

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

---

DO NOT WRITE ABOVE THIS LINE: FOR REGISTRY USES ONLY

[Drafting note: in this template, sections that need to be edited with project-specific information or where one of multiple options should be selected are highlighted in yellow. Optional sections that may be included or omitted are highlighted in green.]

**DEED OF [AGRICULTURAL] CONSERVATION EASEMENT**

**1. PROJECT NAME.**

[Insert LMF project/parcel name or similar identifier – e.g., Old Talbot Farm, Schooner Cove East, etc.]

**2. CONVEYANCE.**

“I/We, [Landowner’s name or names], of [Grantor’s address], being married/unmarried [choose one] (Grantor, hereinafter referred to as the “Landowner”)

**OR**

[Insert exact corporate name/limited liability name/partnership name], a [Insert state of incorporation or residency] corporation/limited liability company/partnership [Choose one] authorized to do business in the State of Maine, with its principal place of business in [Insert town/state where it conducts business] and a mailing address of [Insert mailing address], (hereinafter referred to as the “Landowner”),

[for full consideration paid OR for consideration paid, a portion/all of which being a gift OR for consideration being an absolute and unconditional gift OR for consideration being a gift and in consideration of the gifts of others],

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

GRANT/GRANTS with WARRANTY COVENANTS, [OPTIONAL with title attorney's advice to assure good title: with QUITCLAIM COVENANT] to [Holder's exact legal name], a governmental entity of the State of Maine OR a nonprofit corporation organized and operating in the State of Maine OR a nonprofit corporation authorized to do business in the State of Maine, and whose mailing address is \_\_\_\_\_ (hereinafter referred to as the "Holder"); the following described premises: A Conservation Easement pursuant to 33 M.R.S. Sections 476 through 479-C, inclusive, as amended, over, through, under and across certain parcels of land adjacent to [Insert in bold the road and town name, water body name, or similar geographic reference for ease of reference by those examining document in registry of deeds records] in the Town/City/Plantation/Township of \_\_\_\_\_, County of \_\_\_\_\_, and State of Maine, being more particularly described in **Exhibit A**, and depicted on **Exhibit B**, both attached and incorporated, being all of/a portion of [choose one] that premises acquired by deed to the Landowner from [prior owner], dated [date deed signed] and recorded in the \_\_\_\_\_ County Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter referred to as the "Property" or the "Protected Property"), exclusively for conservation purposes as follows:

**If right of access is included for land not served by public roads:**

"TOGETHER WITH a right-of-way for pedestrian and vehicular access to the Protected Property as necessary or appropriate to exercise the Holder's rights, [choose one of the following:] over and across any and all rights-of-way and roads owned by Landowner or over which Landowner has rights of access to the Protected Property/over and across the following described right-of-way/ over and across a certain parcel of land , as more particularly described in **Exhibit A**; exclusively for conservation purposes, as follows:"

### 3. PURPOSES.

The Holder, with funding from the State of Maine under [insert bond citation] has purchased this Conservation Easement to forever conserve the Protected Property for the Conservation Purposes generally set forth herein and specifically in this Section 3. The Landowner and Holder agree that the following Conservation Purposes ("Purposes") apply to the Protected Property:

To preserve the Protected Property's agricultural soils for the production of food, forage, seed and fiber; prevent the conversion of farmland to nonagricultural uses that would reduce or destroy the Protected Property's diversified agricultural and forest productivity, and allow the Protected Property to remain available for commercial agriculture [if applicable: and forest management];

To conserve water quality, wetlands, and riparian values of the Protected Property;

To preserve and protect the natural condition, wildlife habitat, and scenic and open space values of the Protected Property to the extent the same are consistent with agricultural activities on the Protected Property; and

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**Optional:** To preserve in perpetuity the [OPTIONAL: highly scenic and open views] undeveloped land consisting of [fields, pasture, shorelands, woods] on the Protected Property as enjoyed by the general public who travel along the XXXX Road; and

**Optional:** To restore and maintain important wildlife habitat and natural communities in designated "Ecological Protection Areas" as defined under Section XXX and depicted on Exhibit B, including [edit as appropriate: riparian lands along the XXXXX River, a significant freshwater wetlands complex and associated upland buffer, an open field area for grassland birds, and areas important for climate change adaptation], and limit land management activities in these areas that would adversely impact their wildlife habitat and ecological values; and

**Commented [BJ1]:** Add a property-appropriate description of ecological protection areas.

Landowner and Holder agree that this Conservation Easement confines the use of the Protected Property to activities that are consistent with the Purposes of this Conservation Easement and prohibits any use of the Protected Property that will impair or interfere with the currently existing conservation values ("Conservation Values") of the Protected Property as detailed in the **Baseline Documentation Report**.

#### 4. RECITALS.

WHEREAS, Landowner is the sole owner in fee simple of the Protected Property, situated in the Town [OR: City] of \_\_\_\_\_, \_\_\_\_\_ County, Maine, which is described in **Exhibit A**; and shown on a Plan entitled "Boundary Survey [or Plan as the case may be] of \_\_\_\_\_" by \_\_\_\_\_, dated \_\_\_\_\_, 20XX and recorded as Plan File \_\_\_\_\_ (the "Plan") and shown as **Exhibit B**; and

WHEREAS, Holder is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code"), and meets the requirements of Section 509(a)(2) of the Code. Holder is a "qualified organization," as defined in Section 170(h)(3) of the Code, and is qualified to hold conservation easements pursuant to Title 33, M.R.S., Section 476(2)(B), as amended; and

WHEREAS, in Maine and throughout New England many farms have ceased to exist due to increased pressure from development and other economic factors; and

WHEREAS the Property is a farm in Maine the protection of which shall conserve productive agricultural land in Maine and prevent the conversion of said land to residential, commercial, or industrial development; and

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

WHEREAS, the Property has significant potential for the commercial production of agricultural products due to its Agricultural Soils, the presence of structures and improvements to support agricultural use, and the availability of groundwater and surface water; and

WHEREAS, the grant of this Conservation Easement will provide a significant public benefit as set forth in Section 170(h)(4)(A) of the Code through the preservation of open space, including farmland, pursuant to the following clearly-delineated governmental conservation policies:

1. The Farmland Protection Policy Act, 7 U.S.C. §§ 4201-09, the purpose of which is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland”;
2. The Maine Conservation Easement Act, 33 M.R.S. §§ 476-9-B (the “Maine Conservation Easement Act”) which provides for permanent protection of real property, the purposes of which include assuring its availability for agricultural and forest use;
3. The Maine Farm and Open Space Tax Law, 36 M.R.S. §§ 1101-21, which confers preferential property tax treatment for property that owners keep undeveloped and in productive farm use or as important open space;
4. Section 153 of the Maine Agricultural Protection Act, 7 M.R.S. § 153, which declares that farm operations are not a common law nuisance when operated in compliance with state and federal laws;
5. [If the property includes timber land] The Maine Tree Growth Tax Law, 36 M.R.S. §§ 571-84-A, which confers a partial property tax exemption for land which owners manage for timber harvesting; and
6. [If applicable] The Comprehensive Plan of the Town of [insert Municipality], adopted in which states that . . .

**[OPTIONAL: WHEREAS, the Protected Property in its present state has additional conservation value for surface and ground water quality protection and that has not been subject to significant development and is a "relatively natural habitat for fish, wildlife, or plants or similar ecosystem" as that phrase is used in Section 170(h) (4)(A)(ii) of the Code; and]**

**[OPTIONAL: WHEREAS, the Protected Property is prominently visible from and provides scenic enjoyment to the general public from public road \_\_\_\_\_/from the abutting shore of \_\_\_\_\_; and]**

**Commented [BJ2]:** Include whenever there is a significant amount of forest, wetland, or other relatively natural cover on the property.

**Commented [BJ3]:** Include only if protection of scenic areas is a purpose of the easement and/or the easement includes specific protections for scenic enjoyment by the public.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

[OPTIONAL: WHEREAS, feature on/near property name (i.e XXX Bog) has ecological importance as important wildlife and fisheries habitat, including for: 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 said species and uses; and]

**Commented [BJ4]:** Include only if the easement includes a designated Ecological Protection Area or otherwise includes specific protections for ecological/habitat resources on the property that exceed existing protections under applicable law. Edit as appropriate with a description of the resources being protected.

WHEREAS, the State of Maine has provided funding for this Conservation Easement under its Working Farmland Access and Protection Program, established under Title 5 M.R.S., Chapter 353, Section 6203-C, and funded through [bond citation] to protect access to farmland and preserve the availability of land for the commercial production of agricultural products, and by virtue of this funding holds an interest in the Protected Property as further outlined and defined under the terms of a certain project agreement between Holder and the State of Maine, Department of Agriculture, Conservation and Forestry acting by and through its Bureau of Agriculture, Food, and Rural Resources (hereinafter “DACF” unless otherwise noted), dated [redacted] and recorded herewith (“Project Agreement” or “PA”) which such Agreement Grantor acknowledges as a burden on the Protected Property; and

WHEREAS, the current use of the Property, its existing improvements, and the uses and improvements permitted herein are consistent with the Purposes of this Conservation Easement;

WHEREAS, the Conservation Values of the Property are documented in a **Baseline Documentation Report**, signed and acknowledged by the Landowner and Holder, establishing the baseline condition of the Property at the time of this grant and including maps, photographs and other documentation; and

WHEREAS, the Landowner and Holder have the common purpose of conserving the Conservation Values of the Property in perpetuity, by voluntarily placing restrictions upon the use of the Property as described herein and by providing for the transfer from the Landowner to the Holder of affirmative rights for its protection in perpetuity, with the intention that the grant of such restrictions [redacted] qualify as a “qualified conservation contribution” as that term is defined under Section 170(h)(2)(c) of the Code and [redacted] qualify as a “Conservation Easement” under the Maine Conservation Easement Act.

