

**Determining Monitoring Costs and Stewardship Endowment Levels**  
**for**  
**Maine Working Forest Easements**

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for

**the Maine Department of Conservation**  
**Bureau of Parks and Lands**

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## A. Purpose

This paper was prepared to provide a review of existing policies, practices and costs for monitoring conservation easements in northern New England, with specific attention to working forest conservation easements, and to provide guidance to the Maine Department of Conservation Bureau of Parks and Lands (BPL) on how best to determine the size of easement monitoring endowments for working forest conservation easements. The paper also includes a discussion of related policy issues, and a proposed draft easement stewardship policy for consideration by the Bureau.

## B. Introduction

In Maine, hundreds of thousands of acres of forestland are held under conservation easement by the State of Maine as well as by many non-profit conservation organizations. Among these entities' many responsibilities are ensuring that the provisions of each conservation easement are upheld by the landowner. The breadth of an easement holder's obligations is encompassed by the term **easement stewardship** which, for the purposes of this paper, includes the following monitoring and compliance activities:

- Periodic monitoring of the property, which may be by satellite imagery analysis, aerial photography or reconnaissance, or on the ground inspections;
- Assuring compliance with all easement terms, including administrative and reporting requirements;
- Communication with the landowner, especially as required by the easement (annual meetings, response to landowner requests, etc.);
- Maintaining a complete legal record of easement monitoring and compliance actions and correspondence, including a record of the conservation values and conditions of the property; and
- Defending the property against identified easement violations<sup>1</sup>.

Although the following are pressing fiscal or policy challenges, for the purposes of this paper only, the term easement stewardship does **NOT** include:

- Recreation management activities that may be permitted and developed on the property, including road development and maintenance;
- Ecological or scientific monitoring where not expressly required for easement compliance determinations;
- The establishment of baseline monitoring (as this is a requirement at time of closing); and
- Third party easement holder responsibilities.

NOTE: the concept of stewardship endowments for properties such as recreational lands or ecological reserves *held in fee* by a governmental agency or non-profit should be the subject of a necessary yet separate discussion paper.

The easement holder assumes monitoring and compliance responsibilities in perpetuity. It is therefore incumbent upon the holder to secure or otherwise have confidence in an adequate source of funding to cover these ongoing expenses. The standard practice in Maine and nationally is for a stewardship endowment to be established at the time of closing to ensure a perpetual stream of income.

Use of a charitable stewardship endowment (a fund to which donors can make charitable contributions) is a standard practice for *non-profit* easement holders, enabling the non-profit to supplement the fund as needed to ensure long-term sustainability of the non-profit's monitoring capabilities. This is reflected in the Land Trust Alliance's (LTA's) *Land Trust Standards and Practices*, which provides "ethical and technical guidelines for the responsible operation of land trusts<sup>2</sup>," and addresses a land trust's easement stewardship responsibilities and obligations in its twelve standards:

*Standard 6• G. Funds for Stewardship and Enforcement. The land trust has a secure and lasting source of dedicated or operating funds sufficient to cover the costs of stewarding its land and easements over the long term and enforcing its easements, tracks stewardship and enforcement costs, and periodically evaluates the adequacy of its funds. In the event that full funding for these costs is not secure, the board has adopted a policy committing the organization to raising the necessary funds.*<sup>2</sup>

*Standard 11• A. Funding Easement Stewardship. The land trust determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose.*<sup>2</sup>

More recent use of charitable endowments by *governmental agency* easement holders in Maine shows that this mechanism is, in practice, conceptually different from the Land Trust model. Government agencies must rely on non-profit partners to raise a project's initial endowment, and once created, it has been more of a static fund, as government agencies must rely on supporting partners to provide any additions to the fund, which has proven practically difficult. As a result, experience in Maine has shown that an endowment supporting governmental agency stewardship has typically supplemented – rather than fully sustained – an agency's stewardship activities. Lacking adequate stewardship endowment funds, agencies have either neglected stewardship responsibilities or used general operating funds or special funds to cover expenses. For example, the Maine Department of Conservation Bureau of Parks and Lands (BPL) has recently obtained Maine Outdoor Heritage Fund grants to supplement limited stewardship endowment proceeds used for easement stewardship efforts.

Note: The structure of endowments benefiting government holders is a topic of needed additional analysis and policy development. Appendix A – *Draft Maine Bureau of Parks and Lands Policy: Conservation Easement Stewardship and Easement Stewardship Endowments* -

illustrates the policy issues inherent in establishing stewardship endowments for government-held conservation easements.

### **C. Determining Conservation Easement Monitoring Costs**

Establishing endowments to support easement monitoring costs requires, first and foremost, an understanding of the responsibilities encompassed in monitoring easements, and their costs. There are now several years of easement monitoring expense figures that have been tracked by various conservation organizations in New England, which can be used as a very general guide for estimating easement monitoring expenses. However, experience with monitoring working forest conservation easements has been quite limited. Working forest conservation easements are still relatively new. Maine's first large-scale working forest easement – the Forest Society of Maine's (FSM's) 20,052-acre Attean Township easement – dates back to 1984, but monitoring costs were not closely tracked until recently. The next substantial forestry easement – the 6,773-acre Pierce Pond easement – was not created until 1996, and Maine's largest easement, the 762,000-acre Pingree easement, is still less than a decade old. Complicating the issue, the methods used to monitor large-scale easements have been evolving. As a result, only within the last two years has the State of Maine developed monitoring protocols for its working forest conservation easements, with assistance from researchers at the University of Maine School of Forest Resources. These protocols define methods to be used to check compliance with specific easement terms.

Given the limited experience in the conservation community with working forest easements and evolving technologies for monitoring large tracts of land, relying on past experience has only limited value compared to thoroughly examining an easement's unique attributes to determine its monitoring costs.

The most accurate method of estimating annual monitoring expenses (and hence an adequate endowment size) is to define the expected monitoring protocol, and then create a detailed analysis of the likely staff time to be spent monitoring a given property (with its unique set of characteristics), as well as all major direct expenses likely to be incurred. This process includes estimating, at a minimum<sup>3</sup>:

- Labor Costs – salary and benefits of staff to perform field inspections, landowner communication, data analysis, conflict resolution, recordkeeping and reporting
- Travel (mileage), meals and lodging
- Data acquisition (maps, photos)
- Equipment rentals and plane charters
- Office and field supplies
- Consultants, such as consulting foresters
- Insurance, accreditation, special costs
- Office overhead
- Contingency

The Land Trust Alliance, as well as many regional land conservation organizations, have developed worksheets and guidelines for determining the cost of monitoring a particular

easement. Many examples can be found in LTA's *Determining Stewardship Costs and Raising and Managing Dedicated Funds*, 2007.

Major factors which influence the cost of easement monitoring divide logically into three groups:

- Attributes of the property and terms of the conservation easement itself;
- The method of easement monitoring employed; and
- The frequency of monitoring.

