

Land for Maine's Future Board
Guidelines for Requests for Amendments and Changes of Use
On Land for Maine's Future Funded Projects

A request for an amendment or change of use may be requested by a Cooperating Entity that holds the LMF Project Agreement, or a State Agency that holds the interest in the land or easement acquired with LMF funds (referred to as "the Property"). The Board takes all such requests seriously and has developed this guidance document to ensure that all actions of the Board related to these requests uphold the intent and integrity of the Land for Maine's Future Program and are consistent with state and federal laws.

MRS Title 5 ch. 353 section 6200 The Legislature declares that the future social and economic well-being of the citizens of this State depends upon maintaining the quality and availability of natural areas for recreation, hunting and fishing, conservation, wildlife habitat, vital ecologic functions and scenic beauty and that the State, as the public's trustee, has a responsibility and a duty to pursue an aggressive and coordinated policy to assure that this Maine heritage is passed on to future generations.

PROCESS OVERVIEW:

When a request for an amendment or change of use is made by a Cooperating Entity the following process will be followed. Details of what must be submitted are included in the following sections.

1. The Designated State Agency ("DSA") named in your LMF Project Agreement and LMF staff will review your request once all information is submitted.
2. Thereafter, a site visit may be conducted, and staff will review the criteria and considerations outlined here.
3. Once the DSA has concluded their review, if they are supportive of your request, it will be placed on the LMF Board's agenda for their consideration. Depending on the details and complexity of your request the DSA, LMF staff and Board may request additional information before the Board makes a determination.

1. Cover Letter

Your initial point of contact will be the DSA. Please initiate a conversation with your DSA to discuss your proposal and the expected time frame prior to submitting a formal request. When you are ready to submit a formal request, provide the DSA with a cover letter and support documents associated with your request. A copy of your letter and support documents must be sent to LMF at the same time. The cover letter should address the following information:

1. The current status and condition of the Property.
2. A summary of your request and how the request will result in no change or a net benefit to the conservation values of the Property as described in your LMF Project Agreement. Any proposed amendments that would have a negative impact on conservation values should include proposed steps to off-set the negative impact.
3. Detail what is being proposed, why the change is necessary, what alternatives have been considered, what effect the change will have on the Property, and what impact the proposed change will have upon your stewardship resources. If LMF access improvement funds have

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been used on the Property, please detail whether the proposed change impacts those investments.

4. Reference specific provisions of the LMF Project Agreement/Conservation Easement affected by the proposed change, and include any other relevant information to assist State staff with understanding your request.
5. Include surveys, sketches, engineering designs and reports that help to explain or depict the proposed changes.
6. Include the name and contact information for your designated representative and at least one board member familiar with the Property.

2. Documents Supporting the Cover Letter Request:

1. **For All** - Copies of the original LMF proposal, the recorded deed associated with the initial LMF funding, the PA or CE (as applicable), the baseline document (original and current), and survey;
2. **For All** - Copy of deed into current owner (if owner has changed from initial PA or CE), together with the LMF approval of such change in ownership.
3. **For All** - Copy of title insurance policy insuring current owner and update letter from date of policy to within 30 days of this request (confirms status of title), together with copies of any restrictions, terms or conditions burdening the Property, and an explanation as to how such documents affect title and the proposed changes.
4. **For All** - Provide a summary of other funder's requirements for approval and the status of their approval.
5. **For All** - For fee Properties, provide a signed and notarized certificate from the landowner(s) confirming that there are no known violations of the Project Agreement, municipal ordinances, and state or federal laws and regulations. For easement Properties, provide confirmation that there are no outstanding easement violations and include a current Estoppel Certificate certifying the same. Copies of recent easement monitoring reports may be requested.
6. **For Land Trusts** - Copy of current certificate of good standing from the Maine Secretary of State (short form is acceptable); copy of IRS 501(c)(3) letter confirming your nonprofit status.
7. **For Land Trusts** - Copy of Land Trust Accreditation (if applicable), your board amendment policy, and a summary of your board's process in analyzing the amendment/change of use request against its own policy. Describe any factors of private benefit, private inurement and conflict of interest. If there are none, explain why.
8. **For Land Trusts** - Copy of a recent board vote authorizing this request for change (to document that board is supportive of change; note that if a request is granted, an additional board vote will be required to authorize the change).
9. **For State Agencies** –Cite statutes that outline your agency's authority to undertake the amendment/change, and how this action is consistent with your landownership and management mandate. If you have consulted with the Attorney General's office or other state legal advisors, please provide their summary.
10. **For Municipalities**-Copy of a recent applicable vote from selectmen or town/city council authorizing this request for a change, applicable ordinances or municipal guidelines authorizing the same, and contact information for municipal staff handling the proposal.

