

# MAINE STATE LEGISLATURE

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## **Drafting Guidelines for Working Forest Easements Funded by the Land for Maine's Future Program**

**Adopted by the Land for Maine's Future Board  
June 25, 2002**

*(minor amendments incorporated since this date)*

**Viewing tip:** *This document was composed on Microsoft Word 2002. It is formatted in "landscape" style (sideways) to allow for a side-by-side presentation of the drafting guidelines and the associated commentary. It is easiest to view if the "ruler bars" are turned off and if the display is set to "Print Layout View" at 99% of full size. These settings can all be adjusted under the "View" heading on the main toolbar. Settings may vary depending on the viewer's software.*

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## PART ONE - INTRODUCTION.

The accelerated pace of major land sales in Maine over the past five years has created a unique opportunity in the State's history of land conservation. Shifting ownership objectives have raised the possibility of sweeping land use changes on holdings that have been managed for timber for decades or longer. Development pressures of various kinds are growing in many areas of the state. Wildlife habitat, recreational assets, other natural resource values, and the economic productivity of these lands are potentially at risk. Maine voters have expressed strong interest, via the 1999 passage of a \$50 million land protection bond, in protecting the public values on forest and other lands throughout the State. Large-scale conservation easements covering tens and even hundreds of thousands of acres of working forest land have emerged as a promising tool for land conservation.

Working forest conservation easements can provide an effective and economical alternative to fee acquisition where the conservation and recreational needs of the people of Maine can be served by continuing private ownership with certain limitations on land use. Typically, a landowner sells or gives the State or its partners a conservation easement which extinguishes, by mutual agreement, certain development and land use rights otherwise available to the landowner, and which guides the future use of the land. At the same time, the forests of these properties can continue to be commercially managed with the attendant economic benefits for the landowner and society. The terms of an easement also guide the monitoring and enforcement of the easement by the easement holder.

On May 9, 2001, the Land for Maine's Future Board adopted a set of principles for working forest easements (see Appendix 1), that include essential elements, desirable elements, and cautions for any conservation easement funded by the LMF Program. Although each easement will vary depending on the property involved and the intentions of the grantor and grantee, it will prohibit (or strictly limit) additional non-forestry and non-recreation related development, subdivision, and non-forestry commercial uses, and it will require continuation of traditional recreational access and uses such as fishing, hiking, hunting, and nature observation.

After articulating these general principles for direction, the Board was asked to delineate more detailed easement guidelines, recognizing that each situation will raise unique questions that will require negotiation and modification on a case by case basis. The guidelines which follow are intended to extend the previous work so as to regularize the structure and form of this type of easement and address related areas of policy. While these guidelines will have application to many conservation easements, they are specifically intended for application to working forest conservation easements over large areas, typically including thousands of acres.

## Part Two - PROCESS FOR PLANNING, NEGOTIATING AND LEGAL REVIEW OF WORKING FOREST CONSERVATION EASEMENTS FUNDED BY LAND FOR MAINE'S FUTURE PROGRAM

The Land for Maine's Future Program process for planning and negotiating working forest conservation easements is designed to:

- Provide opportunity for appropriate and timely public input;
- Provide points of contact and responsibility for each project;
- Establish clear conservation purposes and objectives that are consistent with the LMF statute and policies; and
- Provide for sufficient legal review.

Project manager and easement planning group. Following an expression of interest by a land owner, the lead Agency sponsoring the potential easement project will designate a staff person as project manager who will oversee negotiations of the conservation project on behalf of the agency. In situations where the project arises out of a proposal offered by a cooperating entity, project negotiations may be delegated or shared with a representative of the entity. The project manager will convene a planning group of representatives of state agencies with management, stewardship or other responsibilities or significant interests in the proposed easement. The project manager will consult with the planning group during negotiations and keep it apprised of all significant developments. A member of the Board's staff will participate in the planning group for each project.

Easement Plan drafted. As its first step, the group will prepare an "easement plan" that includes a narrative description of the land and its conservation values, an explanation of the conservation purposes of the project, a summary of the proposed restrictions and reserved rights, maps and sketches of the land, and an explanation for any proposed material departures from agency or LMF policies, including these guidelines. A draft of this easement plan should be included in the formal project application to the LMF Board. In unusual cases the Board may accept an application without a draft easement plan. If this is the case, the designation of the project as an LMF finalist will be contingent on subsequent Board review of the plan.

Public input. The LMF Board is required by law to provide for public review and comment prior to final board approval. The draft easement plan included in the LMF application is a public document and will be available for public review. The Board intends to create an opportunity for public input and comment on the draft easement plan prior to its initial consideration of the application, if the Board anticipates that such input is needed for such reasons as the level of known public interest, the existence of precedent setting issues, or significant impacts on local communities. In any event, the easement plan and the easement itself will be made available to the public on request at any time. If, subsequent to designation by the Board of a project as a finalist, there are substantial

changes in a project that affect the easement proposal, the Board may create an additional opportunity for public review and comment on the draft Easement Plan prior to final Board review. . As with all LMF projects, there will be, at a minimum, a public workshop and comment period prior to final Board approval of funding for an easement. The Board publishes notice of this meeting in newspapers circulating in the project area.

Easement drafted. The easement itself must be drafted by a lawyer. It is preferred that the first draft of the easement be provided by the State agency or the cooperating entity and their advisors. Where the State will acquire the easement, the Attorney General, or its designee, must be consulted during both the planning and drafting phase, and must review the terms of the proposed easement, ordinarily before it is sent to the landowner or accepted by the agency. A representative of the Office of the Attorney General will be designated as a liaison to the planning group. It is anticipated that easements will also receive legal review by a member of the team of attorneys currently working with the LMF Program under its Memorandum of Understanding with the Department of Transportation Legal Division. In the future, the Attorney General's representative may delegate AG document review to this team of DOT attorneys.

Final Board approval. Before a final vote to approve and fund a conservation easement, the lead agency staff will provide the LMF Board a summary of the final easement language and will explain any significant departures from the easement plan and these guidelines. The Board has formed a subcommittee to review the easement plans and these easement summaries.

Notice to public officials. The Board will provide notice to legislators and elected municipal officials when a project in their district or municipality is designated as finalist. The same notice will be provided to county commissioners when the project falls in the unorganized townships of the State.

Under current law, documents in the possession of the State are subject to public disclosure under the "Freedom of Access Act." Legal questions about the applicability of this law in specific factual contexts should be directed to the Attorney General's office.

When the LMF Board supports an easement project in which the interest in land will be held by an entity other than a state agency (typically an NGO or municipal government), the State executes a "project agreement" with the entity holding the interest as a form of guarantee of performance and protection for the investment of public funds. While this arrangement is more typically employed in small scale projects of "regional" or "local" significance as those terms are used in the 1999 Bond, project planners may want to discuss this subject with LMF staff.

## PART THREE – USING THE GUIDELINES

This document is intended as a resource to assist agency personnel and landowners, particularly in designing conservation easements that will permanently protect large forests from conversion to non-forest uses and development and assure their continuing availability for traditional public outdoor recreation. The guidelines offer provisions dealing with forest landowners' reserved rights to use the land for commercial forestry consistent with the protection of important conservation values.

The guidelines are focused on working forest easements. However, they also provide “standard” provisions that are appropriate for most conservation easements, including farmland preservation easements, recreational easements, scenic easements and wildlife habitat protection easements.

Easements held by the State do not mandate active commercial forest management, but rather provide limitations to ensure the ability of the forest to provide a sustained yield of forest products should the landowner elect to undertake or continue commercial forest management.

The reader should be mindful of the fact that while these guidelines provide a framework for all conservation easements applied to large areas of working forests, some of the individual guidelines may not be appropriate for “strip” easements along rivers and lakes or in other situations.

While the restrictions and reserved rights in these guidelines are designed to address the most common conservation and land use issues for the working forest of Maine, there is no requirement of slavish adoption. The LMF Board fully understands that every project will involve negotiation between the parties based on careful analysis of the size, condition, location and conservation values of the land, its existing and potential uses, the likelihood of uses detrimental to its conservation values, the owners' goals for the land, and the interests of the State. Any easement funded by LMF must comply with LMF's broad policy goals (see Appendix 1), but each easement will reflect the unique characteristics of the land and the agreement between the agency and the landowner. Therefore, in drafting conservation easements, these guidelines should be used as a starting point, and each provision should be examined to determine whether it requires modification. The ultimate document may depart from the recommended restrictions and reserved rights with approval of the lead agency and the LMFB. These guidelines will facilitate this review by providing a uniform format or template that will enable reviewers to identify where an easement departs from the suggested restrictions and reserved rights, and to seek information to justify that departure.

A conservation easement is necessarily written in enforceable, legal language . However, it must also be understandable to both the landowner and the agency or land trust that administers it. Even the best easement will fail in its purpose if the parties who must work with it on a continuing basis can't understand its terms because of their legal or other complexity. For this reason, these guidelines offer background information and explanations for most provisions, and raise questions to be considered during easement negotiations. They also provide alternative provisions to suit the more common situations encountered. It should be understood that these guidelines are a working document and will be reconsidered and adjusted over time as the State gains additional experience in conservation easements.

Since a conservation easement is a complex legal document intended to last forever, both the agency and landowner should obtain legal help at every stage, from conceptualizing the easement plan through the drafting and reviewing its precise language. Regardless of who provides legal assistance in drafting easements, since only the Attorney General can enforce them on behalf of the State, the agency should consult with a representative of the Attorney General before offering or agreeing to any terms of a conservation easement unless the AG's representative has delegated that function to another state lawyer.

The following drafting guidelines include:

- Information on conservation easements to aid in the understanding of their legal foundation.
- Basic elements of a legally binding conservation easement, with additional requirements for conservation easements acquired by the State of Maine, or by cooperating entities with state funding.
- A checklist of provisions found in most easements, and those recommended for State acquired easements.
- A discussion of drafting considerations and provision of the most typical “boilerplate” clauses that assist administration of the easement and clarify the ongoing relationship between owner and the holder. Much of the suggested language is taken from existing easements held by the State of Maine.
- A compilation of sample restrictions and reserved rights specific to working forest easements.

In using these guidelines, it should be remembered that the terms of each easement will differ, depending on the character and conservation values of the land and on the specific land use and conservation goals of the landowner and the State and the LMF policies. Drafters should carefully choose from the recommended provisions or tailor them, within the format or template provided, so that the easement is responsive to the actual conservation plan for the land.

## PART FOUR - BASICS OF A CONSERVATION EASEMENT.

### I. EVERY CONSERVATION EASEMENT IN MAINE

1. The Conservation Easement is conveyed by a deed, which must include the appropriate deed language under common law or the Maine Short Form Deeds Act. The state prefers a warranty deed, but in every case the owners of the land must have and convey good, insurable and marketable title of record to the easement, in accordance with the Standards of Title adopted by the Maine State Bar.
2. To be funded by the LMF program, the Conservation Easement should be perpetual, in that the restrictions must “run with the land” and be binding on the Grantor and all future owners of the land.<sup>1</sup> It will be recorded at the local registry of deeds.
3. The affected land, usually called the Protected Property, must be adequately described to assure that its location is determinable on the ground, and that the easement will be evident during title searches on the land. This is usually done by referring to or reciting the land description in prior deeds. In some cases, particularly if only part of the Grantor's land is placed under easement, a surveyor's description or reference to well-established landmarks must identify the boundaries. If special land use areas are established, they must be likewise identified clearly by survey or by reference to well-established permanent landmarks.
4. The conservation purposes of the easement should be clearly stated, both to demonstrate that the easement comes within the limited purposes entitled to the protections of the Maine Uniform Conservation Easement Act and the authorized purposes of the Land for Maine's Future Fund, and to guide interpretation of the easement in the event of ambiguity. It is especially important to identify the publicly valuable conservation resources that will be conserved in an easement purchased with public funds.
5. The restrictions on land use must be directly relevant to the conservation intent. Restrictions should be, to the extent possible, unambiguous and quantifiable. General and qualitative terms can be used to demonstrate intent, but all restrictions and reserved uses must be clearly defined. This is the most important functional part of the easement, and requires the closest attention to the numerous variables in land and resources, landowner goals and holder purposes. Clear terminology is also

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<sup>1</sup> Though not strictly required by Maine statute authorizing conservation easements, the Land for Maine's Future Program and virtually all other state agencies and easement-holding nonprofits strongly prefer perpetual easements.

important because the value or cost of the easement will be determined by an appraisal that focuses on these restrictions, and determines how much they will reduce its market value, compared to its realistic market value without such restrictions.