**Commented [BJ5]:** Include if a tax deduction will be claimed.

**5. INCORPORATION OF PURPOSES AND RECITALS**

NOW, THEREFORE, in consideration of the above recited purposes and recitals and of the covenants, terms, conditions and restrictions, and pursuant to the laws of the State of Maine, Landowner and Holder establish, in perpetuity, a Conservation Easement in gross over the Protected Property, as follows:

**6. DEFINITIONS**

**Commented [BJ6]:** Drafting Note: If a definition here does not apply to a given project, please leave the subsection number and title in place, delete text thereafter and replace with words “Not Applicable”

If additional definitions are needed for a project, they may be added.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**6.1. Agricultural Management Plan (if applicable).** A conservation plan developed pursuant to Section 7.2.1.3 and containing specific conservation and management practices to manage the Protected Property in accordance with the Agricultural Principles and the Purposes of this Conservation Easement.

**6.2. Agricultural Enterprises.** Activities conducted by persons or businesses engaged in Agricultural Management and any further processing, storing, packaging or marketing of products derived from plants, animals, plant or animal by-products generated primarily on the Protected Property. "Agricultural Enterprise" also includes Forest Management and the processing and production of firewood and other forest products harvested primarily on the Protected Property.

**6.3. Agricultural Management.** Farming activity which includes the establishment, re-establishment, maintenance and use of cultivated fields, hayfields, pastures, and orchards; the planting, growing, and harvesting of food, forage, seed and fiber, forest products and horticultural and ornamental products, harvesting and processing of maple sugar and other agricultural products; the pasturing, grazing and raising of poultry, animals and livestock of every nature and description for breeding, milking, and selling for fiber or slaughter; the repair, maintenance, operation and storage of farm equipment and machinery used primarily on the Protected Property, including the operation of irrigation pumps; ground and aerial seeding; the composting of material produced by the farm or to be used primarily on the farm; the disposal of manure and other animal wastes generated primarily on the farm; the application of chemical fertilizers, soil amendments, conditioners or pesticides; and the construction and maintenance of water source, wastewater storage, water quality protection and nutrient management structures and improvements as necessary to support allowed activities on the Protected Property.

**6.4. Agricultural Soils.** Prime, unique, statewide or locally important farmland soils identified and classified by the USDA Natural Resource Conservation Service as "Prime, Unique, Statewide or Locally Important Farmland Soils."

**6.5. Agricultural Structures.** Structures used primarily for the support of Agricultural Enterprises and Agricultural Management and not to be used for human habitation.

**6.6. Agritourism.** Farm-related recreational activities designed for the enjoyment or education of the public to promote agricultural products, services, or experiences on the farm. Such activities include conducting educational farm tours, offering hay and sleigh rides, planting crop mazes, offering the public the opportunity to pick and purchase agricultural, horticultural, Christmas trees or other products produced on the Property, cross-country skiing, snowmobiling, and other outdoor recreation, all of which must be conducted in keeping with the Purposes of this Conservation Easement.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**6.7. Baseline Documentation.** The report prepared pursuant to Section 7.1 below that documents the use and state of improvement of the Protected Property at the time of execution of this Conservation Easement.

**6.8. Best Management Practices.** Guidelines or minimum standards recommended by federal, state or county resource management agencies and universities for proper farming and forestry operations, with the goal of limiting non-point pollution of water resources and other disturbances of soil, water, and vegetative resources and to protect wildlife habitats.

**6.9. Conservation Values.** The agricultural and natural resource values of the Protected Property, as set forth in Section 4 and more fully described in the Baseline Documentation, the protection and improvement of which constitutes the Purposes of this Conservation Easement.

**6.10. Forest Management.** The planting, growing, cultivation, stocking, and cutting of trees and other forest products, including the following: 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, the processing and production of firewood and forest products harvested primarily on the Protected Property, 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.

**6.11. Ecological Protection Area (if applicable).** The \_\_\_\_-acre area described in Section 7.2.14 and depicted on Exhibit B, in which protection of ecological resources takes precedence over other uses as provided in Section 7.2.14

**6.12. Ecological Protection Management Plan (if applicable).** See 7.2.14.

**6.13. Farm Labor Housing (IF FARMSTEAD AREA INCLUDED) –** Dwellings used to house farm guests, tenants, and farm workers and temporary seasonal structures used to house seasonal farm workers.

**6.14. Farmstead Area (IF FARMSTEAD AREA INCLUDED).** One or more building areas write out the number of acres (XX) acres as described in **Exhibit A-1** and depicted on **Exhibit B** within which structures and improvements are located and which may be further built upon as provided in Section 7.2.3.1.

**6.15. Footprint (if applicable) -** The ground surface area occupied by structures and improvements, as measured as a product of the outermost width and length dimensions inclusive of roof lines, and including unenclosed areas such as patios and decks.

**Commented [BJ7]:** Include only if the CE has restrictions that make this relevant, such as limits on impervious surface area or size of residences.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**6.16. Impervious Surface (if applicable).** The aggregate area that is covered by structures, paved roads and other permanent improvements or ground coverings which prevent water from penetrating into soil, measured along the outermost perimeter of roads, parking areas, structures, and other improvements, including any attached or associated decks, steps, porches or other enclosed or open-air attachments. Gravel or other materials that will not interfere with the infiltration of water shall not be considered an impervious surface for the purposes of this Conservation Easement. See also Section 7.2.3.7 regarding impervious surface area limitations under this Easement. Seasonal structures, such as earthen floor "hoop houses" which permit periodic exposure of the soils are exempt from the impervious surface limitation.

**6.17. Recreational and Habitat Protection Structures and Improvements.** Small structures that enhance wildlife habitat, mitigate erosion, protect water quality and facilitate outdoor recreation on the Protected Property such as: bird houses; trails and trail markers and small unlighted informational and interpretive signs; trail improvements such as steps, bog bridges, water bars, footbridges, platforms, and railings; wells and springs for fresh water supply, platforms for canoes and other hand carried watercraft, potable water facilities; temporary tents for periodic events; primitive campsites, fire rings, pit toilets, picnic tables and temporary tents for camping; tent platforms; information kiosks and registration boxes; wildlife observation stations; study markers and grids; and gates, barriers or low fences to control unauthorized uses, prevent access by motor vehicles, or protect fragile areas and areas under active management or study.

**6.18. Structure.** Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground.

## **7. RESTRICTIONS AND RESERVED RIGHTS**

Except for the rights conveyed to Holder by this Conservation Easement, and except for the restrictions stated in this Conservation Easement, Landowner 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 and provided that, notwithstanding any other provision of this Conservation Easement, the Protected Property may not be used, altered, or developed in a manner that precludes its availability for the commercial production of agricultural products. Without limiting the generality of the foregoing, the permitted uses on the Protected Property are limited by the provisions of this Section 7.

### **7.1. Baseline Documentation**

In order to properly monitor future uses of the Protected Property and to assure compliance with its terms, Landowner and Holder have prepared a report and inventory of the Protected Property's relevant features and conditions to describe the present condition and uses of the Protected



**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

Property and its Conservation Values, including the natural, scenic and historic resources, 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. The Baseline Documentation may be amended with prior written consent of Holder and Landowner. A copy of the Baseline Documentation is maintained by Landowner and at the offices of the Holder and DACF.

**7.2. Land Uses, Structures, Improvements, and Surface Alterations**

**7.2.1. Agricultural Uses.** The Protected Property shall be generally available for Agricultural Enterprises, Agricultural Management, and Agritourism as defined in Section 6, subject to the provisions of this Section 7, provided that all such uses are conducted in a manner consistent with generally accepted Best Management Practices as those practices may be identified from time to time by appropriate governmental or educational institutions. Notwithstanding the now-current uses on the Protected Property as evidenced by the Baseline Documentation, Landowner has no affirmative obligation to actively farm any portion of the Protected Property except for the obligation to maintain existing fields in accordance with Section 7.2.1.1.

**7.2.1.1 Existing Fields.** Fields identified on **Exhibit B** shall be kept open and not allowed to become forestland except with the prior approval of Holder and the Department of Agriculture, Conservation, and Forestry, Bureau of Agriculture, Forestry, and Rural Resources (“BAFRR”), and following a determination by Holder and BAFRR that reforestation of all or part of this area will enhance the Conservation Values of the Protected Property, further the Purposes of the Conservation Easement, and will not substantially impair the availability of the Protected Property for the commercial production of agricultural products. Absent such determination and approval, these fields shall be kept open by periodic mowing, haying, bush-hogging, the grazing of livestock, agricultural uses such as gardens or orchards, or by any other means mutually agreed to by Landowner and Holder. Where planted with fruit or nut bearing trees, Christmas trees, other ornamental trees or shrubs, the fields shall be considered to be maintained so long as Landowner is actively managing said trees or shrubs. Indications of active management shall include, but are not limited to: mulching; fertilization; trimming or pruning; mowing between and around trees and shrubs; culling diseased, unproductive, or unmarketable trees or shrubs; and harvesting fruits, nuts, trees or shrubs. Should Landowner fail to keep the identified fields open, Holder shall have the right to do so as provided for in Section 9.5.

**Commented [BJ8]:** Drafting note – make sure Exhibit B actually identifies these. With approval of BAFRR, some existing fields may be excluded from this requirement (e.g., areas that are known to be marginal farmland that it might not make sense to keep open).