### **1. Property Attributes and Easement Terms**

Property attributes and easement terms play a significant role in determining easement monitoring methods and costs. Those attributes and terms having the most significant impact on monitoring costs include:

- a. Size and Shape – Many monitoring functions are constant whether an easement encompasses 1,000 acres or 100,000 acres. The amount of time spent on landowner communication and recordkeeping, for example, may not necessarily differ significantly on properties of vastly different size. As a result, there are clear economies of scale inherent in monitoring large properties. This is why most organizations assume a minimum cost of monitoring regardless of easement size and thus establish a minimum endowment size per easement. Strip easements along water bodies with adjacent development are a unique situation which creates a much higher potential for encroachment, resulting in higher stewardship costs.
- b. Distance to the Property – Costs associated with travelling to and from the easement property can be a major easement monitoring expense. Organizations that have multiple properties within close proximity to one another, and which can be ground monitored at the same time and frequency, can minimize this expense to the greatest extent possible.
- c. Numbers of Abutters – Properties with multiple abutting landowners with attendant risks of encroachment from activities prohibited on the easement lands demand a greater level of attention than those with few abutters. This directly impacts the ongoing cost of monitoring.
- d. Types of Adjacent Land Uses and Ease of Access to the Property - Properties within close proximity to developed lands and properties with multiple points of access possess a far greater risk of a variety of encroachments. More intensive communication with adjacent landowners can minimize the likelihood of encroachments but it nonetheless translates to higher ongoing stewardship costs. The likelihood of easement violations is greater on properties with easy access and near developed lands, and thus there is a greater likelihood that the holder will at some point need to defend the terms of the easement.
- e. Recreational Use – If a property is actively used for recreational purposes, even if the easement holder has no affirmative obligations to manage recreational use, there is an increased likelihood of conflicts with the conservation goals of the easement. The net effect is higher costs for easement monitoring and defense.
- f. Reserved Rights and Affirmative Obligations – The more rights retained by the landowner (e.g. timber harvesting, building rights), the more intensively the property will

need to be monitored. Similarly, if the easement requires the landowner to maintain certain conditions (e.g. a multi-aged forest; exemplary communities), or if the easement holder has certain affirmative obligations (e.g. forest management plan approval), this will require greater time on the part of the easement holder to ensure that these terms are being met. Simply put, the more prescriptive the easement, the higher the monitoring costs.

- g. Allowable Property Subdivisions – This specific easement term likely has a greater potential of impacting easement monitoring costs than any other. More landowners translates directly into significantly higher monitoring costs, as each division creates essentially a separate easement administratively. It may also require advising new landowners about the easement provisions in order to reduce the likelihood of future easement violations.

## **2. Standard Easement Monitoring Methods<sup>4</sup>**

Easement holders use a variety of methods to monitor their easements depending on the size of the easement area, an evaluation of the likelihood that a property has been altered since last monitored, and an evaluation of the degree of sensitive features of a property. Properties are typically categorized according to these factors, and the appropriate level(s) of monitoring are then chosen. The Maine Department of Conservation Bureau of Parks and Lands has recently adopted a hierarchical system that defines monitoring methods according to three levels:

Level 1: Satellite Change Detection – This monitoring method makes use of medium spatial resolution satellite (Landsat) imagery to detect changes over the landscape, and allows for an initial evaluation to take place, particularly on large parcels, in a cost effective and time efficient manner. This method is particularly cost effective when an organization is monitoring multiple easement properties within the same Landsat image and can thus spread the image cost over multiple projects or large acreages.

Level 2: More Detailed Satellite Imagery or Air Photo Analysis – This method makes use of high resolution satellite imagery, digital imagery, or aerial photography to more closely identify and evaluate recently altered features on the landscape. This method can include flyovers which employ personal aerial inspection using low-level aircraft for site investigation, or further investigation using geo-referenced vertical aerial photos.

Level 3: On the Ground Inspection – This method makes use of on-site field visits and, because it is the most costly and time-intensive monitoring method, is typically used to more thoroughly inspect areas of change identified through other monitoring methods, and to monitor conditions that cannot be detected remotely.

## **3. Frequency of Monitoring**

Frequency of monitoring is a critical factor in understanding easement monitoring costs. In fact, however, there is not universal agreement in the conservation community as to how frequently easements should be monitored. Maine's new conservation easement statute requires that easements be monitored at least once every three years, with annual reporting of the most recent date of monitoring to the Maine State Planning Office.<sup>5</sup> The USDA Forest Service Forest



Legacy Program requires that states monitor at least annually any lands protected in part with Forest Legacy funds:

*Monitoring FLP conservation easements shall occur periodically, but not less than annually. Monitoring consists of visual inspection of the property, documented by a written report to explain the condition of the property at time of inspection.*<sup>6</sup>

This is of particular importance to Maine given that Forest Legacy funds have been used to protect over 680,000 acres in the State. Current Forest Legacy Program grant agreements further stipulate that a monitoring plan for conservation easements be completed and approved by the State as a condition of receiving Forest Legacy grant funds.

Land conservation organizations seeking Land Trust Alliance accreditation must comply with the following standard addressing monitoring frequency:

*Standard 11 • C. Easement Monitoring. The land trust monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.*<sup>2</sup>

The Land Trust Accreditation process is driven in part by the effort of land trusts to respond to concerns and evolving expectations of the Internal Revenue Service, to ensure that charitably donated easements are in fact retained and stewarded for public conservation value. IRS concerns or evolving rules do not apply directly to governmental holders, yet the IRS and the Land Trust Accreditation Commission are increasingly setting a standard to which governmental holders may be held. Revisions or updates to this paper should include a review of the status of IRS requirements.

Standard best practices for conservation easement holders suggest annual monitoring, but conservation organizations interviewed varied widely in their interpretation of what is even meant by the term monitoring. The Land Trust Accreditation Commission defines conservation easement monitoring as:

*Annual documented visual inspection of a conservation easement-protected property to ensure that the terms of the easement are being upheld, with on-the-ground physical inspections as the site warrants.*<sup>7</sup>

One regional conservation organization uses annual phone interviews of landowners to determine whether any additional monitoring is needed. If the landowner reports exercising no reserved rights on the property in the past year, then no additional monitoring is performed. Another state-wide conservation organization executes ground monitoring on every one of its easements every year. Most organizations fall somewhere between these two ends of the spectrum: using landowner interviews combined with an analysis of aerial imagery to determine whether further monitoring is indicated. Likewise, most organizations commit to doing ground

monitoring at least every four years even if no reserved rights appear to have been exercised on the property in that period of time.

## **D. Determining the Appropriate Size of Easement Monitoring Endowments**

### **1. Endowment Yields and Sustainable Payout Levels**

In order to arrive at a reasonable target for an easement's endowment, it is important to go beyond estimating annual monitoring costs, and consider what is a sustainable annual payout that can be expected from an endowment. Until quite recently, a 5% annual payout (5% of an endowment's principal based typically on a rolling twelve-quarter or five-year average) was the standard generally used by conservation organizations and foundations. Given the recent economic downturn, many organizations, including the Maine Community Foundation, have revised their guidance to a more conservative range of 3.5%-4%.

