

# *Working Waterfront Access Protection Program: Application Informational Summary*

*Prepared by Maine Department of Marine Resources*



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## How should this document be used?

This document was created to supplement the Working Waterfront Access Protection Program workbook ([Land for Maine's Future Program](#)). We hope this will clarify the purpose of the program and answer common questions. However, the workbook is the most accurate source of information and should be referenced regularly. This document describes the program, eligibility requirements, and application steps. If you have further questions, please contact Maine DMR or the Land for Maine's Future program (info on previous page).

## What is the WWAPP?

The Working Waterfront Access Protection Program (WWAPP) protects commercial working waterfront properties by restricting future development so the properties cannot be developed in ways that are incompatible with commercial fishing or aquaculture activities. This maintains accessible and affordable working waterfronts now and in the future for Maine's marine economy.

Property owners who enter the program permanently restrict their right to develop their property, although development supporting commercial fishing or aquaculture activities is allowed. This is a **permanent** relinquishment of these rights. For simplicity, this transaction is often referred to as the sale or extinguishment of the development rights. If an application is accepted and all program requirements are completed, the property title is encumbered by a [Working Waterfront Covenant](#), which is recorded at the applicable registry of deeds.

The covenant gives Maine Department of Marine Resources (DMR) the right to preserve the property as a working waterfront, although property owners retain their legal rights of ownership over the property. The covenant also includes a Right of First Refusal that allows DMR to review sales of the property and limits the future resale value to the working waterfront value.

Property owners are compensated for entering the WWAPP. The amount is determined by a specialized appraisal (purchased by the applicant) that considers potential activities and the value of the property with and without the covenant in place. The difference between the values is the applicant's compensation (and the value of the rights they will relinquish). After the covenant is in place, the land is forever subject to the agreements and requirements of the covenant.

Maine DMR administers the WWAPP application for the Land for Maine's Future Program (LMF). If applicants choose to relinquish the development rights on their property and enter the WWAPP, LMF staff assist with the drafting of the covenant and other due diligence steps to close the sale.

**Is this a grant?** No. The WWAPP is a *sale*. Property owners are paid for the value of the development rights that they give up and for agreeing to follow the terms of the working waterfront covenant to keep the property in commercial use.

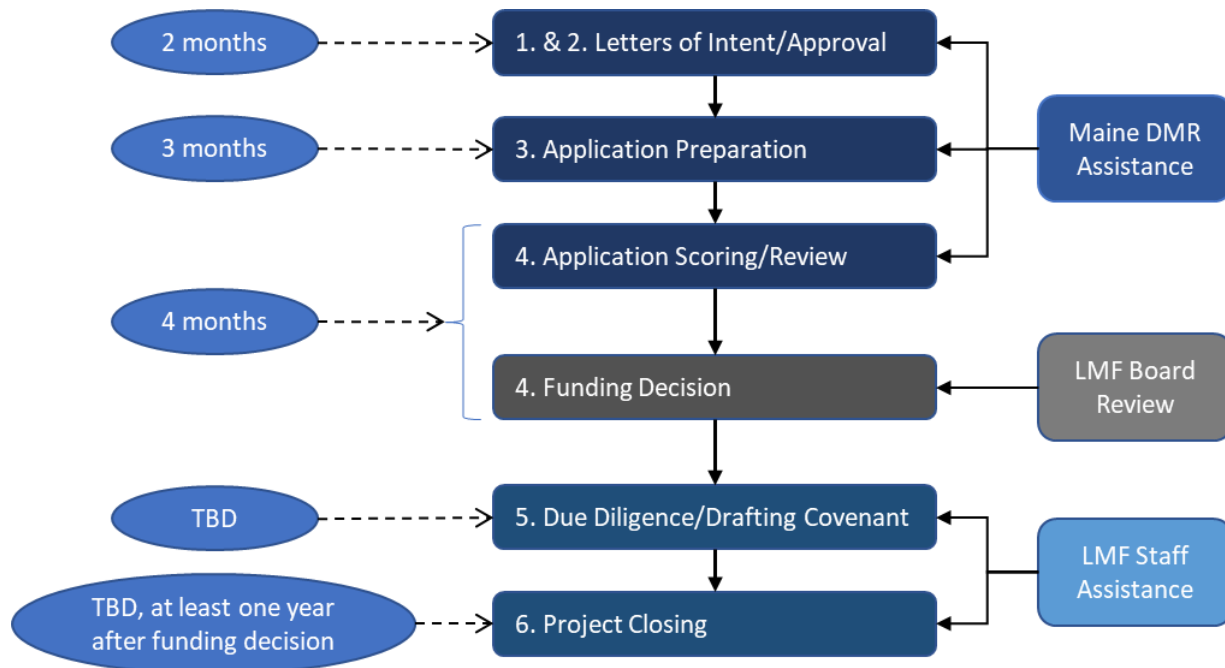
## Who is eligible?