6. As a foundation for the restrictions, the current condition of the land will be described in the easement. A detailed inventory of conditions and values will be included in the “Baseline Documentation.” This must be in place when the easement is signed. Thorough baseline documentation is critical for conditions that might otherwise be mistaken for violations in the future, or if they form the basis for measuring or comparing allowed future uses.
7. Everyone with an "ownership" interest in the affected land must sign the deed. The spouse of an individual owner who grants the easement must sign and release their marital rights in the easement. Grantors' signatures must be notarized. Mortgage holders, right-of-way holders, lease tenants, owners of options or purchase agreements have an "interest" in the land, and their rights will not be limited by the terms of the easement restrictions unless they sign a “consent” or “subordination” to the easement.
8. In order to demonstrate that the easement qualifies for the legal protections of the **Maine Uniform Conservation Easement Act**, (Title 33 M.R.S.A §476, et seq.), the easement must recite how it meets the following conditions:
  - a. The Holder must be either a governmental entity authorized to hold title to land and interests in land, or a non-profit corporation or charitable trust, with purposes that include land conservation.
  - b. The easement must allow the Holder to enter the land at a reasonable time and in a reasonable manner to assure compliance. Easements must document specific access rights or rights of way to the land for the monitoring and enforcement purposes of the easement.
  - c. The easement must be "accepted" by the Holder; whose representative signs it.
  - d. The easement must be established for one or more of the allowed conservation purposes of the Act, and for one or more of the allowed conservation purposes of the Holder.
9. Some acquisitions are part gift and part sale. Landowners who intend to claim income tax benefits for charitable gifts or bargain sales are strongly advised to obtain the advice of a tax professional for the transaction. They must rely on their own tax and legal advice to assure compliance with tax benefit requirements. A brief discussion is provided in Appendix 3.

## II. ADDITIONAL ELEMENTS OF CONSERVATION EASEMENTS FUNDED BY LAND FOR MAINE'S FUTURE PROGRAM

All conservation easements will address the elements discussed in the preceding section above. Easements purchased with LMF funds will serve the conservation purposes of the holder agency and meet the requirements of the 1999 Bond Issue, the Land for Maine's Future Act, and any other applicable law. The following is a brief summary of these goals and requirements. The policies of the Land for Maine's Future Board for working forest easements are attached in Appendix 1. The easement will recite the applicable policies. Each easement will be carefully analyzed to determine if the restrictions, landowner's reserved rights, and affirmative rights granted to the Holder serve those policies and the public benefit goals that underlie them. It is important to remember that the cost of a purchased easement depends in large part on the restrictions imposed, and care must be taken to avoid inclusion of restrictions that don't serve public goals.

1. Qualification for LMF Funded Projects: In order to demonstrate qualification for acquisition under the Land For Maine's Future Fund, the easement must recite how it meets one or more of the goals and purposes of **Title 5 Maine Revised Statutes Annotated, Chapter 353, Section 6200, et seq**, which authorizes the State to acquire lands and interests in land that:
  - a. Contain recreation lands, prime physical features of the Maine landscape, areas of special scenic beauty, farmland or open space, undeveloped shorelines, wetlands, fragile mountain areas, or lands with other conservation or recreation values;
  - b. Are habitat for plant or animal species or natural communities considered rare, threatened or endangered in the State; or
  - c. Provide access to recreation opportunities or to the above-mentioned natural resources.
2. Qualification for Bond Funding: The 1999 Bond Act at **P.L. 1999 c. 514, Sec. A-6**, authorizes expenditures of bond proceeds by the Land For Maine's Future Program for the acquisition of lands and interests in lands for conservation, water access, outdoor recreation, wildlife and fish habitat and farmland preservation and to access matching contributions from public in accordance with Title 5 M.R.S.A. Chapter 353. The easement will recite its reliance on these funds and may recite how it satisfies any specific criteria unique to the Bond issue. The 1999 Bond Issue specifies that bond proceeds may be used for acquisitions of local or regional significance by cooperating entities, as defined in Title 5 MRSA Section 6201(2). Section A-6(1) of the 1999 Bond Issue also provides that the holders of these lands acquired with bond funds may not prohibit hunting,



fishing, trapping and public access, except to the extent of applicable state, local or federal laws and regulations. While this does not strictly apply to Conservation Easement acquisition, the Land for Maine's Future Board has endorsed a strong policy of favoring those easements that guarantee traditional pedestrian public access.

3. **Authority to Acquire Easements:** The authority of the agency or cooperating entity to acquire interests in land will be recited in "Whereas Clauses", as per the examples in the easement guidelines in Part Four. (Section IV Recitals)
4. **Vehicular Access:** Title 5, Section 6207, subsection 3, requires the Land for Maine's Future Board to acquire, along with any interest in land that it acquires, the right to access the land by vehicle "whenever possible and appropriate". The State must at minimum have access for monitoring and enforcement, and will also seek assurances of public access to the land. Much of the land in the Northern Forest has been traditionally accessible by a shared network of private roads maintained by the several timber company owners. Vehicular access to some of these properties may not be under the exclusive control of the landowner negotiating the easement and thus may not be conveyable to the State.

## PART FIVE - CONSERVATION EASEMENT DRAFTING – CONTENT & STRUCTURE

The following outline provides the basic form and structure of a Conservation Easement. Part Six uses this outline to present recommended model easement language. Where the recommended content is likely to be appropriate for all easements, a single example is provided in the drafting guidelines. Where the content of a particular section is likely to be tailored for each project, a collection of sample restrictive covenants is provided.

Material departures from the guidelines should be explained for the reviewer's consideration. All departures should be shown in a redlined version.

### BASIC OUTLINE OF A TYPICAL CONSERVATION EASEMENT:

- I. PROJECT NAME:
- II. WORDS OF CONVEYANCE:
- III. PURPOSE
- IV. RECITALS
- V. INCORPORATION OF PURPOSES & RECITALS
- VI. RESTRICTIONS AND LANDOWNERS RESERVED RIGHTS  
*The Section on Restrictions and Reserved Rights will include several provisions specific to land use under the terms of the Easement.*
  1. LAND USE
    - A. General land uses
    - B. Specific prohibitions

- C. Waste disposal
- D. Special use areas (**optional**)
- E. Baseline documentation

2. SUBDIVISION.

- A. General prohibition against division, with exception for specifically allowed and limited divisions including boundary adjustments
- B. Exception for transfer to Holder or other qualified entity
- C. Extinguishment of development rights
- D. Leased lots (**optional**)

3. STRUCTURES.

Existing structures, broadly defined, are listed, typically with a right to maintain and replace, (or general listing by type with reference to Baseline Documentation for specifics). This is followed by a general prohibition against additional structures, subject to reserved rights which may include:

- A. Minor structures for recreation & conservation
- B. Forest management improvements
- C. Other built areas (**optional**)

4. SURFACE ALTERATIONS.

Existing roads, trails, borrow pits and other specific surface alterations are listed here (or general listing by types with reference to Baseline Documentation for specifics,) with a right to maintain existing conditions. This is followed by a general prohibition against additional alterations, subject to reserved rights which may include:

- A. Alterations to surface necessary for other rights
- B. Unpaved foot trails
- C. Woods roads & access roads
- D. Gravel excavation
- E. Archeological or scientific digs

5. FOREST MANAGEMENT.

Generally, this provision will describe existing forest conditions with reference to Baseline Documentation, and identification of special management areas, if any. This is followed by Grantor's express right to conduct sustainable forest management. Part Six provides two models of these provisions.

## 6. PUBLIC ACCESS.

Part Six provides two models for public access and use depending on whether the Grantor or the Holder will manage the recreational activity on the Protected Property.

- A. Grant to Holder, minimum standards
- B. Rules and regulations

## 7. DEFINITIONS.

- A. Commercial Forest Management
- B. Traditional non-intensive outdoor recreation by the general public
- C. Normal high watermark (*for measuring setbacks*)
- D. Wetlands

## 8. NOTICES.

- A. To Holder
- B. To Grantor
- C. Owner's Designee

## 9. COSTS AND TAXES, INDEMNIFICATION.

- A. Taxes and liens
- B. Liability and insurance
- C. Hazardous materials

## 10. HOLDER'S AFFIRMATIVE RIGHTS.

- A. Right to enter and inspect (*R.O.W. for access*)
- B. Right to enforce
- C. Boundaries
- D. Right to install signage
- E. Affirmative land use rights (*public amenities, maintaining views*) for Public Access

## 11. CONSERVATION EASEMENT LEGAL REQUIREMENTS UNDER STATE AND FEDERAL LAWS.

- A. Conservation purposes test
- B. Qualified donee

- C. Assignment limitation
- D. Notification requirements
- E. Proceeds upon termination

12. GENERAL PROVISIONS.

- A. Applicable law
- B. Interpretation
- C. Non waiver
- D. Compliance
- E. Severability
- F. Amendment
- G. Liens and mortgages
- H. Termination
- I. Grantor's right to further conservation actions
- J. Rights and immunities
- K. Standing to enforce
- L. Reasonable control of access
- M. Additional grant of access rights not limited
- N. Holder's ability to exercise rights

VII. HABENDUM AND SIGNATURES

VIII. ACKNOWLEDGEMENT

IX. HOLDER ACCEPTANCE

X. EXHIBITS TO CONSERVATION EASEMENT DOCUMENT

*The attached exhibits may include the following as needed:*

- EXHIBIT A - LEGAL DESCRIPTION
  - EXHIBIT B - PLAN SHOWING THE PROPERTY AND IMPORTANT FEATURES
  - EXHIBIT C - SPECIAL LAND USE AREAS
- (written description or plan or both)*

**EXHIBIT D**

**LEASED LOTS**

## **PART SIX – DRAFTING GUIDELINES FOR CONSERVATION EASEMENTS PROTECTING NATURAL VALUES, TRADITIONAL PUBLIC RECREATIONAL ACCESS AND USE AND RESERVING COMMERCIAL FOREST MANAGEMENT RIGHTS**

Recommended language is provided below for generic issues and administrative boilerplate provisions found in most conservation easements. Specific restrictions and reserved rights are also provided that are typical for easements on large commercial forest lands. Many of these provisions are also applicable to conservation easements covering other types of properties.

While the recommended language is appropriate in many cases, it should also be recognized that each property is unique. The conservation values of a property may require tailoring the restrictions, reserved rights, and affirmative rights granted to accommodate the following considerations: the unique attributes of the land, the acquiring agency's goals and purposes, the landowners' goals for the future of the land, and the public values to be protected. Departures from the recommended provisions offered here will be considered as long as the particular variation is highlighted for the reviewers and there is an appropriate explanation of how the alternative language is equally protective of the State's legal rights and the conservation purposes of the easement. However, these guidelines represent the State's preferred format.

The recommended provisions are combined with commentary in *bold-faced italics*, offering background information and explanations, as well as options to address typical alternative situations.

<p><b>I. PROJECT NAME:</b></p> <p><i>Identifies the Location and Common Name of Project. May also identify owner and holder.</i></p>	<p><b>I. PROJECT NAME:</b></p> <p><i>[Insert Here]</i></p>
<p><b>II. WORDS OF CONVEYANCE</b></p> <p><i>This portion of the Easement includes the standard legal form for conveying land under the Maine Short Form Deeds Act. It identifies the Grantor and Holder, and defines these terms to include all future owners of the land and the successors and assigns of Holder. It identifies the Protected Property, and any additional rights of access or rights of first refusal included as part of the Conservation Easement.</i></p>	<p><b>II. WORDS OF CONVEYANCE:</b></p> <p>We/I, <i>[ Grantor's name ]</i>, of <i>[ Grantor's address ]</i> <i>[identifies Grantor as individual, marital status, or business entity authorized to do business in Maine]</i> (hereinafter referred to as the "GRANTOR(S)," which word shall include, unless the context clearly indicates otherwise, the above-named Grantor(s), jointly and severally, his/her/their personal representatives, heirs and assigns, its successors and assigns and any successors in interest to the Protected Property, and their executors, administrators and personal representatives, for full consideration paid and not as a gift. <i>[This assumes that the easement is not a bargain sale. If the easement is a bargain sale, suitably revised language should still be employed that indicates that partial consideration was paid.]</i></p> <p>GRANTS to the STATE OF MAINE, acting by and through its <i>[Department of Conservation, Bureau of Parks and Lands, a governmental entity having a mailing address of 22 State House Station, Augusta, Maine 04333] or [Department of Inland Fisheries and Wildlife, a governmental entity with its principal place of business in Augusta, Maine and having a mailing address of 41 State House Station, Augusta, Maine 04333-0041] or [Department of Agriculture, Food and Rural Resources, a governmental entity having a mailing address of 28 State House Station, Augusta, Maine 04333] or [Maine Atlantic Salmon Commission, a governmental entity having a mailing address of 172 State House Station, Augusta, Maine 04333]</i> (hereinafter referred to as the HOLDER, which word shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns); <i>[Note: the holder may be a non-profit cooperating entity, in which case this provision should recite its address and authority to operate in Maine]</i></p> <p>with WARRANTY COVENANTS<i>[or less preferable, QUITCLAIM with COVENANT]</i> in perpetuity, the following described Conservation Easement on real estate in the Town of _____, County of _____, and State of Maine, hereinafter referred to as the PROTECTED PROPERTY, and more particularly described in Exhibit A.</p>



	and depicted on Exhibit B, both attached hereto and made a part hereof by reference, <i>[For land not served by public roads:</i> and a right of way for vehicular access to the Protected Property as necessary or appropriate to exercise the Holder's rights hereunder, over any and all rights-of-way and roads owned by Grantor or over which Grantor has or shall have rights of access to the Protected Property, as more particularly described in Exhibit A;] <i>[If first refusal rights are included:</i> and a right of first refusal to acquire the Protected Property, as set forth more particularly herein;] exclusively for conservation purposes as follows:
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**III. PURPOSE**

*Here the purposes of the easement are recited, including general language that demonstrates qualification for the funding source, and specific goals for the particular property.*

*Other more specific purposes may be included as appropriate.*

**III. PURPOSE**

The people of the State of Maine have purchased this Conservation Easement to forever conserve the Protected Property for the following conservation purposes:

To protect in perpetuity the Protected Property's significant recreational, wildlife and ecological values for public benefit and to ensure that, so long as the Protected Property is managed as a working forest, its management will allow for a continuing, renewable and long term source of forest products important to the economy of the State;

To protect rare and endangered species habitat, rare and exemplary natural communities and other significant wildlife values (including, without limitation, fisheries habitats and deer yards) and the natural, scenic, educational, scientific, recreational, historical and archaeological features of the Protected Property;

To conserve water quality, wetlands and riparian values of the Protected Property; and to maintain the fertility and quality of its soil;

To assure the sustained, natural capacity of the Protected Property and its soils to support healthy and vigorous forest growth and allow, but not require, commercial forest management. If undertaken, commercial forest management must be designed and implemented to assure a continuing, renewable and long-term source of forest products, maintain a healthy and biologically diverse forest that supports a full range of native flora and fauna, and limit adverse aesthetic and ecological impacts, particularly in riparian areas, high elevation areas and public vistas; and

To assure the availability of the Protected Property for traditional non-intensive outdoor recreation by the general public in accordance with applicable laws and regulations.