### **2. Minimum Endowment Levels**

Many conservation organizations and governmental agencies have established minimum endowment levels for easement lands, though none seem particularly relevant to Maine's experience given the large size of so many of Maine's easements. The Land Trust Alliance guidance to land trusts (2007), excerpted below, clearly is not adequate for Working Forest Conservation Easements, and professionals volunteering their services to the Land Trust Accreditation Committee acknowledge that this guidance is currently in need of updating:

*It would be **desirable** for a land trust to have an endowment (yielding a 5 percent rate of return) sufficient to cover between 75 and 100 percent of its annual stewardship costs; OR if the land trust does not calculate its annual stewardship costs, to have an endowment sufficient to generate enough income to cover an annual cost of between \$200 and \$500 per easement (equal to an endowment per easement of \$4,000 to \$10,000 – 75 percent of this is \$3,000).*

*It would be **acceptable** for a land trust to have an endowment that covers less than 75 percent of its annual stewardship costs (or that has less than a minimum of \$3,000 per easement) IF there is some other dedicated and secure source of income; a credible fundraising plan that enables the land trust to raise the desirable funds within 10 years; and the funds required to be raised each year do not exceed 50 percent of the land trust's annual budget.<sup>8</sup>*

The State of New Hampshire has not historically required an endowment on Legacy easements, nor do they exist on any NH Legacy properties except for the CT Lakes Headwaters project. New Hampshire's LCHIP program (Land and Community Heritage Investment Program) sets aside money as part of every land transaction it helps fund, *not* for the purposes of providing this to easement holders to fund easement monitoring, but rather to provide small contributions to easement holders to ensure that LCHIP receives an annual monitoring report. This set-aside is calculated as a standard percentage of the appraised value of the conservation easement (3.5%), with a minimum of \$7,500 and not to exceed \$40,000 per easement.

Several conservation organizations follow a similar model of using a percentage of market value (e.g. 1%) to calculate a property's endowment. This is not generally viewed as a sound approach as there is little relationship between market value and the costs of monitoring.

Other organization/agency minimum endowment levels are listed in the table below; however, these are not specifically directed at working forest easements.

Organization/Agency	Minimum Endowment/Easement
Forest Society of Maine	\$30,000
State of NH Dep't of Resources & Economic Development	\$10,000
Society for the Protection of New Hampshire Forests	\$10,000
Land Trust Alliance	\$3,500 (general guidance to land trusts)
Vermont Land Trust	~\$2,000, but will soon be increased to \$5,000
New England Forestry Foundation	\$7,500 up to 1,000 acres Negotiated for larger parcels

### 3. Approaches to Establishing Working Forest Conservation Easement Endowment Levels

The Land Trust Alliance's *Determining Stewardship Costs and Raising and Managing Dedicated Funds* articulates three basic methods of determining stewardship costs, the first two of which have already been discussed:

- a. Case-by-Case Calculation Model: A detailed cost analysis (as previously described) that estimates the time and direct expenses associated with monitoring a specific easement.
- b. Flat Fee Model: A flat fee based on average easement monitoring costs. If an organization has a solid handle on its total annual easement monitoring costs and there is not a great range in the size and type of conservation easements, it can divide its total costs by the number of easements held to determine the amount needed per easement per year. This figure divided by a reasonable payout rate determines the needed endowment per easement. Minimum endowment levels (as described in section D.2 above) *should* serve this purpose, though many organizations have set minimum levels that do not provide adequate income to cover the full cost of annual monitoring.
- c. Hybrid Model: This "combines the advantages of the case-by-case and flat fee models (by) start(ing) with a base stewardship contribution amount that covers standard cost elements for an average easement and then adjust(ing) the

contribution amount upward to reflect factors that may make the easement more difficult or time consuming to monitor.”<sup>9</sup>

#### **E. A Proposed Approach for the Maine Bureau of Parks and Lands for Determining Working Forest Conservation Easement Monitoring Endowment Amounts**

Several years of easement monitoring costs have now been tracked on large forestry easements in northern New England. Nevertheless, there is considerable variability in the size of these easements (from 21,000 to 335,000 acres); the number of years of monitoring history (from ten to only a few years); the terms of the easements (from simply no development to complex terms affecting how the forest is managed); and the methods used to monitor them. Consequently, the experience from these easements can only be considered as general guidance from which we can produce a range of cost figures reflecting monitoring costs for easements of various sizes. To develop a greater level of accuracy, an individual property could be analyzed to see if an adjustment, upwards or downwards, can be supported.

The table below represents then, a *modified hybrid* approach, and is a logical method for Maine to use in establishing endowment levels for future working forest easements. This table should be updated regularly to reflect increased experience with easement monitoring, particularly given that the Maine Bureau of Parks and Lands is only beginning to employ recently developed standardized protocols for its working forest conservation easements, using advanced tools including satellite imagery change analysis.

**Conservation Easement Endowment Guideline Table  
for Maine Bureau of Parks & Lands Working Forest Easements**

Easement Size	Endowment Size	Endowment \$/Acre	\$ Available/Yr (@3.5%)	\$ Available per Acre/Yr
less than 10,000 acres	\$100,000	-	\$3,500	-
~10,000 acres	\$150,000	\$15	\$5,250	\$0.53
Township Size + (20,000 acres)	\$200,000	\$10	\$7,000	\$0.35
~100,000 –	\$750,000	\$7.50	\$26,250	\$0.26
200,000 acres+	\$850,000	\$4.25	\$29,750	\$0.15

An individual property’s endowment should initially be determined using the Endowment Guideline Table, interpolating between the various easement size categories as needed. Through analysis of the three major cost factors described earlier (see Sections C.1-3), including property attributes and easement terms, easement monitoring method(s) to be employed, and frequency of

monitoring, a detailed cost estimate should be prepared to determine if an adjustment to the endowment level is warranted.

It is worth noting that as more experience and expertise is gained in monitoring working forest conservation easements, and to the extent that easement provisions can be somewhat standardized in the future, economies of scale can be realized. In general, the table already shows an expected inverse relationship between the size of an easement and the per acre cost of monitoring. More specifically, the per acre cost of monitoring rises dramatically on easements under 20,000 acres, and rises even further on easements under 10,000 acres. As a result, it could be argued that the endowment size for a 20,000-acre easement and a 2,000-acre easement should be the same. Governmental agencies and land trusts can address this challenge in part by taking strategic advantage of economies of scale, for example, through joint acquisition of satellite imagery and air photos, as well as satellite change detection analysis and air photo interpretation.

## **F. Additional Considerations and Options Related to Easement Monitoring Endowment Funds**

### **1. Triggers for Automatic Endowment Increases**

Because the number of property subdivisions that an easement allows has such a great impact on the time ultimately required for easement monitoring, it is highly recommended that a standard easement provision be incorporated whenever possible stipulating that when a landowner's right to subdivide is exercised, an additional endowment contribution will be made by the landowner. This approach was incorporated into the recent 363,000-acre Plum Creek easement: \$150,000 will be added to the endowment for each property division over 10,000 acres, and \$100,000 will be added to the endowment for each property division between 5,000 and 10,000 acres (no property divisions below 5,000 acres are permitted).