**7.2.1.2 New Fields.** With the prior approval of Holder, and except as otherwise prohibited by this Conservation Easement, Landowner may clear areas that are forested as of the date of the grant of this Easement to establish new fields for pasture, hay, or crop production, provided that the clearing is done in accordance with [the Agricultural Management Plan, Forest Management Plan, and] general accepted Best Management Practices. Fields established after the effective date of this Conservation Easement are not subject to the requirements of Section 7.2.1.1.ii

**Commented [BJ9]:** If applicable.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**7.2.1.3. Agricultural Management Plan [OPTIONAL].** Landowner shall conduct all Agricultural Enterprises, Agricultural Management, and Agritourism on the Protected Property in a manner consistent with an Agricultural Management Plan as defined in Section 6. The Plan shall specify activities and practices to be implemented on the Protected Property to accomplish the following Agricultural Principles:

- i. Protection and enhancement of the sustained ability of the Property and its soils to support productive agricultural uses now and in the future.
- ii. Protection and enhancement of soil health on the Property as evidenced by increased soil organic matter, healthy soil structure and topsoil horizons, water and nutrient retention capacity, and biological and microbiological diversity and activity within the soil.
- iii. Protection of wildlife habitat and unique natural areas; in particular, any Habitat Protection Areas identified in the easement.
- iv. Preservation of wetlands, water quality, and riparian areas with specific practices to safeguard against nutrient runoff and contamination of groundwater and surface water.
- v. Limited and appropriate utilization of external inputs such as pesticides and fertilizers.
- vi. Incorporation or adoption of other stewardship and resource protection plans, including but not limited to a Nutrient Management Plan, Conservation Stewardship Programs plan etc.
- vii. [OPTIONAL] Mitigation of climate change via sequestration of carbon in agricultural soils, reduction of greenhouse gas emissions, adoption of water conservation infrastructure, equipment, or practices in on-farm irrigation or other water use.

Any time there is a change in the type or extent of Agricultural Management on the Protected Property, or changes in the ownership of the Protected Property, Landowner shall update the Agricultural Management Plan and shall forward such updated Agricultural Management Plan to Holder and BAFRR for review and approval. Any Agricultural Management Plan developed or updated for a lessee shall be deemed an amendment to the Agricultural Management Plan and shall be provided to Holder and BAFRR for review and approval.

**7.2.2. Forest Management.** Landowner may engage in Forest Management on the Protected Property, in accordance with the Purposes of this Conservation Easement and generally accepted Best Management Practices.

**Commented [BJ10]:** To be included when the project proposal states that a management plan will be used.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**7.2.2.1. Timber Harvesting.** All Forest Management except for those activities described in Section 7.2.2.3 shall be overseen by a licensed forester and conducted under written contracts with competent operators, which contract shall specify relevant requirements for compliance with this Conservation Easement. Landowner shall notify Holder of a proposed harvest at least thirty (30) days prior to the commencement of harvest operations.

**Commented [BJ11]:** Drafting note – if the property does not contain significant amounts of timberland (i.e., less than ~10 acres), 7.2.2.1 through 7.2.2.5 can be removed.

**7.2.2.2. Forest Management Plan.** All Forest Management activities outside the Farmstead Area, except preliminary timber cruising and resource evaluation and except as otherwise provided herein shall be conducted in accordance with a written Forest Management Plan prepared by a licensed forester. The Forest Management Plan shall be provided to Holder upon completion and at least sixty (60) days prior to conducting any Timber Management activities and shall be reviewed and updated at least every ten (10) years by one or more professional foresters licensed in the State of Maine.

Holder, in consultation with the Maine Department of Agriculture, Conservation, and Forestry or its successor, may review the Forest Management Plan for consistency with the purpose and terms of this Easement. 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 shall provide written comments to the Landowner identifying and explaining such inconsistencies that may result in a violation of the Easement, but Holder and Landowner acknowledge that the actual activities and outcomes on the Protected Property will determine compliance with this Conservation Easement. Holder's failure to provide comments does not constitute a waiver of the terms of this Easement.

**7.2.2.3. Exceptions.** Forest Management activities are permitted without a Forest Management Plan for the following purposes:

- (i) To clear land as necessary for the location or construction of structures, improvements, and surface alterations permitted herein;
- (ii) To control unusually damaging insects, invasive species, and diseases and to restore forested areas damaged by natural disasters, upon written recommendation of a licensed professional forester;
- (iii) To prevent personal injury and property damage;
- (iv) To maintain the perimeter of open fields or establish new fields as permitted by Section 7.2.1.2;
- (v) To harvest annually up to twenty (20) cords (or equivalent board footage), not including any wood harvested pursuant to the exemptions listed in subsection 7.2.2.3(i)-(iv) above, unless Holder has provided prior written approval of an amount in excess of this maximum. **OPTIONAL: If the Property is divided as provided in Section 7.3.4, a supplement to this Easement shall be recorded in the \_\_\_ County Registry of Deeds of even date with the deed by which the Property is divided, which supplement shall allocate the twenty (20) cord**

**Commented [BJ12]:** If the property contains less than ~40 forested acres, this amount should be reduced to maintain a ratio of ~0.5 cords per forested acre (to a minimum of 5 cords at 10 acres).

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

allowance of wood that may be harvested without a Forest Management Plan between the two parcels resulting from the division.]

**7.2.2.4. Forestry Principles.** All Forest Management activities shall accomplish the forestry principles set forth below ("Forestry Principles"). The Forest Management Plan shall specify activities and practices proposed to achieve compliance with these Forestry Principles:

- (i) protection of wildlife habitat and unique natural areas, in particular the Ecological Protection Areas;
- (ii) maintenance or improvement of the diversity and health of the forest;
- (iii) preservation of wetlands, water quality and riparian areas; and
- (iv) assurance of the sustained ability of the Protected Property and its soils to support healthy and vigorous forest growth and the commercial production of agricultural products.

**[OPTIONAL] 7.2.2.5. Harvest Restrictions.** [If the property includes habitat protection areas or other sensitive areas where forestry will be limited beyond the provisions of State law, describe those restrictions/setbacks/requirements here.]

**Commented [BJ13]:** This is a placeholder for property-specific restrictions like stream/wetland setbacks or maximum clearing sizes. If the proposal includes protection for habitat or water quality resources, appropriate language should be included here.

**7.2.3. Structures and Improvements** As of the date of this grant, the existing structures and improvements on the Protected Property are documented in the Baseline Documentation and as shown on Exhibit B. Except as otherwise provided in this Section 7.2.3 and as specifically allowed elsewhere in Section 7, no additional structures of any kind, temporary or permanent, may be located on the Protected Property.

**7.2.3.1. Farmstead Area.** Within the Farmstead Area, Landowner may construct, install, maintain, repair, and replace any structure or improvement that does not adversely affect the availability of the Protected Property for the commercial production of agricultural products and is not specifically prohibited by Section 7.2.12 or other applicable provision of this Conservation Easement, [OPTIONAL: subject to the following limitations:

- 7.2.3.1.1. Residences.
- 7.2.3.1.2. Agricultural Structures.
- 7.2.3.1.3. Holder Approval.
- 7.2.3.1.4. Etc.]

**Commented [BJ14]:** LMF does not require any specific limitations on use if the Farmstead Area is included in the easement. Specific restrictions should be added by the applicant. If no detailed restrictions are needed within the Farmstead Area, consider excluding it from the easement entirely.

**7.2.3.2. Agricultural Structures.** Farm stands, stacking pads for storage and composting of feed stocks, manure, compost and other soil amendments, and other permanent agricultural structures may be constructed, installed, maintained, repaired, and replaced outside the Farmstead Area only if it is not practicable to site them within the Farmstead Area and with the prior written approval of the Holder and BAFRR. In determining whether approval is appropriate and siting agricultural structures, the

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

parties will consider [OPTIONAL: the Purposes of the Conservation Easement, square feet of Impervious Surface], proximity to existing structures and infrastructure, proximity to and impacts on wells, streams, waterbodies and wetland areas, and impacts on Agricultural Soils and other Conservation Values of the Protected Property.

**7.2.3.3. Temporary or Portable Structures.** Landowner reserves the right to maintain and install temporary or portable structures, such as animal watering and irrigation systems, pump houses, temporary livestock fencing, portable livestock shelters, earthen-floor hoop houses, temporary equipment sheds, temporary sawmills, self-contained portable privies, signs and boundary markers, and other improvements necessary or appropriate to accomplish management activities permitted by this Conservation Easement anywhere on the Protected Property, provided that such improvements, if located outside the Farmstead Area, are:

- (i) without a foundation;
- (ii) set back whenever practicable at least two hundred fifty feet (250'), measured horizontally, from the high water mark of all water bodies and wetlands; and
- (iii) consistent with conserving the productivity of areas of the Protected Property containing Agricultural Soils.

When such structures cease to be used, as evidenced by the cessation of their use for a period of five (5) years or their lack of maintenance, and such cessation of use or lack of maintenance results in an unsafe condition, a danger to human health, or a threat to the environment, then such structures, including any utilities, shall be removed or lawfully disposed of by Landowner, as required by applicable law; any wells or subsurface wastewater disposal systems shall be capped; and the site of such improvements shall be revegetated and allowed to return to a natural condition, all at Landowner's cost and expense.

**7.2.3.4. Recreational and Habitat Protection Improvements.** Landowner reserves the right to install Recreational and Habitat Protection Improvements as defined under Section 6, provided that such improvements are consistent with the Purposes of this Conservation Easement and the preservation of the Conservation Values of the Protected Property. All such structures outside the Farmstead Area must be designed and located to blend with the natural surroundings and complement the agricultural, natural, and scenic features of the Protected Property, except in cases where deviation from such standards is necessary to ensure public health or safety.