Grantor and Holder intend that this Conservation Easement will confine the use of the Protected Property to activities that are consistent with the purposes of this Conservation Easement.



**IV. RECITALS**

*The recitals opposite more particularly describe the conservation values of the Protected Property and the significance of this grant.*

*Begin with recitals that help to describe and locate the property, identify the conservation values and importance of the land, and demonstrate satisfaction of requirements for funding and income tax benefits, as appropriate. The Sample Recitals opposite are offered only as an example of style. Each property will require individualized research to identify the appropriate purposes and recitals that describe the particular property and support those purposes.*

**IV. RECITALS**

WHEREAS, the Grantor is the sole owner of the Protected Property, which consists of approximately [#] acres of substantially natural and undeveloped forested land with *[Option: approximately (#) feet of shoreline on the (water body) important for shorebirds and waterfowl, fresh water wetlands and streams, steep sloping/gently contoured uplands, rocky promontories, spruce-fir and mixed hardwood forests, and old growth forests important as nesting and roosting habitat for American Bald Eagle];* and

WHEREAS, the Protected Property is prominently visible from and provides scenic enjoyment to the general public from public route [#], *[or] [water body], [and/or] from the abutting Preserve on the shore of [water body];* and

WHEREAS, *[Water body]* has ecological importance as important wildlife and fisheries habitat, including for *[as appropriate]* waterfowl, as a nesting, roosting and feeding area for American Bald Eagles, a federal and state listed endangered species, and for other fish and wildlife species; and development of the Protected Property in excess of that allowed in this Conservation Easement would have an adverse effect on the ecology of the area for the aforementioned species and uses; and

WHEREAS, the Protected Property is a predominately forested land area of significant breadth and diversity, with outstanding natural resources, including large tracts of undeveloped forests of high quality, productive soils, diverse wildlife and plant habitat, extensive bogs, mountains, elevated ridges, wetlands, rivers, streams, lakes, remote ponds, and other water bodies, and unique natural features;

WHEREAS, the Protected Property contains popular recreational areas important to the people of the State of Maine, and preservation of the opportunity for continued public access and traditional non-intensive outdoor recreation on the Protected Property by the general public, as defined herein, consistent with the preservation and protection of the other conservation values of the Property and Grantor's reserved rights, is in the public interest; and

WHEREAS, the Grantor shall have the reserved right to use the Protected Property for commercial forest management under the terms of this Conservation Easement, consistent with the protection and preservation of rare and endangered species and rare and exemplary natural communities, significant wildlife values, special natural, historical or archaeological features, areas of high public value, and other conservation values identified herein;

WHEREAS, Grantor and Holder agree that continued management of the Protected Property as a



*Include a “WHEREAS” clause that recites the acquisition policy and powers of the State agency involved. Here are several options.*

working forest, in a manner that protects rare and endangered species and rare and exemplary natural communities and conserves significant wildlife values, special natural, historical or archaeological features, and areas of high public values, is consistent with the goals of this Conservation Easement;

WHEREAS, Grantor and Holder agree that as long as the Grantor continues to manage the Protected Property as a Working Forest, it will confer the following public benefits: (a) provide a continuing, renewable and long-term source of forest products; (b) provide for long-term management of the forest in accordance with best management practices to prevent erosion, sedimentation and other degradation of soil and water resources; (c) maintain a natural resource base for a forest-based economy and corresponding employment opportunities; and (d) support further investment in local businesses and community services that depend directly upon, or provide ancillary services to, a forest-based economy and forest product industry; and

WHEREAS, the Grantor and Holder agree that the permanent protection of the Protected Property for conservation and traditional non-intensive outdoor recreation by the general public, while permitting its use for commercial forestry consistent with the protection of those values, will make a lasting contribution to the State of Maine;

***[Department of Agriculture:]***

WHEREAS, the State of Maine, through its Commissioner of the Department of Agriculture, Food and Rural Resources, may acquire, pursuant to Title 7, Maine Revised Statutes Annotated, Section 19, a conservation easement, as defined by Title 33, Maine Revised Statutes Annotated, Section 476 *et. seq.*, in perpetuity in certain lands in order to preserve their agricultural productivity and open space and other public values by limiting development incompatible with this resource conservation purpose.

***[Department of Conservation, Bureau of Parks and Lands:]***

WHEREAS, the Bureau of Parks and Lands of the State of Maine Department of Conservation is authorized to acquire land and interests in land, with the consent of the Commissioner of the Department of Conservation, pursuant to M.R.S.A. Title 12, Section 1850, subsection 1, *[for reserved lands]* and Section 1836 *[for non-reserved lands]*.

***[Department of Inland Fisheries and Wildlife:]***

WHEREAS, this grant is made pursuant to Title 12, Maine Revised Statutes Annotated, Chapter 702, Section 7652, under which the Commissioner of the Department of Inland Fisheries and Wildlife may acquire, on behalf of the State of Maine, lands or any interest therein for the purpose of public use, fish and wildlife management, recreation, and the management of forest resources.



*Identify the funding sources.*

*There may be matching funds or grants from foundations that should be identified in additional recitals.*

***[Atlantic Salmon Commission:]***

WHEREAS, this grant is made pursuant to Title 12 M.R.S.A. Section 9902, under which the Maine Atlantic Salmon Commission is empowered to acquire, on behalf of the State of Maine, land or any interest therein as necessary for the Commission to carry out its purposes.

WHEREAS, this Conservation Easement, including the easement for traditional non-intensive outdoor recreation by the general public and the development and land use rights conveyed and hereby extinguished, has been purchased for full fair market value with funds from Land for Maine's Future Fund, established under **Title 5 Maine Revised Statutes Annotated, Chapter 353, Section 6200**, and pursuant to the terms of **P.L. 1999 c. 514, Sec. A-6**, to acquire lands or conservation easements and other interests in land of statewide significance that: a) Contain recreation lands, prime physical features of the Maine landscape, areas of special scenic beauty, farmland or open space, undeveloped shorelines, wetlands, fragile mountain areas, or lands with other conservation or recreation values; b) Provide habitat for plant or animal species or natural communities considered rare, threatened or endangered in the State; or c) Provide access to recreation opportunities or to the above mentioned natural resources.

WHEREAS, this Conservation Easement has been acquired, in part, with federal funds from the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. §2103c), as amended, which was enacted to protect environmentally important forest areas threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities.

***[Insert reference to other funding sources here.]***

<p><b>V. INCORPORATION OF PURPOSES &amp; RECITALS</b></p> <p><i>This is a general clause that serves to incorporate the recitals and purposes into the document for interpretation purposes.</i></p>	<p><b>V. INCORPORATION OF PURPOSES &amp; RECITALS</b></p> <p>THEREFORE, in consideration of the foregoing recitals and purposes and for the benefit of the general public, the Grantor and Holder have established this Conservation Easement on, over and across the Protected Property consisting of the following terms, covenants, restrictions and affirmative rights granted to Holder, which shall run with and bind the Protected Property in perpetuity:</p>
<p><b>VI. RESTRICTIONS AND RESERVED RIGHTS</b></p> <p><i>The restrictions and reserved rights are the heart of the easement. Here the plan for the land unfolds, and each plan will be tailored to the different attributes of the property, the landowner's goals for its future private use, and the acquiring agency's conservation goals.</i></p> <p><i>Either version of prefatory language opposite may be used.</i></p> <p><b>1. LAND USE:</b></p> <p><i>The Land Use section provides a list of the usual permitted and prohibited land</i></p>	<p><b>VI. RESTRICTIONS AND RESERVED RIGHTS</b></p> <p><b>Option 1</b></p> <p>The Protected Property shall be used only for conservation and for traditional non-intensive outdoor recreation by the general public, and for uses specifically reserved by Grantor in this Conservation Easement.</p> <p><b>Option 2</b></p> <p>Except for the rights conveyed by this Conservation Easement to the Holder, and except for the restrictions stated in this Conservation Easement, the Grantor retains all ownership rights in the Protected Property and may use the Protected Property for any lawful purpose provided that any such use is consistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following activities described in sections 1 through 4 are expressly prohibited.</p> <p><b>1. LAND USE:</b></p> <p>A. No residential, industrial, or commercial development, quarrying, mining, mineral development, energy generation installations, alteration of watercourses and water bodies, <i>[If appropriate: agricultural, farming, ranching]</i> or building development activities are permitted on</p>



*uses (see 1.A) addressed in larger forest easements. The parties may wish to adopt the customary practice of listing specific activities or uses that are included in the general prohibition, but that are important to list for emphasis or as a reminder (see 1.B), such as prohibitions against power corridors, gas pipelines, docks or piers, power transmission facilities, towers, aircraft landing strips, as applicable.*

*Additional land use prohibitions, such as those related to overboard discharge and waste disposal, may also be listed here (see 1.C).*

*Separate Land Use Areas, such as a Riparian Area, Building Area, Buffer Area, Ecological Preserve Area, if applicable, will also be noted here (see 1.D). The boundaries of these special land use areas are described in Exhibits to the Conservation Easement.*

*The use of Baseline Documentation as an aid to interpreting the easement is noted here (see 1.E). Reference to aerial photography may be appropriate. The typical format, which must be tailored to the specific project, is shown opposite.*

the Protected Property, except for commercial forestry activities expressly reserved herein by Grantor and as otherwise expressly permitted herein.

B. Without limiting the generality of the foregoing, residential housing units, docks, piers, campgrounds, condominiums, trailer parks, mobile homes, high-intensity lighting, motels or hotels, commercial advertising, billboards, towers, power generation or transmission facilities, antennas or equipment for telecommunications and/or radar, and use of the Protected Property as an aircraft landing site except in an emergency, all are specifically prohibited on the Protected Property.

C. Discharge of waste water into surface or ground waters on or about the Protected Property is prohibited. It is forbidden to dispose of or store rubbish, garbage, building debris, unserviceable vehicles and equipment or parts thereof, hazardous or other waste, hazardous or toxic substance, or other unsightly or offensive waste material on the Protected Property, except that organic matter, compost and logging debris may be used, stored or disposed of in a manner not detrimental to the conservation values of the Protected Property, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, all in accordance with applicable state, local and federal laws and regulations.

D. For the purposes of land uses permitted under the terms of this Conservation Easement, the Protected Property will be considered as *[#/]* land use areas: *[List any special use areas. For example: The Ecological Reserve Area – The Recreational Reserve Area – The Forever Wild Area – The Forest Management Area]*, as generally depicted in Exhibit B and more particularly described in Exhibit C, all attached hereto and made a part hereof by reference.

E. In order to describe the present condition of the Protected Property and its natural and scenic resources so as to be able to monitor properly future uses of the Property and assure compliance with the terms hereof, Holder and Grantor have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Documentation" hereinafter so called) and have certified the same as an accurate representation of the condition of the Protected Property as known to them as of the date of this grant.

## 2. SUBDIVISION:



## 2. SUBDIVISION:

*Parties should strive to minimize the possibility of future divisions of ownership of the land, in order to preserve unified management of large parcels, and for administrative feasibility of monitoring and enforcing a conservation easement.*

*There are several possible options for this provision, ranging from no division (see 2.A), to allowance of a specified number of lots, sometimes with minimum acreage requirements, with a notice requirement.*

*Divisions may be allowed (see 2.B) for transfers to Holder or other qualified entities.*

*The easement will specify (see 2.C) that the development rights conveyed are extinguished and may not be used to augment development or other land uses on other land, as might otherwise occur in cluster zoning laws, transfer of development rights schemes, and carbon sequestration and carbon dioxide credit programs.*

A. The Protected Property shall remain in its current configuration as an entirety without division, partition, subdivision or other legal or *de facto* creation of lots or parcels in separate ownership; *[Option: except that not more than [for example: three (3)] separate lots of not less than [for example: one thousand (1,000)] contiguous acres may be established.]* Any division whatsoever of the Protected Property, and any parcel created thereby, shall always be subject to this Conservation Easement. Grantor may enter into boundary line agreements to resolve bona fide boundary line disputes with the prior written consent of Holder which shall not be unreasonably withheld, provided that the total acreage of land protected under this Conservation Easement shall not materially be reduced thereby without court order *[Option:... shall not be reduced by more than [#] acres without court order]*.

B. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to Holder or to another entity that meets the requirements set forth in Section 11 *[Uniform Conservation Easement Act Holder qualifications]*, for permanent conservation ownership by such a qualified entity, subject to the terms of this Conservation Easement.

C. All rights to develop or use the Property that are prohibited by or inconsistent with this Easement are extinguished, and can not be used to transfer development rights to other land, or to permit increased development or natural resource use or removal on other land, or to achieve other regulatory mitigation credits for fiber, discharge of pollutants, or other similar accommodation on land not subject to this Conservation Easement.

D. Conveyance of Leased Lots located within the bounds of the Protected Property as of the date of this grant and as provided in Section 3.C shall not be deemed divisions of the Protected Property, provided that they are treated in accordance with the terms of Section 3.C.



*Subdivision consideration of Leased Lots (if necessary) (see 3.D). The Property may already be divided, legally or by use, with Leased Lots located within the bounds of the Protected Property. It is usual to exclude the Leased Lots from the easement. However, the parties may wish to include them provisionally in order to: 1) limit future development; 2) require retirement of the Leased Lots and restoration to natural conditions, 3) permit sale and severance of the Leased Lots either without restriction or subject to limitations on future development. See Section 3.D for additional sample language for restoration of developed or improved land to a natural condition following cessation to use.*

### **3. STRUCTURES:**

*This section includes a description of existing structures, broadly defined to mean any man-made or assembled object placed or installed on or under the ground. It includes a general prohibition against additional structures, subject to Grantor's reserved rights with respect to maintenance, improvement, replacement and relocation of existing structures.*

### **3. STRUCTURES:**

As of the date of this grant, there are no structures on the Protected Property except for *[List structures of all relevant sorts]*; as documented in Baseline Documentation, which existing structures may be maintained and replaced with substantially similar structures in substantially the same locations, or as otherwise permitted hereinafter.

No additional structures of any kind, temporary or permanent, may be located on the Protected Property, except that Grantor reserves the following rights:

A. Minor Structures. Grantor reserves the right to install minor, small scale structures to enhance the opportunity for traditional non-intensive outdoor recreation by the general public, and as necessary for the management of such recreation not detrimental to the conservation values of the Protected Property, including but not limited to *[Options: trail markers; small unlighted informational*



*The section is followed by the landowner's reserved right to install additional structures of defined types (see 3.A). In some easements, the Holder acquires the right to install recreational and/or habitat improvement structures, in which case they are permitted in the section on Holder's Affirmative Rights, and so are not reserved as a landowner's right in this section. [addressed specifically in Section 6, Public Access, Example 2] If these rights extend to both Grantor and Holder, they will be addressed here and in Holder's rights.*

*This is also the section where the landowner reserves the right to install specific, minor or temporary structures necessary to accomplish its forest management activities (see 3.B), and any other special reserved land uses.*

and interpretive signs; trail improvements such as steps, bog bridges, water bars, footbridges, platforms, and railings; wells and springs for fresh water supply, canoe platforms, outfalls, docks or piers (*limited in number and location*), primitive campsites facilities (*limited in number and type of amenities, such as:* fire rings, pit toilets, picnic tables,) and temporary tents for camping; tent platforms; registration boxes; wildlife observation stations; study markers and grids; gates, barriers or low fences to control unauthorized use, prevent access by motor vehicles, or protect fragile areas and areas under active management or study]; provided that all such structures must be designed and located to blend with the natural surroundings and complement the natural and scenic features of the landscape. *[Option:* Grantor also reserves the right to install and maintain the following public recreation management structures and facilities: (*each specifically limited in size, number and location*) picnic facilities; portable or composting toilets or outhouses; parking lot structures in the parking area permitted under Section 4, Surface Alterations; registration and information kiosks; potable water facilities; temporary tents for periodic events, and not more than (#) caretaker's or ranger's cabin(s), (*other limited items as necessary*).]

B. Forestry Improvements. Grantor reserves the right to install minor or temporary structures necessary or appropriate to accomplish its forest management activities on the Protected Property, as defined in Section 7.A, hereafter "Forestry Improvements", such as *[Options:* portable privies, temporary equipment sheds, temporary sawmills, gates, barriers, fences, fresh water systems, boundary markers, temporary docks and barge landing facilities, temporary office trailers and shelters for workers, other], provided that they *[Options:* (1) are designed and located in a manner that does not detract from the scenic and substantially undeveloped character of the Protected Property when viewed from public vantage points; (2) are set back at least (#) feet, measured horizontally, from (*list specific sensitive protected resources*); and (3) are not located within the (*list specific special areas including any that are specifically identified in the easement exhibits*).] The Grantor also reserves the right to install bridges, drainage and support structures for winter roads, skid roads and permanent roads permitted in Section 4, permitted Surface Alterations that may be necessary to accomplish its Forest Management Activities on the Protected Property. When Forestry Improvements cease to be used, as evidenced by the cessation of their use for a period of years and their lack of maintenance, and such cessation of use and lack of maintenance results in an unsafe condition, a danger to human health, or a threat to the environment, then any such adverse conditions shall be removed by Grantor, the site of such structures, improvements and utilities shall be allowed to return to a natural condition and the Grantor shall remove any utilities, cap any wells or septic systems, and remove or burn and bury any decaying structures at the Grantor's cost and expense.



*Leased Lots are usually excluded from the easement. However, they can be included in the Protected Property to restrict more intensive development or conversion to inappropriate uses in close proximity to the Protected Property. They can also be excluded temporarily but brought into the Protected Property under the terms of the Easement triggered by abandonment or termination of leases or camp use. Paragraphs 3.C and 3.D provide an example that supports the status-quo, and offers language for requiring notification to Holder of additional building development within the Leased Lot (see 3.E). This treatment of the built environment in an easement can be modified to address other kinds of built areas usually omitted from large forest land easements. This is offered not to recommend the inclusion of built areas in the Protected Property, but rather to identify an issue that might otherwise be inadequately addressed if not mentioned.*

C. Leased Lots. The lots located within the Protected Property, which are subject to existing leases as of the date of this grant and are depicted as Lot 1 and Lot 2 in Exhibit C, attached hereto and made a part hereof, each having approximately one (1) acre, (hereafter “Leased Lots”) are subject to the following limitations: the Leased Lots will be limited to their traditional use and character, allowing for maintenance of existing structures *[Describe here or on exhibit or refer to Baseline Documentation]*, reconstruction of damaged or destroyed structures in the same location and size, and construction or expansion of new structures and facilities only with Holder’s prior written approval and consistent with the existing use and character of the Leased Lots. For purposes of this clause, traditional use and character shall be that in existence as of the date of this Conservation Easement as documented in Baseline Documentation. Grantor shall have the right to renew the existing leases and to lease or sell the Lease Lots to any party upon the condition that the deed of transfer shall contain restrictive covenants running with the land, for the benefit of the Protected Property, prohibiting any future use inconsistent with the terms of this Conservation Easement.

D. When Leased Lot improvements cease to be used, as evidenced by the cessation of their use and/or their lack of maintenance for a period of *[XX]* years, or as evidenced by the lapse of any lease for a period of *[XX]* years, then any structure or other improvement shall be removed, and Grantor shall restore the site to a natural condition.

E. Notice. Prior to the commencement of site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure referred to in Section 3.C, Grantor must notify Holder in writing in accordance with the provisions of Section 8, including, at a minimum, sufficient information to enable Holder to determine whether the proposed plans are consistent with the terms of this Conservation Easement. Work shall proceed only with Holder’s prior written approval, which shall not be unreasonably withheld.



**4. SURFACE ALTERATIONS:**

*This section will identify existing surface alterations generally, with reference to the Baseline Documentation for roads, man-made ponds, gravel pits, and other surface alterations. It will include a general prohibition against alterations to the surface, subject to the landowner's reserved rights and any allowed additional alterations.*

*The reserved rights include a general right (See 4.A) to alter the surface as necessary to exercise Grantor's reserved rights to maintain the existing surface alterations and to install additional permitted structures and undertake permitted forest and vegetation management.*

*There is also a reserved right to build access roads, woods roads, and landing areas for timber harvesting, all in locations that are not identified as high sensitivity, and to allow the use of gravel deposits for such road building on the property and, optionally, on Grantor's other timber land (See 4.B & C), but the easement will require that the sites be limited in size and location, and eventually restored. This latter option*

**4. SURFACE ALTERATIONS:**

As of the date of this grant, there are no surface alterations on the Protected Property except for *[List as relevant: unpaved trails, skid trails, unpaved woods roads and timber landing areas, small gravel pits, stump dumps, fresh water wells, erosion control systems, (unpaved or paved) roads and parking areas, alterations associated with existing structures, (others)]* all of which are described in the Baseline Documentation.

No additional filling, dumping, excavation or other alteration may be made to the surface or subsurface of the Protected Property or to its surface or ground waters, or wetlands; except that the Grantor reserves the following rights, provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the conservation values to be protected by this Conservation Easement:

A. Grantor reserves the right to maintain existing surface alterations described above in this Section 4, and the right to alter the surface to the minimum extent necessary to exercise the rights reserved in Sections 3 and 5 herein; *[Option: provided that paving or treatment of the surface with petroleum derivative or concrete surface is prohibited.]*

B. Grantor reserves the right to establish and maintain additional woods roads provided for in the Forest Management Plan required in Section 5.A, and to install erosion control devices, and establish timber landing areas, temporary winter woods road and skid trails, all subject to any applicable design and location requirements and compliance with Best Management Practices for such activities and the other requirements of this easement.

C. *[Option for larger parcels: Except where otherwise prohibited or restricted by this Easement, Grantor also has the right to excavate and use gravel and rock found within the Protected Property exclusively for construction and maintenance of woods roads, timber landings and trails permitted on the Protected Property and on other, adjoining land owned by Grantor; provided that the exposed mineral surface of any such gravel or borrow pit shall be limited to (State surface area, such as: not more than (#) acre(s) of exposed mineral surface at any time), and shall be located sufficiently distant to protect wetlands, water bodies and fragile habitat from erosion or disturbance, shall be located in such a manner as to minimize the impact on the scenic character, and shall be*



*may be disfavored by IRS for tax deductible easements [see Great Northern Nekoosa Corporation v. United States, 38 Fed. Cl. 645, 1997, 97-2 USTC 50,591, Case No. 589-89T filed Aug.1, 1997.]*

*Section 4.D is an optional but common provision allowing limited archeological and scientific excavations. This right is generally recommended since most land in Maine has potential for important archeological and ecological study, and the general prohibition would otherwise prohibit digging.*

*Section 4.E provides a typical reserved right to install additional foot paths unless the Holder acquires exclusive rights to build recreational improvements.*

regraded and restored to a natural vegetated condition and appearance similar to its original condition within a reasonable time after use.]

D. Grantor reserves the right, subject to prior written notice to Holder, to permit limited excavation of the surface of the Protected Property for ecological, education, scientific research, or archeological investigation conducted under then current generally accepted professional standards and without adverse impact to the conservation values protected by this easement.

E. Grantor reserves the right, after notice in writing to Holder in accordance with the terms of Section 8, to establish and maintain additional unpaved trails for use by the general public, provided that they are located and designed in a manner to prevent soil erosion and prevent damage to fragile plant communities and wildlife habitat. *[OPTION: The easement may call for other restrictions such as width, design for pedestrian use, barriers to discourage motorized access, or exclusion from special protected areas].*

## 5. FOREST MANAGEMENT: INTRODUCTION

Two different forestry models are provided for lands where the owner's primary use is commercial forestry. Although the concepts included in each model can be combined, care should be taken to avoid inconsistencies and gaps, as each example is integrated with its associated provisions.

In general terms, the two options can be described as "with" and "without" Holder approval models. Holder approval will be required when the easement contains only general statements of management objectives and management planning requirements are only generally described. The easement may be adopted with Holder review when more detail is provided in the forest management objectives and when the forest management plan contains a more detailed description of its required elements. Third party certification is a possible addition to both models.

Forest Management covenants for large, forestry-oriented properties should always make reference to Baseline Documentation to describe



conditions existing at the time of signing, including a general stand mix and identification of non-forest areas. This baseline will be modified over time and will be documented in the forest management plan provided for in the easement. Sensitive land areas and significant features slated for special treatment (if any) should also be identified, such as old growth stands and eagle nesting habitats.

These provisions allow the Grantor to engage in commercial forestry and non-commercial forest management in accordance with a required forest management plan. They also allow alteration of vegetation, without a plan, as necessary to install permitted structures and surface alterations.

As noted earlier, negotiators designing language for extensive riparian corridor easements, easements covering many noncontiguous parcels in a single ownership and other variations in ownership geometry may need to adapt the examples below substantially.