### **2. Unrestricted Pooled Endowment Funds**

The structure of endowments benefitting governmental agency easement holders is a topic of needed analysis and policy development. To date, the Maine BPL has established several endowment accounts with the Maine Community Foundation to provide investment income for the stewardship of specific large BPL-held easements (e.g. Roaches Pond tract, Wabassus Lake tract, and others). In most cases, these endowments have been specific to a particular property rather than structured as a pooled account to serve all aspects of BPL's stewardship endowment program. Appendix B contains examples of agreements for endowment accounts held by the Maine Community Foundation for BPL's benefit.

When endowments are raised for a specific project rather than to support an agency's or organization's easement stewardship program as a whole, it places significant restrictions on the holding entity's ability to be efficient in the use of these funds. While the task of fundraising may be easier for a restricted fund, an unrestricted pooled endowment fund provides the greatest flexibility to a holding entity to effectively administer a comprehensive easement stewardship program.

### 3. Legal Defense Funds

Beyond an easement holder's obligations to monitor an easement, a holder must also be prepared to defend the property against easement violations.

The Land Trust Alliance's *Land Trust Standards and Practices* addresses the need for an adequate legal defense fund:

*Standard 11• E. Enforcement of Easements. The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense.*

Many local land conservation organizations have established a separate legal defense fund for this purpose. Other organizations have a reserve account from which to draw funds for significant costs of a non-routine or unanticipated nature, including the costs of defending an easement. The legal costs associated with resolving easement violations are nearly impossible to estimate in advance. The size of the property is no indicator of the likelihood that a violation will occur, and therefore expenses cannot reliably be broken down as a per acre cost.

In 2007, the Land Trust Alliance offered guidance to land trusts about establishing a sufficient legal defense fund:

*As a guide, in order to fully fund an enforcement action or other litigation, a land trust needs a minimum of \$50,000 in its legal defense/stewardship fund. If the land trust holds more than 15 easements, it needs an additional \$1,500 to \$3,000 per easement in this fund.<sup>8</sup>*

Most organizations establish a funding level on a per easement basis for easement defense. The Vermont Land Trust, for example, sets aside \$500 from each endowment and retains it in a segregated account for legal defense. However, land trusts have recognized for some time that they have limited capacity to raise sufficient funds to defend their easements against violations, encroachments, and other unforeseen events. As a result, the Land Trust Alliance is in the process of developing a Conservation Defense Insurance Program which will likely be operational in 2010. It will enable land trusts to purchase insurance that would cover legal fees associated with easement defense and enforcement.

The Maine Bureau of Parks and Land's relationship with the Maine Attorney General's office should be closely considered when establishing any legal funding mechanisms or calculating expected legal expenses for agency-held easements, or when comparing BPL's legal costs to the costs of other easement holders. To date, the Maine Attorney General and contracted counsel have assisted occasionally with legal issues associated with easement stewardship, and BPL has

not used any (or had adequate) endowment funds to pay for these legal services. In these instances, the Attorney General's expenses have been absorbed within larger budget line items and retainers. Future revisions to this paper should consider whether the Attorney General's expenses have exceeded basic budget expectations, or should be factored into future endowments.

#### **4. Green Endowments**

The term green endowment as applied to forest lands generally refers to the income generated from the sale of sustainably harvested timber from land held in fee by a conservation organization. Fee-owned lands can generate an immediate and sustainable timber yield and income depending on the condition of the property. This revenue is typically used to cover the costs associated with managing the fee land itself, including recreational management costs. However, to the extent that surplus revenue is generated, timber harvest income may also be used to cover easement monitoring costs of other properties. In this respect, active timber management of lands held in fee could theoretically play a useful role in an organization's easement monitoring program by reducing the permanent endowment size needed to cover annual monitoring costs. However, no examples of this practice were found in northern New England.

One local example of a green endowment is the University of Maine Foundation's Green Endowment Forests. These forests, totaling roughly 6,500 acres, have been "donated to the University of Maine Foundation to be managed to provide revenues to the Green Endowment Fund of the College of Natural Sciences, Forestry and Agriculture. These properties are normally family owned woodlots with a long history of management. The owners wish to ensure the continued management of these lands that benefit the students within the College financially. They are managed by the University Forests Office, with revenues supporting management costs and student initiated projects."<sup>10</sup>

While the goal of this University program has been to eventually encompass upwards of 25,000 acres and generate a sustainable income of approximately \$4.00/acre/year (based on a growth rate of  $\frac{1}{4}$  -  $\frac{1}{3}$  cord/acre/year and an average stumpage rate for spruce-fir or hardwood), the reality is that this program has yet to yield significant dollars. Many properties donated to the University were heavily harvested prior to donation, and will not yield significant income for decades. Sustained yields of \$4.00/acre/year would only be achievable with a large acreage base and a broad mix of forest types, stocking levels and stages of maturity.

The Society for the Protection of New Hampshire Forests (SPNHF) holds 48,000 acres of forestland in fee, 29,000 acres of which is commercially harvestable. From this land base, the organization generates on average \$150,000-\$200,000 per year in timber revenue, or \$5.00-\$7.00/acre/year. SPNHF uses none of this income for easement stewardship but instead folds the full amount back into the management of its fee lands, believing that to do otherwise would in essence be siphoning off much needed revenue from its fee holdings to subsidize its easement responsibilities.

The Nature Conservancy (TNC) manages its 180,000-acre St. John lands in a similar manner. Roughly 133,000 acres are managed as working forest, and while its returns vary year to year, even in the worst of years, timber revenues have fully covered all management costs. However, similar to SPNHF, TNC treats its fee lands as essentially a separate cost center, and does not use surplus revenues from fee land management to support its easement stewardship program.

The New England Forestry Foundation (NEFF) has a unique perspective on the concept of green endowments. Of the 130 easements which NEFF holds, three are structured such that NEFF holds exclusive timber rights. On these parcels, totaling approximately 450 acres, NEFF has established a forest management plan, and will contract with both a consulting forester and logger to eventually receive timber revenue from periodic harvesting. While no harvesting has yet to occur on these parcels, timber revenues will eventually serve the same role as a permanent endowment. Other conservation organizations interviewed are resistant to enter into such a relationship, questioning whether the holder of an easement can assume enforcement responsibility over rights that it itself holds. Similarly, many organizations are guarded regarding the concept of receiving timber harvesting revenue from a landowner in lieu of an endowment; this is seen as a potential conflict of interest as the holder stands to benefit financially from an activity that it then must enforce.

Like the Society for the Protection of New Hampshire Forests and The Nature Conservancy, the Maine Bureau of Parks and Lands manages timber on a portion of its lands (Public Reserved Lands) and uses the revenues to support management of those lands for recreation and conservation values. To the extent that the Maine Bureau of Parks and Lands uses operating funds from the Public Reserved Lands account (consisting largely of Public Lands timber revenues) to cover easement stewardship responsibilities, BPL is tapping into its "Green Endowment" to cover easement costs at the expense of other needed investments and commitments. This has been a hidden cost of accepting conservation easements without sufficient easement monitoring endowments.