**7.2.3.5. Fences, Stone Walls.** Fences and stone walls on the Protected Property may be constructed, installed, moved, removed, maintained, repaired and replaced, provided that the Property boundaries remain clearly marked on the ground in accordance with Section 11.2.

**Commented [BJ15]:** If the project proposal includes preservation of deer wintering areas or other wildlife habitat, requirements such as wildlife-friendly fencing may be necessary to accomplish these goals – consultation with DIFW is recommended.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
**2023 Workbook Version**  
*(Based on MLCAN 10-24-2022 version)*

**7.2.3.6. Signs.** Within the Farmstead Area, Landowner may erect and maintain signs that do not interfere with Agricultural Enterprises and Agricultural Management on the Protected Property. Outside of the Farmstead Area, Landowner may erect and maintain unlighted signs that inform the public as to which activities are permitted or prohibited to the public, or are directly related to the operation of the Agricultural Enterprises on the Protected Property, consistent with the purposes and terms of this Conservation Easement. With the exception of those signs permitted to Holder under Section 9.4, all other permanent signs are prohibited outside the Farmstead Area.

**[OPTIONAL] 7.2.3.7. Impervious Surface Limit.** All structures and/or improvements permitted on the Protected Property by this Conservation Easement in the aggregate shall not cause more than two percent (2%) of the total area of the Protected Property, of \_\_\_\_\_ [square feet or \_\_\_\_\_ [ acres, to be covered by Impervious Surfaces as defined in Section 6, and inclusive of any road paving surfaces allowed under this Easement. Landowner shall notify Holder of any construction that will increase the Impervious Surface area of the Property more than *[edit as appropriate]* \_\_\_\_\_ square feet/\_\_\_\_\_ acres. At the time of this grant, the total existing Impervious Surface area of the Protected Property is \_\_\_\_ (\_\_\_\_%) percent consisting of *[edit as appropriate]* \_\_\_\_\_ square feet/\_\_\_\_\_ acres as documented in the Baseline Documentation.

**Commented [BJ16]:** Not required by LMF. Left it in the template for drafting convenience when NRCS is a funder (in which case we should probably just use NRCS' default language) or if the applicant prefers to include it for other reasons. Applicants can substitute their preferred language in this section.

**7.2.4. Surface Alterations.** As of the date of this grant, there are no surface alterations on the Protected Property except for the following, all of which are described in the Baseline Documentation: agricultural fields and use areas, unpaved field roads, unpaved woods roads, skid roads and timber landing areas, unpaved recreational trails, fresh water wells, erosion control systems, and alterations associated with existing structures.

**Commented [BJ17]:** Drafting note: add any other existing structures and improvement here.

No additional quarrying, mining, mineral extraction, earth removal, filling, dumping, excavation, alteration of watercourses and water bodies, or other alteration may be made to the surface or subsurface of the Protected Property or to its surface waters, ground waters or wetlands; except that Landowner reserves the following rights:

**7.2.4.1. Farmstead Area.** The right to alter the surface of the Protected Property within the Farmstead Area, provided that surface alterations do not adversely affect the availability of the Protected Property for the commercial production of agricultural products.

**7.2.4.2. Existing Surface Alterations.** The right to maintain existing surface alterations and the right to alter the surface to the minimum extent necessary to exercise the rights reserved in Section 7.2.

**7.2.4.3. Habitat and Wetland Restoration.** The right, with the prior written approval of Holder and BAFRR, such approval to be granted only after consultation with the

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

Maine Department of Inland Fisheries and Wildlife, to alter the surface of the Protected Property in order to create, enhance, or restore fish and wildlife habitat, wetlands, or similar natural features. Any such alterations must be consistent with the Agricultural Management Plan, Forest Management Plan, and the Purposes of this Conservation Easement.

**Commented [BJ18]:** Note that Section 8 prohibits any mitigation credits related to this. However, there should be no prohibition on receiving payments under EQIP or similar programs.

**Commented [BJ19]:** If applicable.

**7.2.4.4. Excavations.** The right, except where otherwise prohibited or restricted by this Conservation Easement, to excavate and use gravel, sand, clay, and rock found within the Protected Property, exclusively for construction and maintenance of permitted improvements on the Protected Property provided that the exposed mineral surface of any such gravel or borrow pit shall be:

- 1) limited to not more than two (2) acres of exposed mineral surface at any time;
- 2) located at a sufficient distance to protect wetlands, water bodies, and fragile habitat from erosion or disturbance;
- 3) minimized in a manner that mitigates the impact on the agricultural activities on, and scenic character of, the Protected Property; and
- 4) regraded and restored to a natural vegetated condition and appearance similar to its original condition as soon as reasonably possible after use of such pit is completed.

**Commented [BJ20]:** If possible, include a specific setback here.

Nothing herein shall be construed to allow the removal from the Protected Property of any topsoils, subsoils, gravel, sand, clay, rock or other minerals or material excavated or disturbed during operations on the Protected Property. Such excavated or disturbed material shall be stockpiled on the Protected Property until it can be redistributed and used within the bounds of the Protected Property.

**7.2.5. Utilities.** Construction or installation of underground or above ground utility systems, including but not limited to water, sewer, power fuel systems, sewerage pumping stations, and cellular telephone or other communication towers is prohibited except where such utilities will serve only permitted improvements on the Protected Property. New utilities or utility easements crossing the Protected Property shall be designed and sited to avoid adverse impacts to the agricultural uses, agricultural soils, and other Conservation Values of the Protected Property, and require Holder's prior written approval.

**7.2.6. Energy Generation.** Energy production, including wood and fossil fuel systems, sunlight, wind, geothermal heat, and biological processes, is prohibited outside of the Farmstead Area. Within the Farmstead Area, energy production is permitted with the prior approval of Holder and BAFRR if the proposed energy production is not of a type or scale that would adversely affect the potential for the Farmstead Area to contain infrastructure to support the commercial production of agricultural products on the Protected Property. However, self-contained energy generation for the purpose of powering permitted

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

structures and improvements and not connected to a power grid, such as solar or wind-powered well pumps, is permitted anywhere on the Protected Property.

**7.2.7. Water Systems.** Landowner may use, maintain, establish, construct, and improve wells, ponds, and other water sources and water systems within the Property solely for the uses permitted by this Easement. All water systems and related improvements shall be sited and constructed to minimize negative impact on the Purposes and Conservation Values of the Conservation Easement and be undertaken in accordance with any applicable Forest Management Plan or other conservation plan. Any construction, reconstruction, or other improvements permitted under this Section that causes more than four hundred (400) square feet of surface area to be disturbed requires Holder's prior written approval.

Ground water and any other water rights appurtenant to the Protected Property shall be used only for permitted activities on the Protected Property, subject to the existing rights of others, if any, as of the date of this grant, and to the right of the State or other governmental entities to regulate water withdrawals. All other utilization of water and water rights is prohibited. Landowner shall not convey, encumber, lease, bargain, sell or otherwise transfer or create contractual or other interests in said water rights separately from the ownership of the Protected Property.

The excavation of ponds and buried irrigations lines shall not be considered mining and extraction activities under this Section.

**7.2.8. Waste and Wastewater.** Except for the discharge of wastewater from permitted structures on the Protected Property by means of subsurface or other wastewater disposal systems directly connected to such structures and in compliance with all applicable laws, the discharge of wastewater 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 substances, or other unsightly or offensive waste material on the Protected Property.

Notwithstanding the foregoing, the following generated, stored, or used in Agricultural Management and Forest Management under this Conservation Easement and in accordance with all applicable laws and ordinances shall not be deemed a violation of this Easement: agricultural products, animal wastes, organic matter, compost, farm irrigation and equipment parts; pesticides, herbicides, soil and crop amendments; fuel and other chemicals required for the operation and maintenance of agricultural and forestry equipment; storage of incidental scrap metal held for future farming uses; and the use, storage and disposal of logging debris provided it is done in a manner not detrimental to the Conservation Values of the Protected Property. Waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal



**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

at reasonable intervals, all in accordance with applicable state, local, and federal laws and regulations.

**7.2.9. Roads and Trails.**

**7.2.9.1. Field and Forest Roads.** Landowner may maintain existing roads and may establish and maintain new roads for management of the Protected Property, including bridges, drainage and support structures, timber landing areas, temporary winter roads, and skid trails, all in compliance with then current Best Management Practices for such activities as set forth by the Maine Forest Service or its successor agency, or, in the event that Best Management Practices are no longer promulgated, with other standards for soil and water protection approved in advance and in writing by Holder, and with the other requirements of this Conservation Easement.

**7.2.9.2. Trails.** Landowner may establish and maintain unpaved trails for permitted motorized and non-motorized recreational uses, provided that such trails and uses are consistent with the Agricultural Management of the Protected Property, and the Purposes of this Conservation Easement.

**7.2.10. Recreational Uses.** Use of the property for motorized and non-motorized outdoor recreation, including but not limited to hiking, biking, skiing, snowshoeing, snowmobiling, All Terrain Vehicle use, hunting, fishing, and trapping, is permitted. If Holder determines, in its sole and absolute discretion, that commercial recreational use or recreational use by the public poses a threat to the Purposes and Conservation Values of the Conservation Easement, Holder may require that such use be subject to a Recreation Management Plan that includes provisions for the management of recreational uses and the design and location of trails and other recreational improvements to avoid harm to the Conservation Values of the Protected Property.

**Commented [BJ21]:** Drafting note: applicants who prefer to include language restricting ATVs are welcome to do so – the Easement Guidelines are minimum terms, and applicants may use more protective language at their discretion.

**7.2.11. Research and Education.** Use of the Protected Property for research and education is permitted, provided that the activities carried out in the course of such research and education are not otherwise prohibited by this Conservation Easement.