#### **HOLDER APPROVAL - MODEL 1**

*This forestry model calls for a forest management plan and certification by a licensed professional forester that it protects the conservation values and meets the other terms of the easement. The forest management plan is subject to Holder approval to assure that that implementation of the general objectives provided here conforms to the intent of the easement.*

*Section 5.A describes landowner's reserved rights to conduct sustainable commercial forestry in accordance with a Forest Management Plan that provides protection for the conservation of the Protected Property. This model provides for Holder approval to ensure that the conservation values of the Property generally described here are*

#### **5. FOREST MANAGEMENT**

As of the date of this grant, the Protected Property is in a substantially natural, predominantly forested condition with areas of *[List any special areas or sensitive resources as documented in the Baseline Documentation]*.

Grantor reserves the right to manage vegetation on the Protected Property, subject to applicable laws and regulations, in a manner that assures the continuing and sustained ability of the Protected Property and its soils to support healthy and vigorous forest growth and allows for, but does not require, commercial forest management. If undertaken, commercial forest management must be designed and implemented to ensure a continuing, renewable and long-term harvest of forest products, consistent with the protection of the forestry principles of paragraph C of this section and with the use of the Protected Property by the general public for traditional non-intensive outdoor recreation, subject to the following conditions:

A. Grantor reserves the right to manage vegetation for commercial forestry, as defined herein, and for the control and prevention of fire and disease, eradication of invasive species, wildlife habitat improvement, and general forest health, in accordance with a Forest Management Plan (hereafter the "Forest Management Plan,") designed to ensure, if commercial forest management is undertaken, the utilization of silviculturally sound forestry methods that: 1) allow for a continuing, renewable and long term source of forest products; 2) assure the sustained ability of the Protected Property and its soils to support healthy and vigorous forest growth and allow for a continuing, renewable and long-term harvest of forest products; 3) protect fish, wildlife, riparian and recreational resources and designated scenic areas of the Protected Property



*achieved. Unless a specific activity is approved by Holder, compliance with the easement will be determined by the condition of the land after harvest or treatment.*

and its conservation values identified in the purposes, recitals and other terms of this Conservation Easement; *[If needed,* 4) protect Special Management Areas identified in Exhibit C attached hereto and made a part hereof by reference;] and 5) comply with then-current Best Management Practices for timber harvesting operations as set forth by the Maine Forest Service or its successor agency, or other standard for soil and water protection approved in advance and in writing by Holder.

The Forest Management Plan shall also include information by species group on timber harvest levels during the period of the preceding ten year period, current stocking levels, projection of timber harvests and growth over at least the coming ten years, and will describe and demonstrate how timber resources on the Protected Property will be managed during the coming ten years to assure compliance with this Conservation Easement. Timber harvesting shall be conducted within the constraints of the Forest Management Plan by competent operators who are informed by Grantor of relevant requirements for compliance with this Conservation Easement. Notwithstanding the foregoing, compliance with the terms of this Conservation Easement shall be determined by actual conditions on the Protected Property.

The Forest Management Plan must be prepared and updated at least every ten years, by a professional forester licensed in the State of Maine who certifies that it is consistent with the requirements of this Conservation Easement.

Prior to commencing any timber harvesting on the Protected Property, Grantor shall submit to Holder for its prior written approval, the Forest Management Plan, and any amendments thereto or required updates. Holder's approval of the Forest Management Plan (including any amendment thereto or update) shall not be unreasonably withheld or conditioned if the Forest Management Plan conforms to the requirements of this Section 5.A and otherwise conforms with this Conservation Easement and carries out the Purposes of this Conservation Easement, but it is acknowledged that the actual activities and outcomes on the Protected Property will determine compliance with this Conservation Easement. It is understood that Holder may rely upon the advice and recommendations of such foresters, wildlife experts, ecologists, conservation biologists or other experts as Holder may select to determine whether activities and practices proposed by the Forest Management Plan would be detrimental to the purposes of this Conservation Easement and otherwise consistent with the terms hereof.

B. Grantor reserves the right to manage vegetation by cutting, pruning and planting without the requirement of a Forest Management Plan, as necessary to exercise the reserved rights at



*Section 5.B is a broad right to allow accomplishment of Grantor's other reserved rights, and to allow certain non-commercial vegetation management activities without a plan.*

*Section 5.C provides general forestry principles.*

*Section 5.D provides for an annual written report and opportunity for meeting between Grantor and Holder. The purpose of the annual report is to provide information on the commercial forestry being practiced that cannot be reasonably included in the long-term forest management plan.*

*Section 5.E provides an option to add third party certification mechanism. Note that this does not stand alone, since third party certification may not be available at some future point.*

Sections 3 and 4, and to accommodate traditional non-intensive outdoor recreation by the general public allowed by this Conservation Easement, including the removal of vegetation for safety purposes, for the creation of scenic vistas and views from trails, public roadways, campsites, overlooks, and other public vantage points; provided that no new openings or clearings in the forest greater than **[Options: ¼, ½, 1 acre, etc]** are permitted for such purposes without the prior written consent of Holder. The incidental sale of vegetation cut or removed from the Protected Property in the exercise of Grantor's non-commercial vegetation management rights shall not be deemed commercial forestry.

C. All forestry activities shall be consistent with the maintenance of a healthy and biologically diverse forest, prevention of soil erosion and preservation of soil productivity, preservation of water quality, wetlands and riparian zones, preservation of scenic character as viewed from designated public vantage points **[List here]**, enhancement of wildlife habitat and recreational resources, and protection of **[List any specific conservation features here]**, while enabling the Property's use as economically productive timberland, without requiring the same, under the terms of this Conservation Easement.

D. Grantor shall provide Holder with a written annual report describing Grantor's proposed plan for forestry and other activities on the Protected Property during the coming year. In the annual report, Grantor shall accurately describe the forestry and other activities on the Protected Property during the preceding year including information on proposed harvest volumes for the coming year and the preceding year's actual harvest volume. Grantor shall also describe in the report the location, silvicultural objectives, and estimated timing of all forestry activities planned for the coming year. In the report, Grantor shall also demonstrate the consistency of such completed and anticipated forestry activities with the Forest Management Plan prepared under this Easement. Grantor shall provide Holder with reasonable opportunity to meet with Grantor and its supervising licensed professional forester at least annually to review the annual report.

E. Holder may approve an independent, third-party certification agent, which approval will be based upon Holder's assessment of the qualifications, experience, audit standards and procedures of that agent to evaluate the consistency of the Grantor's Forest Management Plan with the terms of this Easement. If the Protected Property is certified as being operated in a sustainable manner or other relevant certification standard by a third-party certification agent so approved by the Holder, and if the Grantor's Forest Management Plan and performance under the plan is reviewed and approved as being consistent with the terms of this Easement by such third party as part of the certification process, such plan shall be deemed to be in compliance with all of



<p><i>The Easement may also provide for the case where land is included that is intended for non-forest use, in which case Grantor will reserve appropriate rights. For instance, the owner may want the right to keep an unforested open area cleared and unforested. If that area is important to the public, such as in the case of vistas from adjacent public roadways, the parties may agree to impose the obligation to maintain a specific cleared area.</i></p>	<p>the provisions of this Section 5 and the terms, purposes and recitals of this Conservation Easement, and may, but need not be, reviewed by the Holder. The third party certification process qualifying under this paragraph, including Holder's approval of the certification agent, shall be effective for a period of up to three years. The Holder retains the right to review the Forest Management Plan and shall have the right to review all documents prepared by the third-party responsible for the certification. Grantor acknowledges that the purpose of the Forest Management Plan is to guide forest management activities in compliance herewith, and that the actual activities and outcomes on the Protected Property will determine compliance with this Conservation Easement.</p> <p><i>[No example provided]</i></p>
<p><b>HOLDER REVIEW - MODEL 2</b></p> <p><i>This forestry model follows the same basic structure as Model 1 but is designed to provide greater specificity in objectives and management planning but to require only Holder review.</i></p> <p><i>The model provides for a listing of the special value resource areas that the</i></p>	<p><b>5. FOREST MANAGEMENT</b></p> <p>As of the date of this grant, the Protected Property is in a substantially natural, predominantly forested condition with areas of <i>[List any special areas or sensitive resources here]</i>, as documented in Baseline Documentation.</p> <p>Grantor reserves the right to manage vegetation on the Protected Property, subject to applicable laws and regulations and in a manner that assures the continuing and sustained ability of the Protected Property and its soils to support healthy and vigorous forest growth and allows for, but does not require, commercial forest management. If undertaken, commercial forest management must be designed and implemented to ensure a continuing, renewable and long-term harvest of</p>



*owner has agreed to treat with specific forestry prescriptions. It calls for a detailed forest management plan and administrative guidance.*

*Section 5.A describes landowner's reserved rights to conduct sustainable commercial forestry in accordance with a Forest Management Plan that provides protection for the conservation values of the Protected Property. Unless a specific activity is approved by Holder, compliance with the easement will be determined by the condition of the land after harvest or treatment.*

*Section 5.B is a broad right to allow accomplishment of Grantor's other reserved rights, and to allow certain non-commercial vegetation management activities without a plan.*

forest products, consistent with the protection of the conservation values of the Protected Property and with the use of the Protected Property by the general public for traditional non-intensive outdoor recreation, subject to the following conditions:

A. Grantor reserves the right to manage vegetation for commercial forestry, as defined herein, and for the control and prevention of fire and disease, eradication of invasive species, wildlife habitat improvement, and general forest health, in accordance with a Forest Management Plan (hereafter the "Forest Management Plan,") designed to ensure, if commercial forest management is undertaken, the utilization of silviculturally sound forestry methods that: 1) allow for a continuing, renewable and long term source of forest products; 2) assure the sustained ability of the Protected Property and its soils to support healthy and vigorous forest growth and allow for a continuing, renewable and long-term harvest of forest products; 3) protect fish, wildlife, riparian and recreational resources and designated scenic areas of the Protected Property and its conservation values identified in the purposes, recitals and other terms of this Conservation Easement; *[If necessary,* 4) protect Special Management Areas as identified in Exhibit C attached hereto and made a part hereof by reference;*]* and 5) comply with then-current Best Management Practices for timber harvesting operations as set forth by the Maine Forest Service or its successor agency, or other standards for soil and water protection approved in advance and in writing by Holder.

B. Grantor reserves the right to manage vegetation by cutting, pruning and planting without the requirement of a Forest Management Plan, as necessary to exercise the reserved rights at Sections 3 and 4, and to accommodate traditional non-intensive outdoor recreation by the general public allowed by this Conservation Easement, including the removal of vegetation for safety purposes, for the creation of scenic vistas and views from trails, public roadways, campsites, overlooks, and other public vantage points; provided that all such vegetation management shall be conducted in a manner to assure the sustained ability of the Protected Property and its soils to support healthy and vigorous forest growth and allow for a continuing, renewable and long-term source of forest products, and in a manner that maintains the high scenic character and healthy wildlife habitat and forest ecosystem of the Protected Property; and further provided that no new openings or clearings in the forest greater than **/Options: ¼, ½, 1 acre, etc/** are permitted for such purposes without the prior written consent of Holder. The incidental sale of vegetation cut or removed from the Protected Property in the exercise of Grantor's non-commercial vegetation management rights shall not be deemed commercial forestry.

C. All forestry activities shall be consistent with the maintenance of a healthy and



*Section 5.C provides general forestry principles with reference to specific, identified resources.*

*If necessary, general forestry principles may be followed in Section 5.D by site-specific prescriptions or specific prescriptions for overall management goals. These may be appropriate and necessary to further guide forest management if the general forestry principles are insufficient to assure adequate protection of specifically*

biologically diverse forest, prevention of soil erosion and preservation of soil productivity, preservation of water quality, wetlands and riparian zones, preservation of scenic character as viewed from public vantage points, enhancement of wildlife habitat and recreational resources, and shall accomplish the Forestry Principles *[Option: and Specific Prescriptions]* set forth below:

(i) protection of wildlife habitat and unique natural areas, in particular *[List as applicable: deer yards, migratory bird habitat, and other known habitat and natural areas in need of protection]*;

(ii) preservation of traditional, non-intensive outdoor recreational activities;

(iii) protection of scenic quality, *[list if necessary: specifically on trails and the summit of (Name) Hill, and the view of the Protected Property from (Name) Water Body and Route (#) ]*

(iv) maintenance or improvement of the diversity and health of the forest and the productive capacity of the soil; and

(v) preservation of wetlands, water quality and riparian areas, *[List if necessary: particularly (Water Body) ]*, by avoidance of erosion, siltation or other degradation of waters.

*[Option: D. Specific prescriptions. All forest management activities, except for preliminary cruising and resource evaluation, shall be controlled by the following site-specific prescriptions:*

(i)...( ) *[As necessary, insert site specific prescriptions here referenced as relevant to the principles above] ]*.