The recent experience of Maine's Forest Legacy Program creates an interesting and related dynamic. Because Forest Legacy funds may only be used to acquire interests held by a governmental agency (Maine BPL for example), non-profit conservation organizations in several instances have acquired fee ownership in a parcel while BPL has acquired the easement. In these cases, the non-profit fee holder will generate ongoing income through timber revenues, while BPL as the easement holder must support its stewardship responsibilities in perpetuity through income from an endowment established at or near the time of closing. In the past three years, two major closings using Forest Legacy funds - Katahdin Iron Works and the Machias River III Wabassus Lake Tract - have followed this model. The proposed West Grand Lake Community Forest project is similarly structured, and the Roaches property, while not benefitting from Forest Legacy funding, makes use of the same model. To the extent that the Forest Legacy program or other funding programs continue to drive this trend toward increased non-profit fee ownership, state agencies will continue to move away from a traditional reliance on managed timber revenues for state conservation stewardship budget items, and instead move toward an increasing reliance on more constrained endowment income. This shifting relationship bears frequent reexamination to ensure that an adequate source of revenue remains for agency holders to fulfill their stewardship responsibilities in perpetuity.



## G. Related Policy Trends

The USFS Forest Legacy Program is considering issuing recommendations in 2010 that will ensure more thorough monitoring and compliance of state-held Forest Legacy conservation easements. The Forest Legacy Program does not currently provide funds to states for monitoring but is considering (as of late 2009) counting funds raised for easement monitoring as qualified match. In addition, the Forest Legacy Program's Project Scoring Guidance (updated 5/22/09) specifies that the National Review Panel which ranks all Legacy funding requests will consider a state's capacity to monitor conservation easements as part of its project ranking process.

The Maine Forest Legacy Program's application guidelines and scoring criteria also provide specific guidance on project scoring in part based on the degree to which project partners have committed to raising the funds necessary for ongoing management and monitoring.

The Land for Maine's Future Program does not score an applicant's ability or commitment to raising an endowment for easement stewardship. It does, however, ask applicants to detail the management responsibilities being assumed by the easement holder, estimate the costs associated with monitoring compliance, and describe the holder's overall capacity to undertake a project including the holder's ability, experience, *and resources* to manage the property appropriately.

Land for Maine's Future (LMF) funds, because they are in large part bond funds, cannot be used for endowment funds or operational funds such as stewardship. The LMF program does, however, allow certain funds – up to 20% of the appraised value of the property – raised for a stewardship endowment to count as match.

Currently, Congress is considering some conservation easement stewardship provisions related to “Cap and Trade” legislation which, if enacted by Congress, might also set the stage for more clear federal stewardship expectations.

The Maine Forest Legacy Program scoring process, and to a much smaller extent, the Land for Maine's Future scoring process, are highly imperfect attempts at capturing a commitment to creating a stewardship endowment, and further, to in many cases obligating a non-profit partner to raising these funds. Large and complex projects take multiple years to complete, and there exists little or no way to see that an endowment funding commitment made at the time of application is actually accomplished by or at closing. With statutory requirements (e.g. USFS Forest Legacy Program) that easements be held by a governmental agency, yet little or no government funding available for stewardship, agency holders are highly dependent on their non-profit partners to raise necessary endowments. The Maine BPL's draft policy on Conservation Easement Stewardship and Easement Stewardship Endowments (see Appendix A) is an attempt to formalize what to this point has been a casually defined or wholly undefined model of partnership between BPL and its non-profit partners.

The availability of governmental funds for stewardship or for endowments should be frequently reviewed, as policy dialog advances in Maine and nationally. Some states, for example, are able to provide funding for stewardship endowment as their land acquisition funds are not bonded (e.g. in some cases, Maryland sets aside 1.5% of acquisition costs for monitoring endowments).

As new sources of funding are developed for land conservation, this model could be applied to Maine.

In recent years, the Maine Bureau of Parks & Lands has begun publicly reporting – through its required annual report to the Maine Legislature - its approach to stewardship and endowments, to increase awareness of the challenges and exposure that the current system creates. This voluntary report supplements more basic legislatively mandated reporting requirements. See Appendix C of <http://www.maine.gov/doc/parks/pdf/2008landsannualreport.pdf>.

## **H. Recommendations**

The following are specific recommendations that address the need for more consistent policy in regards to stewardship endowments for BPL-held easements:

1. BPL should adopt a policy to more formally guide its approach to stewardship and endowments (see Appendix A for a draft recommended policy). It should aim to approach Land Trust Accreditation Commission standards which depend upon an articulated policy. BPL's policy should include:
  - a. an approach to setting required endowment levels;
  - b. an approach to clearly defining at the beginning of project development the expected partnership between BPL and the lead non-profit partner, with respect to raising a stewardship endowment;
  - c. an approach to setting expectations of funding for pre-closing baseline development, pre-closing or post-closing easement monitoring protocols, and other post-closing "start-up" easement expenses;
  - d. an approach to reviewing and adapting to evolving policy and practice;
  - e. compliance with state and federal stewardship and reporting; and
  - f. additional annual reporting (beyond mandated reporting) to the Legislature on stewardship funding and stewardship trends.
2. The Maine Forest Legacy Program and the Land for Maine's Future Program should modify their application scoring approaches to include evaluating the adequacy of proposed endowment levels, using best available guidance including, as applicable, the requirements articulated in the draft BPL Policy: Conservation Easement Stewardship and Easement Stewardship Endowments dated December 1, 2009. (see Appendix A).
3. The Land for Maine's Future Program and the Maine Forest Legacy Program should amend model easement and guidance documents to require that endowments be supplemented as a result of certain actions (e.g. subdivisions).
4. The Maine BPL should systematically track its conservation easement monitoring costs, including staff time, related expenses, and consulting costs, and should revise and otherwise update this paper by the end of 2011, to stay current.

## Bibliography

<sup>1</sup>Adapted from Society for the Protection of New Hampshire Forests, *Conservation Easement Stewardship* brochure, May, 2006, p. 2.

<sup>2</sup>Land Trust Alliance's *Land Trust Standards and Practices*, revised 2004.

<sup>3</sup>Adapted from Forest Society of Maine, *Sample Project Budget Worksheet*.

<sup>4</sup>Modified from Catamount Consulting Group, Inc.'s *Conceptual Approach to Conservation Easement Monitoring of Forest Easements for the State of Maine Bureau of Parks and Lands*, December, 2007.

<sup>5</sup>*Conservation Easements Held by the Bureau of Parks and Lands, An Inventory and Assessment of Issues and Opportunities for Meeting the Bureau's Management Responsibilities and Serving the Public Interest*, November 7, 2007.

<sup>6</sup>USDA Forest Service *Forest Legacy Program Implementation Guidelines*, June 30, 2003, p. 20.