Waterfront properties with wharves, piers, and walk-in or small boat access are eligible for the WWAPP. Properties must be used for aquaculture and/or commercial fishing, either exclusively or in combination with other activities. In cases where multiple activities occur on a property, the applicant must be able to show that the aquaculture and/or commercial fishing uses won't be displaced by other uses of the property. There is a strong preference for projects that protect and secure the use of existing, established facilities and access sites over projects that involve speculative plans to develop new access sites and facilities. The WWAPP focuses on properties used as access points for commercial fishing and aquaculture and is not designed to protect other types of working waterfront properties defined in state law (<https://legislature.maine.gov/statutes/38/title38sec480-B.html>).

## WWAPP steps

WWAPP proposals are evaluated in a competitive round, as funding permits. Maine DMR will announce when a round is open, as well as the deadlines for letters of intent and full applications. DMR cannot entertain proposals outside of the competitive rounds.

- 1) Potential applicants submit a letter of intent to Maine DMR
- 2) DMR encourages appropriate applicants to prepare full applications
- 3) Applicants follow the steps outlined in the [WWAPP Workbook](#). DMR staff are available to assist with application preparation.
- 4) Applications are scored by an external review panel and the scores are presented to the DMR Commissioner. The DMR Commissioner makes recommendations for funding to the Land for Maine's Future board, who reviews those recommendations and determines the allocation of funding.
- 5) If applications are approved for funding, the applicant begins the due diligence and covenant drafting phase and completes the following steps, with assistance from LMF staff:
  - a) Full working waterfront appraisal (to determine covenant value)
  - b) Phase I Environmental Site Assessment
  - c) Property boundary survey
  - d) Deed evaluation and other legal work
  - e) Covenant drafting
- 6) When all due diligence steps are completed and the covenant is finalized, the sale and extinguishment of the development rights occurs when the covenant is recorded at the applicable registry of deeds and the property owner is paid for the sale.



**Figure 1:** WWAPP steps (center), the groups that provide assistance during each phase (right) and an approximate timeline (left). The final two steps (due diligence and closing) can take a year or more but depend on the speed that the necessary tasks are completed.

## Further Details

**What is the Land for Maine’s Future program (LMF)?** Land for Maine's Future is a state program that funds land conservation in Maine. The Working Waterfront Access Protection Program was created by the Maine Legislature in 2005 and [30 commercial fishing properties](#) have been protected as of summer 2022.

### The covenant

**What is the covenant?** The covenant is a permanent restriction (encumbrance) on future uses of the property. The Working Waterfront Covenant is designed to ensure that commercial fishing and/or aquaculture uses are protected and will continue, so other types of development are restricted. However, every covenant is unique, and the allowed uses at each property are determined by the applicant and Maine Department of Marine Resources (DMR) when the covenant is drafted.

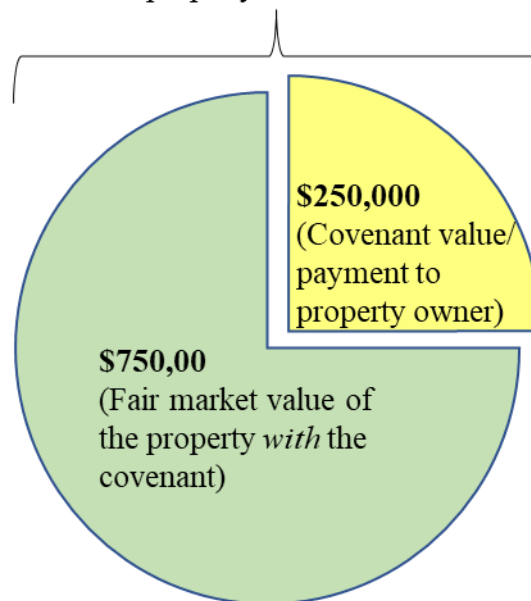
**What is the monetary value of the covenant?** The covenant value is the value of the development rights that are extinguished. This value is determined by subtracting the fair market value of the property *with* the covenant's restrictions in place from the fair market value of the property *without* the covenant's restrictions. Property owners are paid for the reduction in value caused by placing the covenant on their property.

**How much money do I get?** The final amount depends on the results of a working waterfront appraisal to determine the fair market value of the property with and without the covenant. The appraisal determines these values and the Land for Maine's Future (LMF) Board makes the final decision to accept the appraisal.

Although the goal is to pay owners for the entire covenant value, the State's payment cannot be greater than 50% of the fair market value of the property *without* the covenant. If the value of a covenant exceeds that threshold, the State's payment will be less than the full covenant value.

In cases where the highest and best use of the property is commercial fishing or aquaculture (resulting in little to no covenant value using the before and after method described above), the State will consider requests of up to 25% of the fair market value of the property *without* the covenant. For further details, see [Appendix C](#) in the workbook.

Fair market value of the property *without* the covenant = \$1,000,000



**Figure 2:** The working waterfront appraisal determines the fair market value of a property and how the covenant impacts the fair market value of that property. Property owners are compensated for the decrease in the fair market value after the covenant is placed on their property. If the fair market value of a property *without* the covenant is \$1,000,000, and the fair

market value of the property *with* the covenant is \$750,000, then the difference between those values (\$250,000) is the covenant value and is what the owner will be paid for entering their property into the WWAPP.

