage  
28 or lien.  
29

30 I. This Conservation Easement constitutes a property right owned by the Holder.  
31 Notwithstanding that this Conservation Easement is an obligation, and not a financial asset,  
32 should it be extinguished which may be accomplished only by court order, Holder is entitled to a  
33 share of the proceeds of any sale, exchange, voluntary or involuntary conversion of the  
34 unrestricted property, including by an act of eminent domain or in lieu thereof, according to  
35 Holder's proportional interest in the Protected Property as determined by Treasury Regulations  
36 1.170-A-14 (g)(6)(ii) or successor regulations. Holder's proportional interest is determined as of  
37 the date of this grant and will not include value attributable to improvements to the Protected  
38 Property that are in accordance with the terms of this Conservation Easement made after the  
39 date of this grant. Holder will use such proceeds for its conservation purposes, as approved by  
40 the Third Party.  
41  
42

1 **13. GENERAL PROVISIONS**

2  
3 A. Enforcement of the terms of this Conservation Easement shall be at the sole  
4 discretion of the Holder and/or the Third Party. The failure or delay of the Holder or Third  
5 Party, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a  
6 waiver of its rights and Grantor hereby waives any defense of laches, prescription or estoppel.

7  
8 B. Grantor agrees to notify Holder and Third Party prior to any transfer of its interest  
9 in the Protected Property. A party's rights and obligations under this Conservation Easement  
10 shall terminate when such person or entity ceases to have any interest in the Protected Property  
11 or this Easement, except that liability for acts or omissions occurring prior to transfer shall  
12 survive transfer.

13  
14 C. The parties may amend this Conservation Easement only to the extent that  
15 changes are not inconsistent with the conservation purposes of this grant, and only by written and  
16 recorded agreement executed by the Grantor, Holder and Third Party.

17  
18 D. If any provision of this Conservation Easement or the application of any provision  
19 to a particular person or circumstance is found to be invalid, the remainder of this Conservation  
20 Easement and the application of such provision to any other person or in any other circumstance,  
21 shall remain valid.

22  
23 E. Interpretation and performance of this Conservation Easement shall be governed  
24 by the laws of the State of Maine. Should uncertainty arise in its meaning, this Conservation  
25 Easement should be interpreted in favor of conserving the Protected Property for the  
26 conservation purposes stated herein.

27  
28  
29  
30

1 [For corporate Grantor] IN WITNESS WHEREOF, \_\_\_\_\_, Grantor,  
2 has caused this Conservation Easement to be signed in its corporate name, and its corporate seal  
3 to be hereto affixed, by \_\_\_\_\_, its \_\_\_\_\_, hereunto duly authorized, this  
4 day of \_\_\_\_\_, 200\_.

5  
6 [For individual Grantor] IN WITNESS WHEREOF, \_\_\_\_\_,  
7 Grantor, who if married is joined by the spouse of Grantor for purposes of relinquishing all rights  
8 herein, has hereunto set its and their hand(s) and seal(s).

9  
10  
11 Signed, sealed and delivered in the  
12 presence of:

13  
14  
15 \_\_\_\_\_

16  
17  
18 \_\_\_\_\_

19  
20  
21 \_\_\_\_\_

22 State of \_\_\_\_\_  
23 County of \_\_\_\_\_, ss. \_\_\_\_\_, 200\_

24  
25 Personally appeared the above-named Grantor, \_\_\_\_\_, and  
26 acknowledged the foregoing instrument to be his/her/their free act and deed.

27  
28 Before me, \_\_\_\_\_  
29 Notary Public

30  
31  
32 (Please type or print name of notary)

33  
34  
35  
36 State of \_\_\_\_\_  
37 County of \_\_\_\_\_, ss. \_\_\_\_\_, 200\_

38  
39  
40 Personally appeared \_\_\_\_\_, the President and duly authorized representative of  
41 Grantor corporation, and acknowledged the foregoing instrument to be his/her free act and deed  
42 in said capacity, and the free act and deed of said corporation.

(15)

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7

Before me, \_\_\_\_\_  
Notary Public

(please print or type name of notary public)

1 **HOLDER ACCEPTANCE**

2  
3 The above and foregoing Conservation Easement was authorized to be accepted by  
4 , Holder as aforesaid, and the said Holder does hereby accept the  
5 foregoing Conservation Easement, by and through , its President, hereunto duly  
6 authorized, this day of , 200\_ .

7  
8 **HOLDER**

9  
10  
11 \_\_\_\_\_  
12 by:   
13 its President

14  
15  
16  
17 State of Maine  
18 County of , ss. , 200\_

19  
20 Personally appeared , the President and authorized representative of the  
21 above-named Holder and acknowledged the foregoing instrument to be his free act and deed in  
22 his/her said capacity, and the free act and deed of said corporation.

23  
24 Before me,

25 \_\_\_\_\_  
26 Notary Public

27  
28 (Please type or print name of notary)  
29  
30  
31

**THIRD PARTY APPROVAL**

The foregoing Conservation Easement has been approved by the State of Maine Department of Conservation, which accepts Third Party rights as aforesaid acting by and through \_\_\_\_\_, in the capacity of Commissioner, hereunto duly authorized this day of \_\_\_\_\_, 200\_.

\_\_\_\_\_

State of Maine  
County of Kennebec, ss. \_\_\_\_\_, 200\_

Personally appeared \_\_\_\_\_, hereunto duly authorized, and acknowledged the foregoing instrument to be the free act and deed of that person in said capacity as Commissioner of the Maine Department of Conservation.

Before me,

\_\_\_\_\_  
Notary Public

(Please type or print name of notary)

1 **ATTACHMENTS:**

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EXHIBIT A - A Metes and Bounds description of the property

EXHIBIT B - A Plot Plan depicting the property and showing approximate locations of features identified in the text of the Easement.

EXHIBIT C -

EXHIBIT D -

Not Attached: Baseline Data or Documentation Certification (Compilation of maps and inventories to describe existing conditions of property, to the extent known, must be certified as accurate by both Holder, Grantor and Third Party and must be permanently maintained by Holder.)



**NOTE: IF THERE ARE ANY DEEDED RIGHTS OF WAY, MORTGAGES OR OTHER OUTSTANDING ENCUMBRANCES IN THE PROTECTED PROPERTY, STATE LAW REQUIRES THE OWNERS OF THESE INTERESTS TO SUBORDINATE THEIR INTERESTS TO THIS CONSERVATION EASEMENT.**