<sup>7</sup>Land Trust Accreditation Commission *Guidance Document: Indicator Practice 11C. Easement Monitoring*, 3/09.

<sup>8</sup>Land Trust Alliance's *Conservation Capacity and Enforcement Capability*, January, 2007, p. 3.

<sup>9</sup>Land Trust Alliance's *Determining Stewardship Costs and Raising and Managing Dedicated Funds*, 2007, p. 56.

<sup>10</sup>University of Maine Foundation website

## Appendix A

### **Draft Maine Bureau of Parks and Lands Policy: Conservation Easement Stewardship and Easement Stewardship Endowments**

December 1, 2009

1. Maine BPL aspires to meet or exceed all requirements for conservation easement holders to monitor and ensure compliance with conservation easement terms. At the date of signature of this policy, such requirements include: (a) annual monitoring and annual written records regarding monitoring of all conservation easements funded by the United States Forest Service; (b) every third year monitoring and written records regarding monitoring of all other conservation easements; and (c) annual reporting to the State Planning Office regarding basic information on all conservation easements.
2. BPL determines to report annually to the Maine Legislature's joint standing committee having jurisdiction over conservation, an overview of the fiscal, administrative, and environmental posture of stewardship of BPL's conservation easements.
3. All conservation easements acquired by the Maine Bureau of Parks and Lands (BPL) after the date of adoption of this policy shall be accompanied by an endowment at the date of closing which will deliver to the Bureau financial resources predicted to cover a reasonable estimation of easement administration stewardship costs for perpetuity. Endowment levels for working forest conservation easements should be set using the Endowment Guideline Table provided in Section E of the attached document (*Determining Monitoring Costs and Stewardship Endowment Levels for Maine Working Forest Easements*) dated December, 2009, as well as an accompanying assessment of major easement monitoring cost factors (also described in Section E of the attached document). Reduced endowment levels, unless substantiated and justified through a monitoring cost analysis with the affirmative concurrence of Bureau planners or administrators most familiar with the proposed easement in question, or exceptions to this requirement, shall be approved only with the written concurrence of the Director of Bureau of Parks & Lands, noting circumstances causing the reduction or exception.
4. Prior to BPL acquisition of any conservation easement, the following requirements shall be met:
  - a. BPL project budgets, project funding applications, and other documents shall include a budget for stewardship endowments, a budget for preparation of baseline documentation in cases where the Bureau agrees to provide or assist in baseline documentation, and a budget for year-one start up costs for easement administration and stewardship.
  - b. Project funding applications expected to lead to BPL acquisition of a conservation easement shall include a signed memorandum of understanding between BPL and a lead partnering non-governmental organization (NGO) which describes the extent of

the NGO's commitment to raise funds for a stewardship endowment by the date of closing. The MOU should recognize that the endowment expectation might grow or change as best practices for conservation easement stewardship evolve over the period between application and project completion. A project funding application that does not include a signed MOU shall include an explanation of planned alternative approaches or commitments to stewardship.

- c. Conservation easement closings shall be conditioned upon the following requirements, which shall be in addition to and never lessening requirements imposed by a funding source. Exceptions shall come only with the signature of the Director of BPL.
  - 1.) Endowments created by or on the date of closing.
  - 2.) Easement baselines signed by grantor and grantee by or on the date of closing
  - 3.) Easement monitoring protocol drafted prior to the date of closing, and signed by BPL staff who will be responsible for easement monitoring.
  - 4.) Year one easement start-up plan drafted prior to the date of closing, with a discussion of available resources, and signed by BPL staff responsible for easement monitoring.

This policy should be updated every two years, recognizing rapidly evolving policy and practice regarding conservation easements.

Signed Director BPL, date.

Acknowledged:

Deputy Director, BPL (initials)

Chief of Planning, BPL (initials)

Senior Planner, BPL (initials)

## **Appendix B**

### **Sample Endowment Agreements between the Maine Department of Conservation Bureau of Parks and Lands, Grantors, and the Maine Community Foundation**

#### **DESIGNATED STEWARDSHIP FUND AGREEMENT WABASSUS LAKE EASEMENT**

*DRAFT 6-4-09*

To establish the Wabassus Lake Easement Stewardship Fund (hereinafter called the "Fund"), we transfer, convey, and pay over to the Maine Community Foundation (the "Community Foundation"), as a charitable contribution located in Ellsworth, Maine: \$50,000.00 + / -.

The Community Foundation is authorized to accept additional contributions to the Fund on terms substantially similar to those set forth herein.

We desire that proceeds from the Fund, as determined by the spending policy set by the Community Foundation's Board of Directors, be distributed to the: Maine Department of Conservation – Bureau of Parks and Lands or its successor agency for stewardship of the Wabassus Lake Conservation Easement in accordance with guidelines attached as Exhibit B. Under the special circumstances defined in Exhibit B, principal distributions can be requested from the fund.

We hereby acknowledge receipt of the administrative fee schedule attached hereto as Exhibit A and accept the terms of said schedule. We further understand the fee schedule is subject to modification and may be increased or decreased at the sole discretion of the Community Foundation's Board of Directors. We agree to be bound by the most current schedule of fees published by the Community Foundation.

We also understand that the Community Foundation, through its duly authorized committees, reserves the right to make the final decision regarding distributions from the Fund. If the designated charitable organization specified above or its legal successors cease to exist or are unable to perform its charitable purposes, the Community Foundation shall, in consultation with The Downeast Lakes Land Trust, use the proceeds from the Fund for purposes that most closely reflect those of Wabassus Lake Easement Stewardship Fund.

In addition, The Community Foundation has variance power<sup>1</sup> over the Wabassus Lake Easement Stewardship Fund. The Community Foundation agrees that if its Board of Directors proposes to exercise the variance power stated in the Articles of Incorporation as amended from time to time,

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<sup>1</sup> Maine Community Foundation Articles of Incorporation, Article Second. The Board of Directors shall have the power to modify, consistent with State law including seeking approval of the appropriate court or Attorney General, where applicable, any restriction or condition on the distribution of funds for any specified organizations if in the sole judgment of the Board when (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community.

the exercise of such power shall not be effective earlier than at least thirty (30) days after Foundation notifies Maine Department of Conservation – Bureau of Parks and Lands in writing of (1) its intent to exercise such power and (2) the manner in which Foundation proposes to vary the purposes, uses or methods of administration of the Fund. During the notice period, Maine Department of Conservation – Bureau of Parks and Lands may advise Foundation of its views regarding the proposed exercise of the power and take such other action, as it deems appropriate. If the Community Foundation becomes aware of any other action instituted or proposed by any person to vary the purposes, uses or method of administration of the Fund, it will promptly notify Maine Department of Conservation – Bureau of Parks and Lands.

If the Community Foundation ceases to be a qualified charitable organization or if Foundation proposes to dissolve, the assets of the Fund shall, after payment or making provision for payment of any liabilities properly chargeable to the Fund, shall, after consultation with Downeast Lakes Land Trust, be distributed in such manner and to such organization or organizations in the state of Maine as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of the Wabassus Lake Easement Stewardship Fund.