**7.2.11.1. Excavation of Archaeological Sites.** With prior written notice to Holder, Landowner may permit limited excavation of the surface of the Protected Property for ecological, education, scientific research, or archeological investigations, conducted under then current generally accepted professional standards and without adverse effect upon the Conservation Values, provided that such archaeological investigations are undertaken under the supervision of, or as approved in writing by the Maine Historic Preservation Commission or successor agency.

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**7.2.11.2. Preservation of Existing Resources.** Existing archaeologically, culturally, or historically significant features on the Protected Property as documented in the Baseline Documentation may not be altered or removed without Holder's prior written approval, which approval shall not be unreasonably withheld, delayed, or conditioned and such activity may only be undertaken under the supervision of, or as approved in writing by, the Maine Historical Preservation Commission or successor agency.

**7.2.12. Specific Prohibitions.** The following are specifically prohibited on the Protected Property: non-agricultural commercial or industrial uses and structures such as: docks, piers, billboards, campgrounds, condominiums, trailer parks, motels, and hotels; activities that result in the removal of agricultural soils, such as construction and operation of golf courses and golf ranges, or ball and burlap horticulture and turf farming; and use of the Protected Property for airstrips, helicopter pads, or landing sites. The use of aircraft for aerial spray operations during the course of Agricultural Management is not prohibited by this Section.

No activities shall be permitted on the Protected Property which violate federal criminal statutes and ordinances, regardless of whether such activities are specifically allowed or tolerated under Maine law.

**[OPTIONAL] 7.2.13. View Preservation.** One of the Purposes of this Conservation Easement is the continued preservation of the traditionally open views enjoyed by the public traveling on \_\_\_\_\_ Road. Landowner, Landowner's successors and assigns, shall preserve and maintain said open views over the Protected Property from \_\_\_\_\_ Road, free from material interference by vegetation other than as may be specifically allowed in this Conservation Easement. All structures allowed under the terms of this Conservation Easement shall be sited so as to minimize the impact on such views.]

**[OPTIONAL] 7.2.14. Ecological Protection Area.** The Protected Property includes an "Ecological Protection Area" as defined herein and depicted on Exhibit B, the uses of which are restricted to nonagricultural purposes and uses. The Ecological Protection Area includes the [OPTIONAL, edit as appropriate: riparian areas and associated wetlands of \_\_\_\_\_ Brook/Stream/Lake/River [or an unnamed stream, high elevation forest area, rare/exemplary natural communities, habitats that support (list) rare, threatened, endangered plants and/or animals] as described in the Baseline Documentation and depicted on Exhibit B which are subject to the terms and conditions of the Ecological Protection Management Plan as defined in Section 6. Holder, with joint agreement of Landowner and in consultation with the DACF, has prepared the initial Ecological Protection Management Plan as of the execution date of this Conservation Easement and shall update the plan at least once every ten years.

The management objectives for the Ecological Protection Area are: 1) to preserve the ecological resources in the Ecological Protection Area; 2) to maintain the water quality of and the unnamed stream; and 3) to allow only limited agricultural

**Commented [BJ22]:** Some variant of this subsection will be required in most cases where the proposal claims environmental benefits on unfarmed portions of the property. This section should be customized to meet the goals of the project, however.

**Commented [BJ23]:** If possible, describe the resource protection area precisely, such as "areas within 150' of Trout Brook."

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

forestry, and recreational activities that will not adversely impact ecological and water resources and are consistent with the terms of the Agricultural Management Plan and Forest Management Plan.

Commented [BJ24]: If applicable.

The Ecological Protection Management Plan shall ensure that Ecological Protection Area remains largely undisturbed and covered with natural vegetation. Permitted management activities shall be strictly limited to not adversely impact the wildlife habitat, wetland, riparian and water resources of the Ecological Protection Area. No structures may be installed, or any improvements or surface alterations made within the Ecological Protection Area except as specifically authorized in the Ecological Protection Management Plan. Removal of dead and dying trees; removal of trees and vegetation to enhance wildlife habitat; establishment of a travel corridor to connect areas for Agricultural Management or Forest Management; limited Recreational and Habitat Protection Improvements, as defined in Section 6; other activities, improvements, and alterations to enhance or restore habitat or wetland areas; and collection of natural vegetative crops (such as berries, mushrooms, ferns, and ornamental plants), may be permitted in the Ecological Protection Area, but only as specifically permitted by Holder in the Ecological Protection Management Plan.

**7.3. Subdivision.** As of the date hereof this grant, the Protected Property comprises one or more parcels of land defined in Exhibit A and depicted on Exhibit B which shall be treated as one (1) undivided lot or parcel of land for the purposes of this Conservation Easement.

Commented [DS25]: Drafting note: specify configuration

**7.3.1. Subdivision Prohibited.** The Protected Property shall remain in its current configuration without further division, partition, subdivision, or other legal or *de facto* creation of lots or parcels in separate ownership Optional: except as permitted under Section 7.3.4. Landowner may not separate the ownership of any present or future structures or improvements on the Protected Property from the ownership of the Protected Property by any means, direct or indirect, except that structures can be removed from or relocated on the Protected Property where permitted and Landowner may grant a security interest in any removable structure located on the Protected Property, provided that the foreclosure and removal of the same shall not materially damage the Protected Property. Landowner may however enter into boundary line agreements to resolve bona fide boundary line disputes, with the prior written consent of Holder which consent shall not be unreasonably withheld. If, within the discretionary judgment of Holder, a proposed boundary line agreement will result in an amendment to the Conservation Easement, the proposed boundary line agreement will be subject to the provisions of Section 14.6.2. . A boundary line agreement that reduces the total acreage of land protected under this Conservation Easement by more than one quarter (1/4) acre will create a presumption that, pursuant to 33 M.R.S. § 477-A(2)(B), a court ordered amendment to the Conservation Easement is required.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**7.3.2. Leases Excepted.** Land leases and rental agreements on the Protected Property shall not be deemed divisions of the Protected Property, provided that they are created in accordance with Section 7.4.

**7.3.3. Waiver of Exemptions.** Landowner specifically waives rights to any current or future exemptions to the subdivision laws of the State of Maine. All rights to develop or use the Property that are prohibited by or inconsistent with this Conservation Easement are extinguished and cannot be used to transfer development rights to other land or to achieve other regulatory mitigation credits for open space, buffer discharge for pollutants, or other accommodation for land not subject to this Conservation Easement.

**[OPTIONAL] 7.3.4. Permitted Division.** With prior written approval of Holder and BAFRR, Landowner may divide the Protected Property into two [or more] parcels, which may be transferred separately. Any division under this subsection is subject to the following criteria:

- (i) In the determination of Holder and BAFRR, each resulting parcel must have a size and configuration that allows for the commercial production of agricultural products, taking into consideration the soils, infrastructure, and past and planned management of each parcel.
- (ii) At Landowner's expense, a survey showing the boundaries of the Protected Property as divided shall be prepared and recorded in the \_\_\_\_ County Registry of Deeds.
- (iii) At Landowner's expense, a supplement to this Conservation Easement shall be recorded in the \_\_\_\_ County Registry of Deeds describing the division of the Protected Property. In addition to any other information the Parties deem appropriate, the supplement shall address:
  - (a) The allocation to each parcel of the amount of timber that may be harvested without preparing a Forest Management Plan pursuant to Section 7.2.2.3(v); and
  - (b) [OPTIONAL] The allocation to each parcel of the impervious surface area permitted by Section 7.2.3.6.
- (iv) [OPTIONAL] Upon division of the Protected Property, Landowner shall make a one-time payment to Holder's stewardship fund equal to XXX.
- (v) Both resulting parcels shall remain subject to the terms of this Conservation Easement.

**Commented [BJ26]:** The project proposal should indicate whether this will be included. It should only be used when the property is of a size and configuration that would allow it to support two (or more) economically viable farming operations in their entirety. Also to be included only with BAFRR's agreement that division of the farm is appropriate.

**7.3.5. Farm Labor Housing.** With prior written Approval of Holder, Landowner may divide the Farmstead Area, or a portion thereof, from the remainder of the Property if such a division is required by State or local law or regulation for the purposes of constructing Farm Labor Housing structures permitted herein, provided however, that the Landowner retain title of the divided area and may not convey the divided area separately from the rest of the Property, and the divided area shall remain subject to the terms of this Easement. The division of land under this Section shall not be deemed a division within the meaning of this Easement.

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**7.4. Leases.** Landowner reserves the right to rent or lease any or all of the Protected Property and any structure thereon for uses permitted by this Conservation Easement. Such leases or rental agreements must be in writing and any lease with a term longer than one year must include a provision that Holder may terminate the lease, consistent with applicable laws, if this Conservation Easement is violated by the lessee. Landowner shall provide Holder with a copy of the proposed lease agreement or contract **[OPTIONAL: and contact information for each tenant]** prior to execution of the lease agreement. Each such lease or contract shall specifically require that all tenants comply with the terms and Purposes of this Conservation Easement and the Property Management Plan.

**7.5. Public Access.** Nothing in this Conservation Easement shall create any right of public access to the Protected Property. Landowner retains all rights to allow, prohibit, or restrict use of the property by any person or persons or by the general public. Landowner also reserves the right to prohibit trespass upon the Protected Property by any person, including any unauthorized member of the public, and the right to take such lawfully permitted action as is necessary regarding same, subject to the terms of this Conservation Easement.

