

Appendix J

Guidance for Agricultural Conservation Easements

Working farms form the landscapes which are the fabric of many Maine towns and villages, shaping their character and contributing to a community's quality of life. The Land for Maine's Future Program conserves farmland primarily through the purchase of development rights (an agricultural conservation easement) on viable working farms. LMF assists in the acquisition of agricultural conservation easements with a goal of protecting Maine's productive farmlands from conversion to non-agricultural uses. Agricultural conservation easements allow farmers to retain all other ownership rights; they can sell or continue to farm and they can diversify their agricultural enterprise and operation. Agricultural conservation easements funded by LMF must comply with LMF's broad policy goals, (see pp.8-16 and page 65), but each easement will reflect the unique characteristics of the land and the agreement between the agency, cooperating entity, and the farmland owner(s).

All agricultural conservation easements funded by LMF will serve the conservation and agricultural purposes of the holder agency, meet the requirement of the 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.

- **Qualifications for Bond Funding:** The 2009 Bond, (P.L. 2009, Chapter 645 Sec. J) and, 2011 Bond (P.L. 2011, Chapter 696), authorize expenditures 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 protection 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.
- **Authority to Acquire Easements:** The authority of the agency or cooperating entity to acquire interests in land will be recited in "Whereas Clauses";
- 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 of the public to access the land by vehicle whenever possible and appropriate. The State must at a minimum have access rights for monitoring and enforcement purposes of an easement.

The basic purpose of a LMF funded agricultural conservation easement is to protect the productive soils, preventing conversion of land to non-agricultural uses (e.g. subdivision, development etc.), provide for continued agricultural and forest use, and preserve other natural resource attributes as secondary values to the working farm. The Land for Maine's Future Program's process for planning and funding agricultural conservation easements is designed to:

- Provide points of contact and responsibility for each project;
- Establish clear conservation purposes and objectives that are consistent with the LMF statute and policies;
- Provide for sufficient legal review;
- Work collaboratively with sponsoring agency and other funding resources, such as USDA Natural Resource Conservation Service, Farm & Ranchland Protection Program requirements.

The LMF Board understands that every farmland protection effort involves negotiation between the parties, (farm family members, land trust board members, etc.), who together carefully analyze the farm's size, condition, location, terrain, its soils and natural resource attributes, the owner's goals for the land, its current and potential future agricultural uses, threats and opportunities, and the interests of the State.

The Maine Department of Agriculture Conservation and Forestry and LMF have developed a "Standard Agricultural Conservation Easement Deed" that includes the required language for cooperating entities to use as a template in the first draft. The first draft of the easement should be provided by the State agency or the cooperating entity and their advisors to LMF. The "Standard Conservation Easement Deed" may be adapted to particular circumstances; sections may be added or deleted depending on the land and the land protection objectives for a project property. Each easement will be analyzed to determine if the provisions, landowner's reserved rights, and rights granted to the Holder serve those policies and the public benefit goals that guide them.

When the LMF Board approves funding for an easement project in which the interest in land will be held by an entity other than a state agency (typically a land trust 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. (see Appendix H for LMF Project Agreement template language).

Easement provisions of agricultural conservation easements funded by LMF:

- Run with the land in perpetuity;
- Protect agricultural use and related natural resource attributes by limiting nonagricultural uses of the land;

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- Prohibit subdivision of the property, with the goal of maintaining large enough parcels to be a) cost effective to manage for agricultural production of food, forage, seed and fiber, and timber production, and b) cost effective for the holder to monitor compliance with easement terms. Allowable division may include small conveyances to correct boundary issues with abutters.
 - Provide an enforceable commitment to maintain (or enhance) the potential of the property to provide for long-term management of farmland and forest land in accordance with best management practices to prevent erosion, sedimentation and other degradation of soil and water resources.
 - Retain the landowners' right to permit or forbid public use of the property for snowmobiling and traditional pedestrian recreational uses such as fishing, hiking, hunting, snowshoeing, nature observation, cross-country skiing, etc., and are consistent with the purposes of the conservation easement.
 - If public access and use is a mutual goal of the cooperating entity and the farmland owner, then the easement and boundary survey must designate the location of public access and to insure that the agricultural purposes and uses of the property protected by the conservation easement are not threatened.
 - Provide for permanent agricultural structures to be sited within a designated area of the property that is described in the easement and depicted on the boundary survey map of the property, i.e. a 'Farmstead Area', (this designated area includes the agricultural infrastructure and farm family and farm labor dwellings).
 - Provide provisions for Right of Enforcement, General Indemnification, and Environmental Warranty.