E. Forest management plan; term; review; contents.



*identified features on the land. Alternatively, such site-specific references can be incorporated into the forest management plan and not in the easement itself.*

*This followed by the general requirements for the forest management plan in Section 5.E.*

(i) Ten year management plan: All commercial forest management activities, except preliminary timber cruising and resource evaluation, shall be conducted in accordance with a written Forest Management Plan. After submission to the Holder, the Forest Management Plan shall be adopted by the Grantor, which shall operate within the constraints of the Forest Management Plan in accordance with the terms of this Easement. The Forest Management Plan shall be prepared prior to any harvesting or treatment activities, and shall be reviewed and updated at least every ten years, by one or more professional foresters licensed in the State of Maine, following submission to Holder as provided hereinafter.

(ii) Holder review: The Forest Management Plan shall be provided to Holder prior to conducting any timber harvesting activities. Holder may review the Plan for consistency with the purpose and terms of this Easement, but is not required to approve the Forest Management Plan. If the Holder finds that any portion of the Forest Management Plan is inconsistent with the terms of this Easement or that resulting Forest Management Activities could result in a violation of this Easement, the Holder may, but is not required to, provide written comments to the Grantor identifying and explaining such inconsistencies that may result in a violation of the Easement, but it is acknowledged that the actual activities and outcomes on the Protected Property will determine compliance with this Conservation Easement. Grantee's right to provide comments does not constitute a waiver of the terms of this Easement.

(iii). Grantor shall provide Holder with a written annual report describing Grantors' proposed plan for forestry and other activities on the Protected Property during the coming year. In the annual report, Grantor shall accurately describe the forestry and other activities on the Protected Property during the preceding year including information on proposed harvest volumes for the coming year and the preceding year's actual harvest volume. Grantor shall also describe in the report the location, silvicultural objectives, and estimated timing of all forestry activities planned for the coming year. In the report, Grantor shall also demonstrate the consistency of such completed and anticipated forestry activities with the Forest Management Plan prepared under this Easement. Grantor shall provide Holder with reasonable opportunity to meet with Grantor and its supervising licensed professional forester at least annually to review the annual report.

(iv) Third party certification: Holder may approve an independent, third-party certification agent, which approval will be based upon Holder's assessment of the qualifications, experience, audit standards and procedures of that agent to evaluate the consistency of the Grantor's Forest Management Plan with the terms of this Easement. If the Protected Property is



*Section 5.E(iv) provides option to add third party certification mechanism. Note that this does not stand alone, since third party certification may not be available at some future point.*

*Forest Management Plan contents are as shown in Section 5.E(vi) opposite.*

certified as being operated in a sustainable manner or other relevant certification standard by a third-party certification agent so approved by the Holder, and if the Grantor's Forest Management Plan and performance under the plan is reviewed and approved as being consistent with the terms of this Easement by such third party as part of the certification process, such plan shall be deemed to be in compliance with all of the provisions of this Section 5 and the terms, purposes and recitals of this Conservation Easement, and may, but need not be, reviewed by the Holder. The third party certification process qualifying under this paragraph, including Holder's approval of the certification agent, shall be effective for a period of up to three years. The Holder retains the right to review the Forest Management Plan and shall have the right to review all documents prepared by the third-party responsible for the certification. Grantor acknowledges that the purpose of the Forest Management Plan is to guide forest management activities in compliance herewith, and that the actual activities and outcomes on the Protected Property will determine compliance with this Conservation Easement.

(v) Timber harvesting shall be supervised by a licensed professional forester and conducted under written contracts with competent operators, which contract shall specify relevant requirements for compliance with this Conservation Easement.

(vi) The Forest Management Plan shall specify activities and practices proposed to achieve compliance with the Forestry Principles and Specific Prescriptions set forth hereinabove, and shall also include and comply with at a minimum the following:

- (a) the Grantor's long-term Forest Management Plan for management of the Protected Property, and a general description of proposed actions to protect forest health and maintain timber productivity in a manner to assure compliance with the terms, purposes and recitals of this Easement and the Principles and Prescriptions set forth above;
- (b) identification of the natural and physical features of the Protected Property at the time of the Forest Management Plan, and current harvest areas, including forest type, current stocking levels, age, quality, health, relevant stand history, and existing access routes; wetlands and water bodies; location of roads, trails, campsites and other areas used by the public; location of special plant or wildlife habitat;
- (c) information, by species group, on timber harvest levels during the ten year period of the preceding Forest Management Plan (none is required for submission of the initial



	<p>Forest Management Plan);</p> <p>(d) a projection of timber growth and harvest, by species group, over the period of the Forest Management Plan, and at least twenty years beyond the term of the Forest Management Plan, utilizing current scientific methods, and a description of the relationship between projected harvests and the requirements of this Conservation Easement showing that the Protected Property will be managed to allow for a continuing, renewable and long-term source of forest products;</p> <p>(e) a description of Grantor's actions to protect and manage soil productivity and water quality, including reclamation and reforestation practices to be employed upon completion of harvesting operations to ensure soil stabilization, as may be required for compliance of forest management activities with then currently available best management practices or comparable standards agreed to by Grantor and Holder;</p> <p>(f) a description of the foreseeable situations in which chemical application will be recommended, including the type, amount, method of application, and recommended limitations to protect water quality, recreational values, and wildlife habitat;</p> <p>(g) a specific description of harvesting techniques and treatments to be employed to avoid adverse impact to the specific conservation values identified in the Principles and Prescriptions at Section 5.C and 5.D hereinabove;</p> <p>(h) a description of how Forest Management Activities will be conducted to (1) manage for fish and wildlife resources, (2) protect known site-specific occurrences of animal and plant species that are listed by state or federal agencies as endangered, threatened or of "special concern" for such time period as such species are so listed, and (3) meet the requirements of state and federal law regarding threatened and endangered species;</p> <p>(i) a description of how Forest Management Activities will be conducted to protect and manage the Protected Property's recreational resources and designated scenic areas <i>[If any]</i> <i>[Option: and in accordance with the Holder's Public Access and Recreational Management Rights]; and</i></p>
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	(j) map information sufficient to support the above requirements.
<p><b>6. PUBLIC ACCESS:</b></p> <p><i>All easements acquired under the 1999 Bond Issue will include a component to preserve traditional non-intensive outdoor recreation by the general public, appropriately limited to preserve fragile natural resources and to permit the reasonable exercise of Grantor's reserved rights. This traditional public use can range from continuation of traditional daytime non-motorized uses, to continuation of traditional camping and motorized access, to acquisition by the State of a recreational easement with full management rights for establishment and maintenance of recreational structures, access, and regulation.</i></p> <p><i>The Drafting Guidelines provide two sample covenants on Public Access below. Both are appropriate to a variety of situations, though the first is the most common, in which the owner agrees to permit traditional public uses, subject to rules to prevent unauthorized uses. In all cases, the meaning of traditional uses should be defined to specify whether motorized uses are included in the traditional uses of the property. In every case, the LMF policy of guaranteeing access for hunting, fishing and trapping will be expected. State statute also directs the LMF to seek vehicular access <u>to</u> the property "whenever possible and appropriate" (see page 4-4). The second example addresses the less usual situation where the Holder acquires a public use easement to manage and control both public access and the recreational facilities for such use. In all cases, the easement will reference the landowner's and Holder's limited liability for injury to the public under relevant statutes, and the limitation on public standing to sue.</i></p>	
<p><b>LANDOWNER MANAGES RECREATIONAL USE – MODEL 1</b></p> <p><i>The following guideline applies to the situation where "traditional" public uses are intended to be allowed of a property. Definitions of the "traditional, non-intensive" uses may differ from depending on whether those uses are intended to include motorized uses.</i></p>	<p><b>6. PUBLIC ACCESS</b></p> <p>A. Grantor hereby grants to the Holder the right of public pedestrian access to and use of the Protected Property for traditional, non-intensive outdoor recreation by the general public as provided herein. To this end, Grantor agrees to take no action to prohibit or discourage access to the Protected Property nor to inhibit traditional, non-intensive outdoor recreation by the general public.</p> <p>B. Grantor shall not charge a fee to the general public for pedestrian access or use of the Protected Property; however Grantor may charge customary, reasonable user fees for access to defray the actual cost to Grantor of building and maintaining recreational and public use infrastructure. Such fees must be approved in advance and in writing by Holder. Under no</p>



<p><i>See definitions in Section 7 of these guidelines. In all cases, pedestrian access and hunting, fishing and trapping should be assured.</i></p>	<p>circumstances may the Grantor retain or allow exclusive use of the Protected Property to any person or entity for such recreational purposes, <i>[Option: except in Leased Lots described in Exhibit D].</i></p> <p>C. Grantor further agrees to take no action to discourage or prohibit access to the Protected Property by motor vehicle on abutting public roads, and/or on rights of way owned by Grantor to the Protected Property or to which Grantor has assignable access rights identified in Exhibit A, except as permitted in paragraph D. <i>[If parking is contemplated, add: Reasonable parking will be provided in the parking area(s) and at the roadsides, designated on Exhibit B (or other smaller scale map Exhibit).]</i></p> <p>D. Consistent with the provisions of P.L. 1999, c. 514, sec. A-6 and other applicable law, Grantor has the right to make reasonable rules and regulations for any of the following uses for public recreation: night use; camping; loud activities; open fires; use of motor vehicles except as provided in this easement; access by domesticated animals or pets; any use that may interfere with or be harmful to members of the public using the Protected Property, the conservation values of the Protected Property, or the proper exercise of Grantor's reserved rights. Grantor also has the right to temporarily restrict public access on limited areas of the Protected Property to protect fragile areas under study, or for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users; such right of Grantor may be exercised only following 30 days' prior notice to Holder and an opportunity to comment, except in an emergency in which notice to Holder shall be as soon thereafter as possible. Grantor also has the right to temporarily restrict public access on the roads of the Protected Property during periods of water-saturated soils to prevent road damage. Holder and Grantor may agree in writing to restrict access and use of the Protected Property by the general public for other purposes, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological, or other conservation values of the Protected Property.</p>
<p><b>HOLDER ACQUIRES AFFIRMATIVE RECREATIONAL MANAGEMENT RIGHTS – MODEL 2</b></p> <p><i>The following provisions apply to situations where the Grantor has agreed to transfer affirmative recreational management rights to the Holder; either</i></p>	<p><b>6. PUBLIC ACCESS</b></p> <p>A. Grantor hereby grants to the Holder the right of public pedestrian access to and use of the Protected Property for traditional non-intensive outdoor recreation by the general public, as provided herein. To this end, Grantor agrees to take no action to prohibit or discourage access to the Protected Property nor to inhibit traditional non-intensive outdoor recreation by the general public.</p> <p>B. Grantor shall not charge a fee to the general public for pedestrian access or use of</p>



*exclusive or coextensive with Grantor (see 3.A - Minor Structures for discussion of coextensive rights to install recreational improvements). In this example, Holder acquires the right to establish and maintain trails, campsites and picnic areas, boat launch facilities, to charge fees for use, and to provide signage on the property. Of course, the Grantor and Holder may mutually agree to other configurations of recreation management rights and apportionment of access and recreation-related maintenance costs between Grantor and Holder..*

the Protected Property, however Grantor may charge customary, reasonable user fees for access, approved in advance and in writing by Holder, to defray the actual cost to Grantor of building and maintaining recreational and public use infrastructure. Such fees must be approved in advance and in writing by Holder. Under no circumstances may the Grantor retain or allow exclusive use of the Protected Property to any person or entity for such recreational purposes, *[Option: except in Leased Lots described in Exhibit D].*

C. Grantor further agrees to take no action to discourage or prohibit access to the Protected Property by motor vehicle on abutting public roads, and/or on rights of way owned by Grantor to the Protected Property or to which Grantor has assignable access rights identified in Exhibit A, except as permitted in paragraph D. *[If parking is contemplated, add: Reasonable parking will be provided in the parking area(s) and at the roadsides, designated on Exhibit B (or other smaller scale map Exhibit).]*

D. Grantor has the right to temporarily restrict public access on limited areas of the Protected Property to protect fragile areas under study, or for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users; such right of Grantor may be exercised only following 30 days' prior notice to Holder and an opportunity to comment, except in an emergency in which notice to Holder shall be as soon thereafter as possible. Grantor also has the right to temporarily restrict public access on the roads of the Protected Property during periods of water-saturated soils to prevent road damage. Holder and Grantor may agree in writing to restrict access and use of the Protected Property by the general public for other purposes, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological, or other conservation values of the Protected Property.

E. Grantor also grants to Holder the following public use management rights, which may be assigned or delegated to another entity, after notice to Grantor.

*[List the public use management rights here; for example including such topics as: rules and fees, trails, campsites and picnic areas, boat launching facilities, access routes, signage, and site restoration]*



**7. DEFINITIONS:**

*Any terms that require defining will be found in this section. This is a suggestion of typical definitions.*

**7. DEFINITIONS:**

A. “Commercial Forest Management” is defined as the planting, growing, cultivation, stocking, and cutting of trees and other forest products, and includes timber cruising, resource evaluation, herbicide, pesticide and fertilizer application, timber stand improvement, pruning, mechanical and conventional timber harvesting and other forest harvesting, forest products transportation, natural and artificial regeneration of forest stands, maple sugaring, other substantially similar and associated activities, and the construction, creation, use and maintenance of woods roads, skid trails and winter haul roads, turnouts, timber landings and crossings of flowing waters for such purposes, all as consistent with the terms of this Conservation Easement.