## **8. EXTINGUISHMENT OF DEVELOPMENT RIGHTS.**

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

## **9. HOLDER'S AFFIRMATIVE RIGHTS.**

**9.1. Entry and Inspection.** Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable manner that is consistent with the Purposes hereof. *[OPTION: (NOTE: If the easement allows for public access, the following sentence is not necessary, but if the easement does not allow for public access, the following sentence may be added.)* Except in emergency circumstances, Holder will make reasonable efforts to contact Landowner *[option: and/or persons in residence on the Protected Property and/or Landowner's adjacent property]*, prior to entry onto any area of the Protected Property. "Emergency circumstances" shall mean that the Holder has a good-faith basis to believe a violation of the easement is occurring or is imminent.

**Commented [BJ27]:** Drafting note: Holders may substitute their preferred language regarding notice/process for monitoring visits.

**9.2. Enforcement.**

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**9.2.1 General Right of Enforcement.** Holder shall have the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement and to require the restoration of the Protected Property to the condition that existed prior to any such violation; all without posting of any bond or other security and without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

**9.2.2. Notice of Violation.** Prior to initiation of an enforcement action, Holder shall provide Landowner with written notice and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action. The written notice provided by Holder shall specify the period in which Landowner may cure the breach. This period shall be no less than thirty (30) days from the date of the notice unless Holder determines that a shorter period is necessary to prevent harm to the Conservation Values of the Property.

**9.2.3. Enforcement Costs and Fees.** Recognizing that Holder is a charitable organization that has a duty to protect the Protected Property in the public interest, in the event of a violation, Landowner shall reimburse Holder for all reasonable costs incurred by Holder in enforcing this Conservation Easement or in taking reasonable measures to prevent, remedy, or abate any violation by Landowner or any third party, including without limitation the costs of litigation, administrative proceeding, and restoration, including reasonable expert, consultant, and attorneys' fees. Any such costs and fees reimbursement shall apply whether any formal action is filed, whether Holder is a plaintiff or defendant in a judicial or administrative action or proceeding, and regardless of whether the action is styled as a declaratory judgment action or some other kind of action.

**9.2.4. Force Majeure.** Landowner is not responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Landowner's control, such as fire, flood, storm, and earth movement, or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

**9.2.5. Violations by Third Parties.** Landowner shall take all reasonable actions, consistent with customary standards for the management of comparable areas utilized for the same purposes as the Protected Property, to prevent or halt third parties from violating this Easement. Landowner and Holder, together or unilaterally, may take such action as may be reasonably necessary to remedy acts of authorized or unauthorized third parties that constitute a violation of this Easement. Furthermore, in the event of violations of this Easement caused by acts of third parties, at Holder's option, Landowner agrees to assign their rights of action to Holder, to join in any suit, and/or to appoint Holder its attorney-in-fact for the purposes of pursuing enforcement action. Landowner shall remain responsible for violations of this Easement caused by acts of Landowner's employees, contractors,

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

agents, invitees, guests, licensees, and other expressly or impliedly authorized third parties. As to violations arising from the acts or omissions of unauthorized third parties, the Landowner shall remain responsible for restoration of the Protected Property to a condition of compliance with this Easement, and Holder shall have a right to enforce this Easement directly against the Landowner if the Landowner fails to cooperate with the Easement Holder in all reasonable respects to halt or abate the violation resulting from such acts or omissions, or fails to promptly report a known or suspected violation to the Holder.

**9.3. Boundaries.** The Protected Property has been professionally surveyed. It shall be Landowner's obligation to keep the boundaries of the Protected Property clearly marked. In the event boundaries are not adequately clear or marked and Landowner fails to accurately mark within a reasonable time after notice by Holder, Holder shall have the right to engage a professional surveyor, at Landowner's expense, to re-establish and re-mark boundaries of the Protected Property or any part thereof.

**9.4. Holder Acknowledgement Signs.** Holder shall have the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this grant and acknowledging the State of Maine's role in providing funding.

**9.5. Fields.** If Landowner fails to maintain existing fields on the Property as required by Section 7.2.1.1, Holder has the right to enter the Property and maintain the fields to a standard by which the field(s) could support commercial agricultural production, either by periodic mowing, haying, bush hogging, or by other means mutually agreed to by Landowner and Holder.

Landowner shall be responsible for costs incurred by Holder in undertaking such actions, except for any costs that Holder recovers by disposing of the byproducts of such operations. Holder shall provide Landowner written notice at least sixty (60) days prior to conducting any field management operations.

**Commented [BJ28]:** If Holder prefers language that leaves Holder responsible for these costs, that's fine too.

[**OPTIONAL: Other affirmative rights.** If Holder will have any other affirmative rights, such as view preservation, trail construction, or habitat restoration, add relevant sections here.]

## **10. RIGHTS OF THE STATE OF MAINE.**

Landowner and Holder, in recognition of the funding provided by the State of Maine, agree that the State of Maine, acting by and through BAFRR, shall have the following rights:

**10.1. Entry and Inspection.** BAFRR shall have the same rights of entry and inspection as Holder pursuant to Section 9.1, provided that BAFRR shall make reasonable efforts to contact both Landowner and Holder prior to entry onto any area of the Protected Property.

**10.2. Enforcement under the Maine Conservation Easement Statute, 33 M.R.S. Chapter 7, Subchapter 8-A.** BAFRR may enforce the Conservation Easement if in its judgement, Holder is

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

not carrying out its obligations to monitor and enforce the Conservation Easement. Unless, in the sole and absolute judgment of BAFRR, immediate action is necessary to prevent harm to the Conservation Values of the Protected Property, BAFRR shall provide written notice to Holder of Holder's alleged failure to monitor and enforce the Conservation Easement at least 90 days prior to taking any enforcement action, and shall not act to enforce the Conservation Easement if Holder takes reasonable actions to bring about compliance with the Conservation Easement. Nothing in this subsection shall limit the rights of the Maine Attorney General to enforce the Conservation Easement pursuant to 33 M.R.S. § 478 or other applicable statutes.

**10.3. Successor Holder.** If Holder ceases to exist, or has been determined by a court of competent jurisdiction to be negligent in its monitoring and enforcement responsibilities with respect to this Conservation Easement, BAFRR has the right to enforce the terms and conditions of this Conservation Easement. Until such time as a successor to Holder that is acceptable to BAFRR is named, BAFRR shall act as Holder. If Holder is not replaced by a successor within 30 days of Holder's dissolution or said court determination, BAFRR may succeed as Holder.

**10.4. State's Ability to Exercise Rights.** The parties acknowledge that the ability of BAFRR to exercise rights hereunder is subject to the exercise of BAFRR's discretion as well as the availability of moneys appropriated or otherwise available to BAFRR and designated for such purposes and shall not create any obligation on behalf of BAFRR in excess of such appropriations.

## **11. Notices and Requests for Approval**

**11.1. Notice and Approval Requirements.** Landowner agrees to notify Holder before undertaking any activity or exercising any reserved right that may have a material adverse effect on the Purposes of this Easement, and where prior notice or approval is specifically required in this Conservation Easement. Landowner's notices must include sufficient information to enable Holder, and BAFRR when BAFRR's approval is required, to determine whether Landowner's plans are consistent with the terms of this Easement and its Purposes. Holder's approval shall be conditioned on compliance with the terms of Paragraph 14.6.

### **11.2. Method for Notice.**

**11.2.1.** Any notices or requests for approval required by this Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery, to Landowner and Holder, and to the State of Maine, at the following addresses, unless one has been notified by the other of a change of address or change of ownership:

To Landowner:                      At the address of the owner(s) of record as noted above or as provided by Landowner in writing, or if not provided, as set forth below.



**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

To Holder: [List address, contact information, or as set forth below.]

[To State of Maine: List address, contact information, or as set forth below.]

In the event that notice mailed to Landowner at the last address on file with the sending party is returned as undeliverable, the sending party shall provide notice by regular mail to Landowner's last known address on file with the municipality of [municipality in which property is located], Maine, or the State Tax Assessor in the case of land in the unorganized territories, and the mailing of such notice shall be deemed compliance with the notice provisions of this Easement. In case of a corporate Holder or in the event that notice mailed to Holder is returned as undeliverable, notice shall be sent to the address on file with the Secretary of State, State of Maine.

**11.2.2.** In addition to the methods set forth in Paragraph 11.2.1, a notice or request for approval or any other communication may be sent by electronic mail or other electronic communication ("email") only if an authorized agent of the receiving party has consented to receiving notice by email at a specific email address and the recipient acknowledges having received that email by an email sent to the email address for the sender or by the same email returned to the originating address for the sender, or by a notice delivered by another method in accordance with Paragraph 11.2.1. An automatic "read receipt" shall not constitute acknowledgment of an email for purposes of this Paragraph.

**11.3. Time for Notice and Reply**

i. Where Landowner is required to provide notice to Holder and/or the State of Maine pursuant to this Easement, such notice shall be given in writing           ( )           days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

ii. Where Landowner is required to obtain Holder's and/or the State of Maine's prior written approval, such request shall be given in writing           ( )           days prior to undertaking the proposed activity except as otherwise specifically provided herein. Holder, upon receipt of Landowner's request, shall acknowledge receipt of the same. Following such review, Holder shall grant, grant with conditions, or withhold its approval. Failure to approve Landowner's request within           ( )           days shall be deemed a constructive denial of such request. A constructive denial is not a decision by Holder based on the merits of Landowner's request, and Landowner may resubmit the same or a similar request for approval. No proposed activity may proceed without Holder's written approval as provided herein.