3. LMF Staff and DSA Considerations:

When a Cooperating Entity submits a request for an amendment or change of use, the DSA will take the lead in reviewing the request and will work with LMF staff to make a determination of support. If the DSA supports the requested change, the DSA will develop a memo to the LMF Board providing a summary of the request, the due diligence reviewed and the factors the DSA considered in making its recommendation to the Board.

When a State agency submits a notification for an amendment or change of use, LMF staff will take the lead in reviewing and analyzing the request and will work with agency staff and the Attorney General's office to make a determination on whether the requested change is legal, consistent with LMF program intent and what process for approval must be followed (e.g., Board, Commissioner, Legislative, etc...) LMF staff will develop a memo to the LMF Board providing a summary of the request, the due diligence reviewed, and the factors LMF staff considered in making their recommendation to the Board.

1. Will proposed change(s) affect conservation purposes/values outlined in PA/CE? Summarize the net gain, status quo, or net loss to the conservation values.
2. Does the proposed action reduce the acreage available or substantially alter the Property, including altering its physical characteristics and what lands are proposed to replace any proposed lost lands? (This is important for complying with the Designated State Lands statute 12 MRS Sec. 598-A). If yes, what action does the State recommend for obtaining 2/3 majority legislative vote? Is AG's office consultation required or advisable?
3. Does the proposal affect the function of a larger associated conservation project (e.g., block or change access to a trail system)?
4. Were LMF Access Improvement Funds spent and will that investment be negatively affected?
5. Does the DSA view the proposal as within the scope of its responsibilities/authority and is the proposal consistent with the DSA's policies and procedures?
6. Does the request comply with or contradict other allowed/permitted uses and other terms and conditions of the PA/CE? Is there opportunity to correct contradictions with the amendment?
7. What is the Cooperating Entity's track record on stewardship? Has it consistently submitted LMF PA reports? Is it financially stable and capable of carrying out expanded responsibilities? What effect do the proposed changes have on the stewardship responsibilities of the Cooperating Entity, landowner and the DSA? Does the DSA have any recommendations to improve stewardship?
8. Are there private inurement issues? Will the underlying fee owner or the Cooperating Entity receive any payment or other benefit from the proposed change? In the case of a CE, is it recent enough to trigger IRS audit of gift issues?
9. Does the request require an update to the survey, legal description or deed?
10. Will the change require the following prior to implementation and what is the status?:
 - o Underlying fee owner approval (either landowner (CE) or owner over whose lands easements and rights of way to the Property are located)
 - o Municipal approval
 - o Federal or state permits
 - o Legislative review/approval
 - o Governor or other review/approval
 - o Attorney General review/approval

4. LMF Board Considerations:

The LMF Board is granted the responsibility of approving changes to LMF funded Properties held by Cooperating Entities through the LMF Project Agreement.*

If the request is supported by the DSA/LMF, they will develop a memo to the LMF Board providing a summary of the request, the due diligence reviewed and the factors considered in making the recommendation to the Board. The Board may choose to make a determination at the meeting when the recommendation is presented, or may request additional time or information to make their decision.

In addition to the information provided by LMF and DSA staff as part of their analysis, review and recommendations, the LMF Board should also consider the following factors.

1. What percent of LMF funding was used to acquire the Property?
2. How much land will be affected? Will the change reduce or enlarge protected lands?
3. Does the proposal have the approval and support of the DSA and AG's office as applicable?
4. How does the proposed change serve the public interest in the context of the purposes and conservation values for which the Property was acquired, and as outlined in the PA/CE, LMF statutes and bond language?
5. Does the Designated State Lands statute apply to this Property? If so, does the proposed action reduce or substantially alter the Property?¹
6. Is the change substantial enough to warrant a public hearing?

**The LMF Project Agreement (PA) is a contract signed by the Cooperating Entity, Commissioner of the DSA and LMF Board Chair outlining each party's responsibility in holding and managing property or conservation easements acquired with LMF funds. The LMF PA informs the Cooperating Entity when it must seek Board approval for changes to the Property, the terms of the conservation easement or the PA.*

State agencies do not enter into a Project Agreement with the LMF Board and instead rely on existing statutes to govern use, management and disposition of state owned lands. The LMF Board has no authority to approve or deny changes in use and management of state-owned lands.

¹ Note that reduction in Designated Lands requires 2/3 vote of the Legislature and substitution of other adjacent lands