B. “Traditional, non-intensive outdoor recreation” is defined as dispersed, non-commercial, non-exclusive, and non-motorized public recreational activities that do not generally rely on buildings or spectator facilities. Such uses include hunting, fishing, trapping, hiking, nature observation, picnicking, boating, cross country skiing, snow-shoeing, bicycling, horseback riding, swimming, primitive non-commercial camping, and outdoor education and nature study, including scientific and archeological research and observation, and enjoyment of open space; *[Option: provided however, that snowmobiles and All Terrain Vehicles (ATVs) on trails designated by the Grantor for this purpose shall be permitted in connection with such uses]. [This list of recreational public uses should conform to other recitations in the easement and be as inclusive as possible]*. The incidental use of the Protected Property by the general public supported by paid guides or outfitters shall not be deemed commercial use. Establishment of approved permits and access fees for use of permitted campsites and other permitted recreational facilities shall not be deemed exclusive use.

C. “Normal high watermark of the shore” means that line on the shore of tidal or fresh water bodies which is apparent from visible markings, changes in the character of soils due to the prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In places where the shore or bank is of such character that the high watermark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks), the normal high watermark will be estimated from places where it can be determined by the above method. Distances from the normal high water mark will be determined by horizontal measurement.

D. “Wetland” means any area saturated or inundated by water at a frequency or for a duration sufficient to support, and which under normal circumstances does support, vegetation



	<p>typically adapted for life in saturated soils, or any land below an identifiable debris line left by water action, and any land with vegetation present that is tolerant of salt water and occurs primarily in salt water or estuarine habitat. The "upland edge" of a wetland is the boundary between upland and wetland, and not the edge of open water.</p>
<p><b>8. NOTICES.</b></p> <p><i>This section is standard and provides names and addresses, and a required method for "required" notices. It also identifies the Grantor's designated agent for notice and approvals.</i></p>	<p><b>8. NOTICES.</b></p> <p>A. Any notices to Holder required in this Conservation Easement shall be sent by registered or certified mail, or other courier providing reliable proof of delivery, to the following person and address or such other person or address as may be hereafter specified by notice in writing to: HOLDER: <i>[Give title and address of Agency head]</i>. All other communication shall be made by reasonable means under the circumstances.</p> <p>Such notices to Holder or requests for Holder consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the purposes hereof.</p> <p>B. Any notices to Grantor required by this Conservation Easement shall be sent by registered or certified mail, or other courier providing reliable proof of delivery, to the Grantor's designee at the following address, or to such other person or address as may be hereafter specified by notice in writing to GRANTOR: <i>[give title and address of Grantor's designated representative]</i>. All other communication shall be made by reasonable means under the circumstances.</p> <p>Such notices to Grantor or requests for Grantor consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable Grantor to determine whether proposed plans are consistent with the terms of this Conservation Easement and the purposes hereof.</p> <p>C. In the event that the Protected Property is owned by a trust, business entity, or any common or jointly held ownership, the Grantor entity or the common or joint owners shall designate an agent to be responsible for the granting of approvals of Grantor and the receipt of notices on behalf of Grantor hereunder. In the event that no single owner or agent is so designated, the approval of or notice to, any executive officer of the business entity, or any one common or joint owner, shall be deemed the approval of or notice to all.</p>



## 9. COSTS AND LIABILITIES

*This section is standard in conservation easements, clarifying that the Holder of an easement does not hold an ownership interest in the property, and is therefore not responsible for operation and maintenance of the land. This fact has ramifications that are specified in these several boilerplate clauses.*

## 9. COSTS AND LIABILITIES

A. Grantor shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor shall keep the Protected Property free of any liens or encumbrances, including without limitation those arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

B. 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 *[Options if holder acquires affirmative management rights: , other than as set forth in Section 10.E]*. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. Grantor shall indemnify, defend and hold Holder harmless from and against any and all liabilities, costs, damages, or expenses of any kind that Holder may suffer or incur as a result of or arising out of the activities of Grantor or any other person other than the Holder on the Protected Property.

C. Grantor shall have responsibility, and the Holder shall have no responsibility whatsoever, for the operation of the Property, the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that: (1) it creates in the Holder the obligations or liabilities of an “owner” or “operator” as those words are defined and used in the environmental laws, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, Sections 9601 *et seq.*) or any successor or related law; (2) it creates in the Holder obligations or liabilities of a person described in 42 United States Code Section 9607(a)(3) or any successor or related law; or (3) the Holder has any control over the Grantor's ability to investigate and remediate any hazardous materials associated with the Property. The term “environmental laws” includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous substances.



## 10. HOLDER'S AFFIRMATIVE RIGHTS.

*Holder rights will always include those required for monitoring and enforcement of the easement. In some cases additional management rights will be acquired, such as the right to undertake trail building, or to build and manage recreational facilities, such as campground or boat launch sites. (See Public Access, Section 6).*

## 10. HOLDER'S AFFIRMATIVE RIGHTS.

A. In a reasonable manner, Holder has the right to enter the Protected Property, including over roads owned by Grantor or rights of way or other access ways available to Grantor for access to the Protected Property for inspection and monitoring purposes and for enforcement of the terms of this easement.

B. Holder has the right to enforce this Conservation Easement by proceedings at law and in equity, including without limitation the right to require the restoration of the Protected Property to a condition in compliance herewith and receive damages for irremediable harm due to violation hereof. In the event that Holder becomes aware of a violation or threatened violation of the terms of this Easement, Holder shall give written notice to Grantor and request that Grantor take corrective action sufficient to cure the violation or prevent the threatened violation, except where emergency circumstances or prevention of a threatened breach of this Conservation Easement require more immediate enforcement action. Wherever in this Conservation Easement Grantor is afforded or retains a right to provide a plan or otherwise express an intention to take an action (regardless of whether Holder has any right to approve Grantor's action, plan or statement of intention), nothing in this Easement shall be construed to impair Holder's right to seek injunctive or other relief as necessary to enforce the terms of this Easement against a violation or threatened violation hereof. Holder may not bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantor's control, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by such Court or decision maker.

C. It is Grantor's obligation to locate and keep the boundaries of the Protected Property and any Land Use Areas identified in Section 1, clearly marked on the ground before undertaking any actions that are restricted by this Conservation Easement in the vicinity of such boundary.

D. Holder has the right, after consultation with Grantor, to install and maintain small unlighted signs visible from public vantage points, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this grant.



	<p>E. <i>[ Option for special affirmative rights: As described in Section 6, Holder may reserve special rights, such as the right to establish and maintain trails or primitive campsites, the right to maintain vistas, the right to improve wildlife habitat, conduct ecological surveys or scientific research, or the right to manage certain types of public use, such as ecological education or supervised group visits.]</i></p> <p>F. The Holder may, but is not required to, notify Grantor in the event that Holder believes that Grantor's activities or planned activities may constitute or could lead to a violation of the terms of this Easement, provided that no act or failure to act by or on behalf of the Holder may be construed to constitute an approval, waiver or estoppel in connection with Holder's rights to enforce the terms of this Easement.</p>
<p><b>11. CONSERVATION EASEMENT REQUIREMENTS UNDER FEDERAL LAWS AND REGULATIONS.</b></p> <p><i>This section is particularly relevant to easements for which the Grantor may wish to seek an income tax deduction for the gift portion of a bargain sale to the State of Maine. Where a similar clause is provided in the General Provisions section, there is an asterisk to guide the drafter so that duplication can be avoided. Grantors should always seek their own counsel with respect to tax issues and special provisions that may be required to comply with provisions of the Tax Code.</i></p>	<p><b>11. CONSERVATION EASEMENT REQUIREMENTS UNDER FEDERAL LAWS AND REGULATIONS.</b></p> <p>A. Conservation Purposes. This Conservation Easement is established exclusively for conservation purposes consistent with the provisions of the Internal Revenue Code, as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. §1.170A-14 <i>et seq.</i>, as amended. <i>[* See 12.A for reference to qualification under the Maine UCEA]</i></p> <p>B. Qualified Donee. <i>[For governmental holders :</i> The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section 476(2)(A) and under Internal Revenue Code Section 170(h)3, to wit: a governmental entity with the commitment to preserve the conservation values of the Protected Property.] <i>[For non-profit organizations:</i> The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section 476(2)(B), as amended, and is a Qualified Organization under Code Section 170(h)3, to wit: a publicly funded, non-profit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property.] <i>[* this combines state and federal qualifications]</i></p> <p>C. Assignment Limitation. This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code, (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine</p>



Revised Statutes Annotated, as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant. *[\* this combines state and federal requirements]*

*[The following para. C is an alternative form to be used if Forest Legacy Program funding from the US Forest Service is involved]*

C. Assignment Limitation. The burden of the Easement created hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land, but shall be in gross and assignable or transferable only to a governmental entity, consistent with the Forest Legacy Program (16 USC Section 2103c). Any such assignee or transferee shall have the like power of assignment or transfer. In addition, but only if such assignment is permitted by the Forest Legacy Program at the time of such assignment, the Grantee may assign this Easement with the prior written consent of the Grantor, which consent shall not be unreasonably withheld, to an organization that is qualified at the time of transfer under 16 USC Section 2103c, and the applicable regulations thereunder, Section 170(h) of the Code, and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Title 33, Maine Revised Statutes Annotated, Section 476(2) (or any successor or other legal provision then applicable), or the laws of the United States (an “Alternative Qualified Holder”). As a condition of any such assignment, the Grantee shall require that the conservation purposes this grant is intended to advance, continue to be carried out. The Grantee agrees to give written notice to the Grantor of a proposed assignment. Where the Grantor’s consent to an assignment is required, the Grantor shall respond in writing to the Grantee’s request for consent to an assignment to an Alternative Qualified Holder within ninety (90) days after the receipt of the proposed assignment. If the proposed Alternative Qualified Holder is not acceptable to Grantor, the Grantor shall propose an Alternative Qualified Holder of the Easement that is acceptable to the Grantor. In the event that the parties are unable to agree upon an Alternative Qualified Holder through discussion and/or mediation in accordance with the guidelines set forth in Section 7.3, either party may seek to have an assignee of the Easement determined in accordance with Sections 7.4 and 8 hereof. Any assignment or transfer of responsibility for the Easement shall be in recordable form and shall be recorded in the \_\_\_\_\_ County Registry of Deeds.

D. Proceeds Clause. This Conservation Easement constitutes a property right owned by the Holder. Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished, which may be accomplished only by court order, Holder is



	entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the unrestricted property, according to Holder's proportional interest in the Protected Property, as determined and required under Treasury Regulations 1.170-A-14 (g)(6)(ii). Holder's proportional interest is determined as of the date of this grant and will not include value attributable to authorized improvements to the Protected Property made after the date of this grant, except as to improvements that are made by or at the expense of Holder. Holder will use such proceeds for its conservation purposes. [ <i>* See 12.H for parallel termination clause</i> ].
<p><b>12. GENERAL PROVISIONS.</b></p> <p><i>This section will include general legal and policy provisions.</i></p>	<p><b>12. GENERAL PROVISIONS.</b></p> <p>A. Applicable Law. This Conservation Easement is created pursuant to the Uniform Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-B, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.</p> <p>B. Interpretation. If uncertainty should arise in the interpretation of this Conservation Easement, judgment should be made in favor of accomplishing the conservation purposes of this grant. Nothing in this Conservation Easement should be construed to permit any activity otherwise prohibited by existing or future laws and regulations imposed by any federal, state, or local government or governmental agency having jurisdiction over the Protected Property, nor to prohibit the imposition of further land use restrictions by the agreement of the parties, or by operation of law.</p> <p>C. Non Waiver. The failure or delay of the Holder, for any reason whatsoever, to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute laches or a waiver or estoppel of its rights to do so at a later time.</p> <p>D. Compliance. A person's obligation hereunder as Grantor, or successor owner of the Protected Property, will cease, if and when such person or entity ceases to have any present, partial, contingent, collateral or future interest in the Protected Property, but only to the extent that the Protected Property is then in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Property into compliance unless Holder releases the new owner. At Grantor's cost, Holder will provide certificates to third parties, indicating the extent to which, to Holder's knowledge, there is compliance of the Protected Property with the terms of this grant after an inspection by Holder made upon Grantor's reasonable prior written request.</p>



E. Severability. If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid.

F. Amendment and Discretionary Consents. Grantor and Holder acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Easement. Holder therefore may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Easement or (b) alterations in existing uses or structures, are consistent with the Purposes of this Easement. Any legally permissible amendment hereto, and any discretionary consent by Holder contemplated by this Conservation Easement, may be granted only if the Holder has determined in its reasonable discretion, that the proposed use furthers or is not inconsistent with the purposes of this Conservation Easement, substantially conforms to the intent of this grant, meets any applicable conditions expressly stated herein, and does not materially increase the adverse impact of expressly permitted actions under this Conservation Easement on the conservation values of the Protected Property. Holder has no right or power to consent to any use that would result in building development on the Protected Property other than that which is expressly allowed herein, or that would be inconsistent with the Purposes of this Conservation Easement or limit the term or terminate this Conservation Easement, or that would impair the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including Title 33 M.R.S.A. Section 476 et seq., and/or Section 170(h) or 501(c)(3) of the Internal Revenue Code, or successor provisions thereof.