**12. Costs, Taxes, Liability**

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**12.A. Taxes and Liens.** Landowner shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and shall avoid the imposition of any liens that may impact Holder's rights hereunder. Landowner shall keep the Protected Property free of any liens or encumbrances that may adversely impact Holder's rights, including without limitation those arising out of any work performed for, materials furnished to, or obligations incurred by Landowner; and Landowner shall promptly notify Holder of the filing or recording of any such lien or encumbrance. Holder may, at its discretion, pay any outstanding taxes, assessments, liens or encumbrances, and shall then be entitled to reimbursement by Landowner, together with interest at the then-prevailing statutory post-judgment interest rate in Maine under 14 M.R.S. § 1602-C or successor provisions thereof, calculated from the date of Holder's payment. Landowner and Holder agree that Holder shall have a lien on the Protected Property to secure Holder's right to reimbursement and that Holder may record such lien at any time. In any collection process or court action brought by Holder for reimbursement, Holder shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorney fees.

**12. B. Responsibility of Landowner.** Landowner acknowledges that Holder has neither possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property other than as set forth in Section 9.5. Landowner shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement, and maintenance of the Protected Property. *Optional.* Landowner shall indemnify, defend and hold Holder harmless from and against any and all liabilities, costs, damages, or expenses of any kind including, without limitation, reasonable attorney fees, that Holder may suffer or incur as a result of or arising out of the activities of Landowner or any other person on the protected property, other than those caused by the negligent acts or acts of misconduct of Holder, and except those arising out of Holder's workers' compensation obligations, to the extent relief is available under law. Holder's right to be defended, held harmless and indemnified by Landowner shall extend without limitation to any action based upon the presence of toxic and/or hazardous substances upon or emanating from the Protected Property.

### 13. Standard Provisions

**13.1. Maine Conservation Easement Act.** This Conservation Easement is established pursuant to Maine's Conservation Easement statutes at 33 M.R.S., Sections 476 through 479-C, inclusive, as amended. *OPTIONAL:* The recreational trail easement established hereunder is further authorized under 33 M.R.S., Section 1581, et seq.

*OPTION for Gifts and Bargain Sales* **13.2. Conservation Purposes.** This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code, as amended (hereinafter referred to as the "Code") at 26 U.S.C., Section 170(h)(1)-(6) and [list any other applicable IRC sections: Sections 2031(c), 2055, and 2522,] and under Treasury Regulations at 26 CFR §1.170A-14 et seq., as amended.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**13.3. Qualified Holder.** The Holder is qualified to hold conservation easements pursuant to 33 M.R.S., Section 476(2)(B), as amended, **[OPTION: and recreational trail easements under 33 M.R.S., Section 1581(1), as amended,]** and is a qualified donee under the Code Section 170(h)(3): **[for governmental holders: a governmental entity with the commitment to preserve the conservation values of the Protected Property.] [for nonprofit organizations: a publicly supported, nonprofit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the Conservation Values of the Protected Property.]**

**13.4. Assignment Limitation.** This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Code (or successor provisions thereof) and the requirements of 33 M.R.S. § 476(2) , as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant. For the purposes of this Subsection and the reinvestment of public funds, State approval shall mean by the Board of the Land for Maine's Future Program

In the event that Holder attempts to terminate, transfer, or otherwise divest itself of any right, title, or interest in this Conservation Easement without compliance with 33 M.R.S. § 476 *et seq.* and the prior consent of the State of Maine under the Project Agreement, such attempted divestment shall be a nullity and of no effect. This Subsection may be enforced by the State under the Project Agreement, the Maine Attorney General, and the Maine Superior Court. No divestment shall be allowed without prior written consent of the State of Maine, together with 1) if applicable, State approval of the qualified holder proposed for receipt of any of all of the Easement under 33 M.R.S. § 476(2); 2) reimbursement of all public funds in this Easement to the State unless waived by the State; and 3) State approval of the investment of Holder proceeds arising out of any such divestment..

**13.5. Liens Subordinated.** Landowner represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property **[CONFIRM: , except any listed in Exhibit A, which are subordinated to Holder's rights under this Conservation Easement, as required under Treasury Regulations §1.170A-14].** Landowner 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, regardless of date, are subordinate to 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 subsequent lien or other interest in the Protected Property.

**13.6. Value of Conservation Easement, Extinguishment, Proceeds**

**13.6.1. Proportionate Value.** The parties agree that the grant of this Conservation Easement gives rise to a property right that vests immediately in Holder. The parties further agree that this property right as of the date of its creation has a fair market value that is at

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

least equal to the proportionate value that the Conservation Easement bears at the time of the gift to the value of the property as a whole at that time, in accordance with the Code § 1.170A-14(g)(6)(ii) (hereinafter the “Proportionate Value”). The Proportionate Value shall remain constant.

**13.6.2. Eminent Domain.** If either Holder or Landowner receives notice of the actual or threatened exercise of the power of eminent domain (hereinafter a “Taking”) with respect to any interest in or any part of the Protected Property, the party who receives the notice shall promptly notify the other and the parties may proceed jointly or either party may at its discretion take such legal action as it deems necessary to: (i) challenge the Taking; (ii) challenge the amount of allocation of any award tendered by the Taking authority; or (iii) otherwise participate in, challenge or appeal such proceedings, findings or awards. Any third-party counsel and consultants (including appraisers) hired by either party shall be reasonably acceptable to the other party. Each party shall be responsible for its own costs and legal fees, absent written agreement of the parties.

**13.6.3. Extinguishment and Proceeds.** This Conservation Easement may be extinguished or terminated only by judicial order in a court of competent jurisdiction, including a Taking in accordance with subsection 13.6.2 above. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the conservation purposes of this Conservation Easement are impossible to accomplish, and if Landowner, Holder, and the State of Maine agree. Should this Conservation Easement be terminated or extinguished as provided in this paragraph, in whole or in part, Holder shall be entitled to be paid no less than the greater of: (i) in accordance with the Code § 1.170A-14(g)(6)(ii), a portion of any proceeds of a subsequent sale, exchange, or involuntary conversion computed as to the Proportionate Value ; or (ii) in accordance with 33 M.R.S. § 477-A(2)(B), the increase in value of the Landowner’s estate resulting from such extinguishment, as determined by the court, or in the absence of such court determination, by the agreement of the parties or, in the absence of such agreement, by an independent appraiser mutually selected by Landowner and Holder. Holder shall use its share of the proceeds or other moneys received under this paragraph for the protection of conservation lands consistent, as nearly as possible, with the Purposes of this Conservation Easement. That portion of the award that is allocated to the contribution of the Land for Maine’s Future Fund, as established by the Project Agreement, shall be credited to the Land for Maine’s Future Fund or its successor entity for reinvestment by the Board of the Land for Maine’s Future Program in accordance with the Project Agreement. Landowner agrees and authorizes Holder to record a notice of a lien on the Protected Property which lien will be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

*[For donated and bargain sale easements. Same language should also be included in a separate letter that also references any stewardship contribution. ]*

**13.7. Contemporaneous Written Acknowledgment.** In compliance with the Code § 170(f)(8), Holder acknowledges receipt of this conservation easement on the date hereof, and states that it

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

has not provided Landowner(s) with any goods or services in consideration, in whole or in part, for Landowner(s)' [bargain sale] contribution of this easement. [CAUTION: must add an exception if Holder paid any amount as compensation, including paying for Landowner's appraisal or other transaction costs usually paid by Landowner or the bargain sale purchase price].

## 14. GENERAL PROVISIONS

**14.1. Controlling Law and Interpretation.** The interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes of this Easement and the policy and purpose of Maine's Conservation Easement statutes at 33 M.R.S. §§ 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Purposes of this Easement shall govern.

**15.2. Landowner and Holder Definitions.** The term "Landowner" or "Landowners" as used in this Easement shall include, unless the context clearly indicates otherwise, the within-named Landowner(s), jointly and severally, their personal representatives, heirs, successors and assigns and any successors in interest to the Protected Property. The term "Holder" as used in this easement shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns.

**14.3. Owner's Rights and Obligations, Joint Obligation.** A person's or entity's obligation hereunder as Landowner, or successor owner of the Protected Property, shall be joint and several, and will cease, only if such person or entity ceases to have any ownership interest in the Protected Property (or relevant portion thereof) but only to the extent that the Protected Property (or relevant portion thereof) is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 14.4 below. 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 Protected Property into compliance.

### 14.4. Subsequent Deeds and Transfers.

**14.4.1.** This Easement must be incorporated by reference in any deed or other legal instrument by which Landowner conveys any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. Landowner further agrees to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property [OPTIONAL: pursuant to Paragraph 14.4.2]. The failure of Landowner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**CONSERVATION EASEMENT TEMPLATE**  
**LAND FOR MAINE'S FUTURE PROGRAM**  
*2023 Workbook Version*  
*(Based on MLCAN 10-24-2022 version)*

**[OPTIONAL]**

**14.4.2. Required Transfer Fee and Recording of Notices with Respect to Transfer-- Resulting Lien.** At any time the Protected Property itself, or any interest in it, is transferred by Landowner to any third party, Landowner shall pay a \$100 transfer fee to Holder and Landowner shall notify Holder of such transfer within thirty (30) days of such transfer or conveyance in writing, using the form in Exhibit D attached hereto. *[OPTION: Failure to record the Notice of Transfer described herein shall result in a continuing lien in favor of Holder.]*

**14.5. Compliance/Estoppel Certificates.** Upon written request by Landowner, Holder will provide Compliance/Estoppel Certificates to Landowner or third parties indicating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this grant. The inspection of the Protected Property for this purpose will be made by Holder at Landowner's cost within a reasonable time after Landowner's written request.

**14.6. Discretionary Approvals and Amendments.**

**14.6.1. Discretionary Approvals.** Landowner and Holder recognize that certain activities by the Landowner may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals without prior notice to any other party *except as may be required by the Project Agreement.* Nothing in this paragraph shall require either party to agree to any discretionary approval.