Yours very truly,

By: \_\_\_\_\_  
*Mark Berry, Executive Director*

\_\_\_\_\_  
*Downeast Lakes Land Trust*

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2009

The Maine Community Foundation

By \_\_\_\_\_  
*Ellen Pope, Vice President and Chief Operating Officer*

**Wabassus Lake Easement Stewardship Fund**  
**Exhibit B – Guidelines for Administration**  
**DRAFT 6-4-09**

**Distributions**

The Wabassus Lake Easement Stewardship Fund (WLF) is intended to provide permanent support for the conservation easement negotiated on the Wabassus Lake easement as described in documents on file at the [Registry, Book X, page Y] and the [XYZ County Registry, Book X, page Y]. Should the distributions generated by the WLF exceed that which is required for administering the Wabassus Lake easement, the Director of the Maine Bureau of Parks & Lands may utilize such excess income to administer other conservation easements held by the Maine Bureau of Parks & Lands that are contiguous or in close proximity with the Bureau's Wabassus Lake Easement. The proceeds from the fund may be used to monitor conservation easements for potential violations, collect scientific data and other related purposes at the direction of the Director of the Maine Bureau of Parks and Lands.

While it is the intention of the fund establisher that the Wabassus Lake Easement Stewardship Fund be permanent, the establisher recognizes that the Director of the Maine Bureau of Parks and Lands may require the use of principal to enforce the terms of the Wabassus Lake easement or other special and unforeseen purposes. Such requests should be developed in consultation with the Downeast Lakes Land Trust and submitted in writing to the Maine Community Foundation. If a request for principal exceeds five percent of the fund balance, such requests should be co-signed by the executive director of the Downeast Lakes Land Trust.

Similarly, the director of the Bureau of Parks and Lands may request that distributions be withheld and reinvested with principal.

**Fund Liaison**

Financial reports for the SMF will be mailed quarterly to the director of the Maine Bureau of Parks and Lands or his or her designee. Statements would include the fund's balance, investment performance and fees, additional contributions, and distributions from the fund.

**Fund Investment**

The WLF will be invested with the Maine Community Foundation's Primary Investment Portfolio.



## DESIGNATED STEWARDSHIP FUND AGREEMENT ROACHES POND TRACT EASEMENT

This Agreement dated as of \_\_\_\_\_, 2009 is made by and among Plum Creek Maine Timberland, L.L.C., a Delaware limited liability company with a place of business in Fairfield, Maine (hereinafter, together with its successors and assigns, "Seller"); AMC Maine Woods, Inc. (hereinafter, together with its successors and assigns, "Grantor"); the State of Maine, acting by and through its Department of Conservation, Bureau of Parks and Lands, with a mailing address of 22 State House Station, Augusta, Maine 04333 (hereinafter, together with its successors and assigns, "Holder"); and the Maine Community Foundation, a nonprofit charity, with a place of business in Ellsworth, Maine (hereinafter, together with its successors and assigns, "Fund Operator") (hereinafter individually "Party" and collectively, the "Parties"). In consideration of the mutual promises and undertakings herein, the receipt to which is hereby acknowledged, the Parties agree as follows:

1. Roaches Pond Tract Stewardship Fund. On or before delivery and acceptance of the Conservation Easement entitled "Roaches Pond Tract Conservation Easement" of near or even date herewith, by and among Grantor and Holder, attached hereto as Exhibit A (hereinafter "the Conservation Easement"), (a) Fund Operator shall establish a fund to be known as "The Roaches Pond Tract Conservation Easement Stewardship Fund" (hereinafter the "Fund"), and (b) Seller shall deposit One Hundred and Forty Five Thousand Dollars ( \$145,000) into the Fund, receipt of which shall be acknowledged by Fund Operator to Seller, Grantor, and Holder. The purpose of the Fund shall be to provide support to Holder in its role as Holder of the Conservation Easement.

2. Fees charged by Fund Operator and Management of the Fund. Fund Operator shall charge and deduct from the Fund an annual management fee calculated at Fund Operator's customary rate for managing a fund of comparable size as shown on Exhibit B attached hereto. Any increase in the rate of Fund Operator's annual management fee shall be subject to approval by Holder which approval shall not be unreasonably withheld upon a showing by Fund Operator that the existing rate is no longer sufficient to cover its responsibilities as Fund Operator and the increased rate is consistent with management fees charged by similarly situated entities. Fund Operator may accept additional contributions to the Fund from any source. Fund Operator shall manage and invest the Fund as a fiduciary with the long term goal of preserving the value of the principal and making payments to Holder in accordance with this Agreement.

3. Annual Payment to Holder. Beginning on the first anniversary of delivery and acceptance of this Agreement, Fund Operator shall annually pay out to Holder in four equal quarterly installments the sum of six thousand dollars (\$6,000) calculated in 2009 U.S. Dollars, unless Holder notifies Fund Operator of a lesser amount of payment needed to meet its annual responsibilities as Holder. The amount of this annual payment shall be increased upon receipt of each additional contribution to the Fund required under Section 4, by an amount calculated as four percent (4%) of the additional contribution to the Fund. The annual payment, including any increase due to each additional contribution to the Fund, shall be calculated thereafter in 2009 U.S. Dollars.

4. Additional Contributions to the Fund. Grantor shall make additional contributions to the Fund (1) in the amount of five thousand dollars (\$5,000) calculated in 2009 U.S. dollars for each division of the Protected Property pursuant to Section VI.E.1.(a) & (b) of the Conservation Easement, and (2) in the amount of thirty thousand dollars (\$30,000) calculated in 2009 U.S. dollars minus any contributions made pursuant to subparagraph (1) of this subsection 4, pursuant to Section VI.E.6 of the Conservation Easement. No conveyance of any portion of the Protected Property shall be made unless the contribution to the Fund required by this Section is made by Grantor on or before the date of the conveyance and unless a certificate of Holder is recorded at the Registry of Deeds for the county in which the lot is located stating that the required contribution to the Fund has been paid. Upon payment by Grantor of any contributions to the Fund required by this Section, Holder shall execute and promptly record any certificates required under this Section.

5. Adjustment to 2009 U.S. Dollars. Contributions to the Fund and payments from the Fund required by this Agreement shall be paid in the amounts indicated in U.S. Dollars, adjusted for inflation and/or deflation for each year after 2009 based on the Consumer Price Index for all Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the U.S. Department of Labor for each year after 2009, or if that index is discontinued, based on similar index published by the United States Government and selected by mutual agreement of the Parties.

6. Additional Distributions. In the event that Holder incurs costs and expenses related to or arising out of its duties under the Conservation Easement that exceed the annual payment from the Fund, Fund Operator may allow additional distributions from the Fund to Holder in order to cover the additional costs and expenses incurred by Holder in carrying out its responsibilities under the Conservation Easement. In determining whether to grant approval, Fund Operator shall ensure that (1) any additional payments are needed to cover Holder's costs for carrying out its responsibilities under the Conservation Easement, and (2) these additional payments will not compromise the ability of the principal remaining in the Fund to fund Holder's future responsibilities as Holder under the Conservation Easement in perpetuity.