G. Liens Subordinated. Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property, except any listed in Exhibit A and are subordinated to all of Holder's rights under this Conservation Easement. Grantor has the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose are subordinate to all of Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any lien or other interest in the Property.

H. Termination. This Conservation Easement constitutes a property right owned by



*The paragraph H opposite is similar to the IRS proceeds clause (see Section 11, paragraph D), and must be included if that clause is excluded .*

*If the Holder is other than the State, the State must be given third party rights of enforcement where it is financing acquisition of the easement.*

the Holder. Should this Conservation Easement be extinguished, which may be accomplished only by court order, Holder is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the unrestricted property, according to Holder's proportional interest in the Protected Property, based on the ratio of the value of this Conservation Easement to the value of the Protected Property as a whole as of the date of this grant, excluding value attributable to authorized improvements to the Protected Property made after the date of this grant. For purposes of this paragraph, the value attributable to authorized improvements shall be apportioned to the Grantor or Holder respectively according to which party incurred the costs of such improvements. Holder will use such proceeds for conservation purposes.

I. Grantor's right to further conservation actions. Subject to the provisions of P.L. 1999, c.514, sec. A-6, nothing contained in this Easement shall be construed either to limit the Grantor's rights to take additional conservation actions to protect the resources and conservation values of the Protected Property, such as further restrictions on the use of all or a portion of the Protected Property, or to limit the Grantor's right to cease managing the Property for commercial forestry activities.

J. Rights and immunities. Grantor and Holder claim all of the rights and immunities against liability to the fullest extent of the law under Title 14 M.R.S.A., Section 159-A, et seq. as amended and any successor provisions thereof (Maine Recreational Use Statute), and Title 14 M.R.S.A. Section 8101, et seq. as amended and any successor provisions thereof, (Maine Tort Claims Act), and under any other applicable provision of law.

K. Standing to Enforce. Only the State of Maine *[for Holder, if the easement is to be held by an entity other than the State in which case a provision for 3<sup>rd</sup> Party Enforcement in favor of the State should be inserted]* and Grantor may bring an action to enforce this grant, and nothing herein should be construed to grant the public standing to bring an action hereunder, nor any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Property acquired by common law, adverse possession, prescription or other law, independently of this grant.

L. Reasonable Control of Access. Grantor reserves the right to reasonably control, by posting and other means, any use not specifically granted to the Holder herein, that may unreasonably interfere with the proper exercise of Grantor's reserved rights. Grantor may exercise this right following reasonable, prior notice to Holder and an opportunity to comment, except in an emergency, in which case notice to Holder shall be as soon thereafter as possible. As part of this



	<p>right, Grantor may temporarily restrict public access on areas of the Protected Property for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users. Grantor may temporarily restrict public access on areas of the Protected Property to prevent degradation of the roads during periods of water-saturated soils. Holder and Grantor may agree in writing to restrict access and use of the Protected Property by the general public for other purposes, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological, and other conservation values of the Protected Property.</p> <p>M. Additional Grant of Access Rights Not Limited. Nothing in this Easement should be construed to preclude Grantor's right to grant additional public access on, over or across the Protected Property, for traditional, non-intensive, outdoor recreation by the general public, provided that such use does not conflict with the conservation values of the Protected Property or the public recreational uses provided for herein.</p> <p>N. Holder's ability to exercise rights. The parties acknowledge that the ability of the Holder to exercise the rights or carry out the duties of the Holder hereunder, including, without limitation, the operation and maintenance of any recreational improvements on the Protected Property, are subject to the availability of moneys appropriated or otherwise available to the Holder and designated for such purposes.</p> <p>O. Notwithstanding anything in this Easement to the contrary, this Easement shall not impair any prescriptive or other right in the Property that may have been acquired by the public or the Grantee prior to the date of this Easement or that may be acquired after the date of this Easement, or any other right the public or the Grantee may have to use or access the Property pursuant to law. <i>(Note: this paragraph was inadvertently omitted from the Working Forest Easement Guidelines document dated June 25, 2002)</i></p>
<p><b>VII. HABENDUM AND SIGNATURES</b></p> <p><i>[Choose one of the clauses opposite]</i></p>	<p><b>VII. HABENDUM AND SIGNATURES</b></p> <p>TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder and its successors and assigns forever.</p> <p>IN WITNESS WHEREOF, I, _____, being unmarried, have hereunto set my hand and seal this _____ day of _____, 20 0 .</p>

	<p>IN WITNESS WHEREOF, We, _____, husband and wife and joint tenants, have hereunto set our hands and seals this _____ day of _____, 2000 .</p> <p>IN WITNESS WHEREOF, _____, Grantor herein, and _____, his/her spouse, joining in this deed and relinquishing all rights herein by descent or otherwise, have hereunto set their hands and seals, this _____ day of _____, 2000 .</p> <p>IN WITNESS WHEREOF, I, _____, in my capacity as Trustee under the aforescribed Declaration of Trust, hereunto duly authorized, have hereunto set my hand and seal this _____ day of _____, 2000 .</p> <p>IN WITNESS WHEREOF, Grantor, _____ (corporate name) has caused these presents to be signed and sealed in its corporate name by _____ (person), its _____ (title), hereunto duly authorized, this _____ day of _____, 2000 .</p>
<p><b>VIII. ACKNOWLEDGEMENT</b></p> <p><i>The State requires notarization of all signatories in LMF funded easements.</i></p>	<p><b>VIII. ACKNOWLEDGEMENT</b></p> <p>STATE OF MAINE COUNTY OF _____, ss. _____, 2000 .</p> <p>Personally appeared the above-named Grantor(s), _____ and _____ and acknowledged the foregoing instrument to be their free act and deed.</p> <p>Before me, _____ Notary Public</p> <p>Please type or print name of notary My commission expires: _____</p> <p><i>[Acknowledgement text is different for corporations, partnerships and trusts.]</i></p>



**IX. HOLDER ACCEPTANCE.****IX. HOLDER ACCEPTANCE.**

Pursuant to M.R.S.A. Title \_\_\_\_\_, Section \_\_\_\_\_,  
 Commissioner of the Department of  
 MAINE, Department of \_\_\_\_\_  
 day of \_\_\_\_\_ 200 .

\_\_\_\_\_, hereby gives consent to acquisition by the STATE OF  
 of the above and foregoing Conservation Easement. Executed this

Signed Sealed & Delivered  
**in the Presence of:**

**STATE OF MAINE**  
*Department of*

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 by:  
 its Commissioner

STATE OF MAINE  
 COUNTY OF KENNEBEC, ss.

Date: \_\_\_\_\_

Personally appeared the above-named \_\_\_\_\_, Commissioner of the Maine Department of  
 , and acknowledged acceptance of the above and foregoing Conservation Easement as her/his free act and  
 deed in said capacity, and the free act and deed of the STATE OF MAINE.

Before me, \_\_\_\_\_  
 Notary Public/ Attorney at Law

\_\_\_\_\_  
 Please Print or Type Name

**X. ATTACHMENTS TO  
CONSERVATION EASEMENT**

*Most often prepared (always confirmed) by the landowner's attorney, based on a survey or the best previous deed description, sometimes employing a surveyed line or perimeter to distinguish the portion under easement from unrestricted land.*

*Use either a legal description or mapped plan, from best available source.*

**X. ATTACHMENTS TO CONSERVATION EASEMENT****EXHIBIT A**

**Legal Description of the Protected Property**

**EXHIBIT B**

**A Mapped Plan of the Protected Property Showing Its Important Features**

**EXHIBIT C**

**Description of any special land use areas, such as reserved areas, forever wild areas, public areas, public trails, and lines of demarcation.**

**EXHIBIT D**

**Leased Lots**

## **Appendix 1**

### **LMF Policies for Working Forest Easements**

**Approved by Land For Maine's Future Board  
9 May 2001**

**In early 2001, an 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. They recognize that this is a working document, and that amendments and refinements are likely as experience dictates.**

**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 should 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.



## Appendix 2

### Forest Management Bibliography

For more information on Forestry on Conservation Land, see:

1. **Working Forest Conservation Easements**, by Brenda Lind, Land Trust Alliance, 1331 H. Street, NW #400, Washington D.C. 20005, (2001)
2. **Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters and Landowners**, by Geoffrey T. Jones, Northeast Regional Agricultural Engineering Service, Society for the Protection of New Hampshire Forests, January 1993, 152 Riley-Robb Hall, Ithaca, New York 14853
3. **Riparian Forest Buffers**, by David J. Welsch, Forest Resources Management, USDA Forest Service, Radnor, PA, NA-PR-07-91.
4. **Best Forest Management Practices**, U.S. Soil and Conservation Service, provided by local U.S. Cooperative Extension Service offices. Also see, "Best Management Practices Field Handbook, July 1995 Reprint", Maine Forest Service, SHS#22, Augusta, Maine 04333, (207) 278-2791, or 1-800-367-0223(instate);
5. **"Conservation Easements in the Northern Forest: Principles and Recommendations for the Development of Large-Scale Conservation Easements in the Northern Forest,"** (May 2001) Northern Forest Alliance, 3 Wade Street, Augusta, Maine 04330.

## Appendix 3

### Considerations when designing gift or bargain-sale easements

Some acquisitions are part gift and part sale. Landowners who intend to claim income tax benefits for charitable gifts or bargain sales are strongly advised by the agency to obtain the advice of a tax professional for the transaction. They must rely on their own tax and legal advice to assure compliance with tax benefit requirements. In general, landowner's counsel will want to see language in the easement to demonstrate or recite how it meets the following federal requirements for income tax deductible easements under Internal Revenue Code §170(h)). It is important to note, however, that these standards have been generally accepted by land trusts and government agencies nationwide, and the State of Maine will require many of these standards for both purchased and donated easements. This Appendix provides further discussion of this topic but it should be noted that this material is drawn from the author's understanding of current IRS requirements; it should not be considered to be legal advice nor tax counsel of the State of Maine.

- a. The tax-deductible easement must, in fact, be a gift or bargain sale - i.e., made with a donative intent and not because it is required as a condition of receiving some benefit - such as a governmental regulatory or permit approval.
- b. The Holder must be a governmental entity or a non-profit tax-exempt 501(c)(3) organization (or its wholly owned subsidiary) that meets the "public support test" of IRC Section 509(a)(3). The Holder must also have the ability and the commitment to uphold the conservation purposes of the grant.
- c. The easement must be enforceable in perpetuity. IRS requires specific provisions and actions: the easement must be recorded; it must be perpetual under state law; mortgage and lien holders must subordinate their to the right of the Holder to enforce the easement; the easement may be extinguished only by court order; assignment by the Holder must be specifically limited to other qualified Holders; the Holder must be entitled to share in the proceeds of any sale after a court-ordered termination of the easement. (Specific language examples are noted in the Drafting Guidelines)
- d. The easement must be made exclusively for IRS recognized conservation purposes.<sup>2</sup> It should be noted that the purposes of the LMF Statute (described in the next section) are narrower, but fall generally within the broad conservation purposes recognized by Federal law.

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<sup>2</sup> The conservation purposes are fairly straightforward: (1) preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) protection of a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem; (3) preservation of open space, including farmland and forest land, providing a significant public benefit, pursuant to a clearly delineated state and local governmental policy; (4) preservation of open space for the scenic enjoyment of the general public, providing a significant public benefit; (5) preservation of a historically important land area. The "IRS conservation purposes test" also requires prohibition against surface mining and avoidance of inconsistent



- e. The Grantor may not reserve rights that are contrary to the conservation purposes of the gift. One must look to the specific restrictions to see if they are sufficient to protect the stated or implied conservation purposes, and do not adversely impact other important conservation values. For instance, a farmland or forestry easement on land with fragile and significant ecological features must impose limits on management designed to protect those values.
- f. The taxpayer will need to substantiate the value of the easement, and may not rely on the Holder's appraisal. There are timing considerations for the appraisal, and the Holder will be required to sign IRS Form 8283, the Appraisal Summary, to confirm that the easement has been transferred and to confirming the conservation purposes of the gift. The Holder need not know and, in the case of a State agency, should not confirm, the value of the claimed gift for purposes of the Grantor's potential tax deduction.
- g. Because the State (through the Maine Revenue Service) is also a taxing authority, it is important that there be no representation made in the easement, or during the course of the negotiations, that may be viewed as a representation by the State that the easement is entitled to a tax deduction or other particular tax treatment, since that will be subject to an independent determination by the IRS and Maine Revenue Service.

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reserved rights. The landowner's advisors should refer to Treasury Regulations at 26 CFR Section 1.170A-14, and pertinent Revenue Rulings. Good secondary sources for this information are *Technical Bulletin #104, Qualification of Easement Donation for Federal Income Tax Deduction*, published by Maine Coast Heritage Trust, *The Conservation Easement Handbook* and *The Federal Tax Law of Conservation Easements* both published by Land Trust Alliance, the latter being an essential source for the lawyer, appraiser, accountant, and conservation planner.