**Commented [BJ29]:** Note: the Project Agreement will require the consent of BAFRR for any discretionary approvals.

Notwithstanding the foregoing, Holder shall not approve any activity that would be inconsistent with the Conservation Purposes or adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33 M.R.S. §476 et seq., and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Code, successor provisions thereof and regulations issued pursuant thereto.

**14.6.2. Amendments.** Landowner and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of this Conservation Easement. To this end, Landowner and Holder have the right to agree to amendments to this Conservation Easement provided that such amendment does not violate federal or state law, including 33 M.R.S. §477-A(2), as amended or succeeded. Amendments will become effective upon recording at the County Registry of Deeds. Any amendment that limits the term or results in the partial or complete termination of this Conservation Easement shall be subject to Section 13.6. Nothing in this paragraph shall require the Landowner or the Holder to agree to any amendment or to negotiate regarding any amendment. All rights of Holder to amend this Conservation Easement shall require the approval of BAFRR and the Land for Maine's Future Board and must comply with the Project Agreement.

**14.6.3. Further Limitations on Discretionary Approval and Amendments.**

Notwithstanding the foregoing, except as provided by 33 M.R.S. § 477-A(2), as amended, Holder and Landowner have no right or power to approve any action or agree to any discretionary approval or amendment that would:

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

- (a) materially detract from the conservation values intended for protection under this Conservation Easement;
- (b) limit the term or result in the partial or complete termination of this Conservation Easement;
- (c) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including Maine's Conservation Easement statutes at 33 M.R.S. § 476 *et seq.*, and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Code, successor provisions thereof and regulations issued pursuant thereto; or
- (d) conflict with any provision of the Project Agreement.

[OPTIONAL: (e) enlarge the area for residential or other building development, or the number of residences, if any, permitted by the express terms of this Conservation Easement.]

[(f) OPTIONAL: insert standards based on the specific conservation purposes of the easement, for example, for forever wild easements.]

**14.7. Economic Hardship.** In making this grant, Landowner has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Landowner and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

**14.8. Nonwaiver.** The failure or delay of the Holder, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.

**14.9. Severability, Entire Agreement, No Forfeiture.** 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. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to Landowner of any rights extinguished or conveyed hereby.

**14.10. Standing to Enforce.** Only Holder, Landowner, and the State of Maine may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

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 Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

**14.11. Captions.** The captions in this instrument have been inserted solely for convenience of reference and shall have no effect upon construction or interpretation.

**14.12. Independent Representation.** Landowner has retained legal counsel **[[Optional: Insert name and address of attorney]]** to represent only his/her/their interest in this transaction. Landowner and Holder acknowledge and agree that they have not received and are not relying upon legal, tax, financial, or other advice from each other. Landowner acknowledges that Holder has recommended that it/she/he/they keep independent counsel.

**14.13. Accretion and Reliction.** In the event that changing water levels or water courses or geological action such as accretion or reliction leads to the emergence of new land within or changes to the boundaries of the Protected Property, it is the intention of Landowner and Holder that such new land shall be subject to the terms of this Conservation Easement to the extent that Landowner is the owner or has management rights in such land as a result of such changing water levels or water courses or geological action.

**14.14. Other Laws.** This Conservation Easement does not supersede any federal, state, municipal, and other governmental laws or the need for any permits or approvals.

**OPTION: 15. Holder's Right of First Refusal.**

**[If the Easement will include an OPAV or similar provision allowing Holder to purchase the property, include that here.]**

**Commented [BJ30]:** Left as a placeholder, but there are unresolved issues around WFAPP funding for OPAV provisions – applicants should consult LMF/BAFRR staff if they are interested in including an OPAV as part of the easement.



**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**Section VIII. Habendum**

[Choose one of the following:]

**TO HAVE AND TO HOLD** the said Conservation Easement unto the said Holder, and its successors and assigns forever.

**Or**

**TO HAVE AND TO HOLD** the said Conservation Easement including all development rights, covenants, and restrictions conveyed thereby, with all the privileges and appurtenances thereof, unto the said [insert land trust name], and its successors and assigns, to its own use and behoof forever.

**Section IX. Signatures**

[Choose one of the following:]

[Note: each owner must sign, and for gifts and bargain sales, non-owner spouses must sign, and all signatures should be notarized.]

**For use by Landowner who is not married:**

IN WITNESS WHEREOF, I, \_\_\_\_\_, being unmarried, have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ [year].

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness [Landowner's printed name]

**For use by married Landowners, both of whom are record owners:**

IN WITNESS WHEREOF, We, \_\_\_\_\_, husband and wife, have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ [year].

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness [Landowner's printed name]

Signed, sealed and delivered  
in the presence of:

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

\_\_\_\_\_  
Witness [Landowner's printed name]

**For use when easement is a gift or partial gift being granted by married person. Non-owner spouse should join in gift.**

IN WITNESS WHEREOF, \_\_\_\_\_, Landowner herein, and \_\_\_\_\_, his/her/their spouse, joining in this deed and relinquishing all rights herein by descent or otherwise, have hereunto set their hands and seals, this \_\_\_ day of \_\_\_\_\_, \_\_\_ [year].

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness [Landowner's printed name]

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness [Landowner's spouse printed name]

**For use by a Trust:**

IN WITNESS WHEREOF, I, \_\_\_\_\_, Trustee of [insert name of trust], hereunto duly authorized, have hereunto set my hand and seal this \_\_\_ day of \_\_\_\_\_, \_\_\_ [year].

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness [Printed name of trustee,] Trustee  
[Insert name of trust]

**For use by a corporation or other legal entity:**

[Note: if other corporate entity such as a partnership or LLC is the Landowner, consult Landowner's counsel as to format]

IN WITNESS WHEREOF, Landowner, \_\_\_\_\_ [insert corporate name] \_\_\_\_\_ has caused these presents to be signed and sealed in its corporate name and behalf by \_\_\_\_\_ [insert person's name] \_\_\_\_\_, its [insert title] \_\_\_\_\_, hereunto duly authorized, this \_\_\_ day of \_\_\_\_\_, \_\_\_ [year].

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

Signed, sealed and delivered  
in the presence of:

_____	_____
Witness	[corporation name]
	By: _____
	Its: _____

**Section X. Acknowledgement**

**ACKNOWLEDGMENT (Notarization)**

[NOTE: Maine law requires only one signature to be notarized for a document to be recorded, but it is advisable for all signatures to be notarized. For out-of-state or out-of-county executions, many lawyers prefer that the signature of each signer be notarized to prevent fraud or forgeries. Acknowledgment clause form may vary in other states. It is advisable to consult a lawyer in the state of execution for the correct format. For recording in Maine, any foreign notarization clause must have the printed name of the notary and the expiration date of their commission.]

STATE OF MAINE )  
COUNTY OF \_\_\_\_\_) \_\_\_\_\_, 20\_\_.

Then personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

\_\_\_\_\_

Notary Public

[Printed name of notary]

My commission expires: \_\_\_\_\_

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**Section XI. Holder Acceptance**

The above and foregoing Conservation Easement was authorized to be accepted by the [Holder's Name] and the [Holder's Name] does hereby accept the foregoing Conservation Easement, by and through [Name of Authorized Rep], its [Title], this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[HOLDER'S NAME]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MAINE )  
COUNTY OF \_\_\_\_\_) \_\_\_\_\_, 20\_\_.

Personally appeared \_\_\_\_\_, [Name and Title], duly authorized representative of the above-named [Holder's Name] and acknowledged the foregoing instrument to be his/her free act and deed in his/her/their said capacity, and the free act and deed of the [Holder's Name].

Before me,

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

\_\_\_\_\_  
Printed name of notary

My commission expires: \_\_\_\_\_

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**Section XII. Exhibits and Attachments**

**EXHIBIT A**

**Legal Description of the Protected Property**

*[Include relevant surveys, reference to prior recorded deeds, and existing easements and rights of way that burden or benefit the Protected Property.]*

**EXHIBIT B**

**Sketch Plan**

*[Include perimeter of Protected Property, land use areas, and location of items noted in the easement.]*

**EXHIBIT C**

**Description or Map of Land Use Areas**

*[Can be combined with Exhibit B, but separate descriptions may require additional exhibits.]*

**CONSERVATION EASEMENT TEMPLATE  
LAND FOR MAINE'S FUTURE PROGRAM  
2023 Workbook Version  
(Based on MLCAN 10-24-2022 version)**

**EXHIBIT D – NOT TO BE COMPLETED AT TIME OF EASEMENT RECORDING  
[OPTIONAL UNDER 14.4.2]**

**Notice of Transfer of Protected Property**

To: [Insert name and address of holder] ("Holder")  
From: [Insert name and address of fee owner] ("Landowner")

Pursuant to Paragraph 14.4.(2) of the Deed of Conservation Easement, from \_\_\_\_\_ to Holder, dated \_\_\_\_\_, and recorded at the \_\_\_\_\_ County Registry of Deeds at Book \_\_\_\_\_ and Page \_\_\_\_\_. Holder is hereby notified by Landowner of the transfer of the fee simple interest in the subject Property legally described in Exhibit A attached hereto effective [insert date of closing] to [insert name of new Landowner], who can be reached at [insert name, legal address, phone and fax number]. This notice is accompanied by a transfer fee in the amount of \$\_\_\_\_\_, paid to Holder.

**GRANTOR:**

By:  
Title:

STATE OF MAINE  
COUNTY OF \_\_\_\_\_ )

Then personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her/their free act and deed.

\_\_\_\_\_ Before me,

\_\_\_\_\_  
Notary Public  
Printed name of notary \_\_\_\_\_  
My commission expires: \_\_\_\_\_