7. Right to Replace Fund Operator. Holder shall have the right, at any time, to remove the acting Fund Operator by recommending to the then current Fund Operator that all or any portion of the Fund be granted to one or more charitable organization(s) selected by Holder (hereafter "Replacement Fund Operator"), provided that each such Replacement Fund Operator (a) agrees to assume the obligations of Fund Operator under this Agreement, (b) is qualified under section 501(c)(3) of the Internal Revenue Code, (c) is not a private foundation under section 509(a), and (d) is otherwise qualified to receive a grant from Fund Operator. Fund Operator's board will approve such action and recommend the grant to a Replacement Fund Operator if Fund Operator's board determines that the grant is legally permissible and consistent with Fund Operator's charitable purposes. No portion of the Fund shall be granted to the Replacement Fund Operator until Replacement Fund Operator signs this Agreement as it may be amended, assuming the obligations of Fund Operator.

8. Fund Operator's Reporting Obligations. Fund Operator shall maintain complete and accurate books, records, and accounts of all receipts received in connection with the Fund. The books and records shall be kept in such manner and such details as the Parties shall reasonably require. All such books and records of Fund Operator that relate to the Fund shall be available for inspection and audit by the Parties, at their expense, at all reasonable times during normal business hours.

By the tenth Business Day after the end of each calendar year (the "Report Date"), Fund Operator shall report to the Grantor and the Holder all of the activity of the previous year. Depending on the effective date of this Agreement, the first Report may be based on a short year. Each annual report shall be prepared in accordance with generally accepted accounting principals, on a cash basis, unless otherwise requested by the Parties.

Promptly upon Fund Operator's approval of a grant of the Fund to Replacement Fund Operator, Fund Operator shall deliver to the Grantor and the Holder the report required by this section for any period not covered by such a report at the time of the grant. All statements, receipts, invoices, checks, financial statements, books, records, and all other instruments and documents shall be delivered by Fund Operator to the Replacement Fund Operator.

9. Contributions to the Stewardship Fund Following Enforcement Actions. Any monetary damages, costs and other amounts recovered by Holder in an enforcement action or legal proceeding as described in Section X.A. of the Conservation Easement shall be deposited by Holder into the Fund, except for the withholding by Holder of the amount of expenses relating to or arising out of the enforcement action or legal proceeding incurred by Holder or its legal counsel in excess of either the annual payment to Holder or the additional distribution from the Fund for the purposes of conducting said enforcement action or legal proceeding.

10. Dispute Resolution. Any dispute among the Parties arising out of or relating to this Agreement shall be resolved in accordance with this Section. Any Party may give written notice of a dispute arising out of or related to this Agreement to the other Parties in person or by certified mail, return receipt requested. The Parties shall attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last Party to receive notice. If the dispute has not been resolved within thirty (30) days, any Party may serve written notice on the other Parties of a request for mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the Parties, shall not exceed one full day or two half days in length, and shall be completed within ninety (90) days from the date of receipt of notice of a request for mediation by the last Party to receive notice. In the event that the Parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 90 days, the dispute shall be submitted to arbitration in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S.A. §5927 et seq.

11. Successors and Assigns. This Agreement shall be binding on Seller, Grantor, Holder, and Fund Operator and their respective successors and assigns.

12. Notices. Any notices or requests for consent or approval under this Agreement must be in writing and will be sufficient if served personally or sent by facsimile with a receipt of delivery, overnight mail with receipt acknowledged, or certified mail, return receipt requested, addressed as follows:

To Seller:	Plum Creek Maine Timberlands, L.L.C. 999 Third Avenue, Suite 4300 Seattle, Washington 98104 Attn: General Counsel Fax Number:
With a copy to:	Plum Creek Maine Timberlands, L.L.C. 49 Mountain Avenue Post Office Box 400 Fairfield, Maine 04937-0400 Attn: General Manager, Northeast Region Fax Number:
To Grantor:	AMC Maine Woods, Inc. c/o Appalachian Mountain Club 5 Joy Street Boston, MA 02108 Fax Number:
To Holder:	Maine Bureau of Parks and Lands 22 State House Station Augusta, Maine 04333 Attn: Director, Planning and Land Acquisitions Fax Number:
To Fund Operator:	Maine Community Foundation 245 Main Street Ellsworth, Maine, 04605 Attention: Ellen Pope Fax Number:

or to such other authorized person as any Party may from time to time designate by written notice to the others in the manner set forth above. Notices given in accordance with this Section will be deemed given and received on the date personally delivered or three days after being sent by any other approved method described above.

13. Miscellaneous.

A. Definitions. Unless defined herein, terms used in this Agreement that are defined in the Conservation Easement shall have the defined meanings as set forth in the Conservation Easement.

B. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, then such holding shall not invalidate or render unenforceable any other provision hereof and the Parties shall immediately renegotiate in good faith such provision to eliminate such invalidity or unenforceability, consistent with the intent of this Agreement.

C. Captions, Titles, and Headings. The captions, titles, and headings used in this Agreement are for convenience only and shall not affect the construction of any terms of this Agreement.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine without regard to principles of conflict of laws.

E. No Third Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, or remedy of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

F. Non-Waiver. Except as may be expressly provided in this Agreement or in a writing signed by the Party against whom a waiver is claimed, the failure of any Party to insist in any instance on strict performance of any provision of this Agreement shall not be construed as a waiver of any such provision or the relinquishment of any rights hereunder in the future, but the same shall continue and remain in full force and effect.

G. Modification. The provisions of this Agreement, including any exhibits, may be modified only by written agreement duly executed by each Party, or their respective successors or assigns. If any part of the Protected Property has been conveyed such that there is more than one legal owner of the Protected Property, this Agreement may be amended in part or in whole but such amendment shall be binding only against the portion of the Protected Property whose owner has duly executed the amendment.

H. Entire Agreement. This Agreement sets forth the complete understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous communications, discussions, agreements, understandings, promises, and/or representations made by any Party to any other Party, whether oral, written, or in any other form, which may have related to the subject matter hereof, not expressly included herein.

I. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the Parties have hereto executed this Agreement as of the date above written.

PLUM CREEK MAINE  
TIMBERLANDS, L.L.C.

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AMC MAINE WOODS, INC.

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MAINE, ACTING BY AND  
THROUGH ITS BUREAU OF PARKS  
AND LANDS

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MAINE COMMUNITY FOUNDATION

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**ROACHES POND TRACT CONSERVATION EASEMENT**

*[See Appendix H of the Concept Plan.]*

**EXHIBIT B**

**CUSTOMARY ANNUAL MANAGEMENT FEE**

Customary Annual Management Fees as % of Asset Value (In Thousands)						
Fund	Less than \$1,000	\$1,000 - \$2,999	\$3,000 - \$4,999	\$5,000 - \$7,499	\$7,500 - \$9,999	Over \$10,000
Organizational Endowment	0.85%	0.75%	0.25%	0.25%	0.25%	0.20%