Fair Market Value ( <i>without covenant</i> )	\$1,000,000
<u>Fair Market Value (<i>with covenant</i>)</u>	<u>- \$750,000</u>
Covenant Value	\$250,000

**When you say the covenant is permanent, what do you mean?** It's permanent! The covenant "runs with the land," which means it is recorded at the registry of deeds and remains on the title of the property forever, even when it is sold to a new owner. The covenant cannot be set aside or affected by other future interests (like mortgages or other liens). Future mortgages are allowed, but only if the lender is willing to let their mortgage be in second place (subordinate) to the covenant. This permanence gives strong protections to working waterfront properties, but it is important to understand the implications of placing the covenant on a property.

**Will the covenant interfere with my ability to make improvements or develop my property?** Not if the changes are to support commercial fishing or aquaculture activities. The goal of the WWAPP is to keep properties useable for commercial fishing and aquaculture, so property owners are allowed to do maintenance and make adjustments as needed to better accommodate these users. Major changes (equal or greater than 10% of the assessed property value) need to be confirmed with DMR to make sure they won't interfere with the commercial uses of the property. This ensures that major investments will work with the covenant before the money is spent. The process of writing the covenant will clarify what activities are (or are not) allowed on the property.

### **Other questions**

**Can I buy back my development rights from the state later?** No. This is a sale to the State of Maine and it cannot be undone.

**Can I remove portions of my property from the WWAPP after the covenant is established?** No. The working waterfront appraisal and covenant are based on the boundary survey of the parcel that was entered into the WWAPP. The property cannot be divided later.

**Do I have to sell my property to the state?** No. You are selling your development rights to the property, but you retain ownership of the property and all other typical ownership rights.

**What is the right of first refusal?** Very simply, Maine DMR needs a heads-up when a WWAPP property owner wants to sell, and the owner will need to keep the state informed about potential buyers. The property owner will also need to commission a new working waterfront

appraisal to determine the value of the property because the sale amount cannot be greater than the current appraised value of the property with the covenant in place. This mechanism makes sure the property stays affordable.

The right of first refusal gives the State a legal way to ensure that the property is sold to an owner who will continue to use the property for aquaculture and/or commercial fishing. The owner does not necessarily need to participate in these activities, but they must agree to maintain the property for use by aquaculture farmers and commercial fishermen. The purpose of the WWAPP is to maintain the property as a working waterfront even when ownership changes.

**How much money is there?** In 2021, the WWAPP received \$4 million (out of a total \$40 million allocation to LMF). As of fall 2022, approximately \$2 million has been allocated and \$2 million remains to be allocated by 2024.

**What am I allowed to do with the funding I receive from the sale of the covenant?** There are no requirements for how (or when) the money is spent. Maine DMR and LMF strongly encourage applicants to reinvest the money in their property or business, for example by addressing maintenance needs, paying down debt, building savings for future use, or creating resilient infrastructure for future conditions. DMR encourages property owners to consider the predicted rates of flooding, storm surge and sea level rise and to plan for infrastructure improvements accordingly. This flexibility allows property owners to spend the money in ways that make the most sense for their business and property.

**Can I reapply to the WWAPP for the same property?** No. You sold your development rights and you cannot sell what you no longer own.

**Are there people who can help me write the application?** Possibly. In the past, some applicants have hired a professional to prepare their application, but many successful applicants have not. The application requirements were developed with the goal that the preparation of the application would be well within the abilities of property owners. You can hire another party to prepare your application, but it will be at your own expense. We are not aware of funding sources to help applicants defray this cost.

**Is my award taxable?** We are not qualified to provide tax advice of any kind, other than to encourage you to discuss this with your tax professional.

## **Detailed application questions**

**What assistance will I get from Maine DMR?** Maine DMR staff (or contracted assistants) will be available to answer questions and provide advice to help you put your best foot forward for the application. We will clarify aspects of the workbook and will review applications for completeness once they are submitted. However, we cannot write applications and will not provide substantial editing assistance. We will schedule kickoff meetings with every applicant

and will visit each site in-person to help us understand your application and provide additional help if needed. Maine DMR assists applicants until funding decisions are made at the LMF Board meeting. After that meeting, applicants who move forward with the process will be assisted by LMF staff until their project closes.

**What assistance will I get from LMF?** Land for Maine's Future staff will primarily help applicants after the LMF Board meeting, and they will assist throughout due diligence until the project closes. However, LMF staff will be available during the initial application phase to answer questions about the covenant drafting and due diligence phases.

**What is DMR sponsorship?** Applications that meet program requirements and are scored highly by the external review panel may be sponsored by DMR, who presents those applications to the LMF Board for a decision about which projects to fund. DMR sponsorship determinations are made after applications are submitted and the external review panel evaluates proposals based on the scoring criteria in the workbook.

**Do I need to provide match?** Each applicant is required to provide matching funds of an amount equal to or greater than their request. This does not have to be cash match; it can include project costs and the remaining value of the property after the covenant is applied. *For further details, see [Appendix C](#) in the workbook.*

**Can I look at past applications?** Ask us! Some aspects of an application, like a business plan or financial statements, are confidential. We can coordinate with you so you can come to our office and read the non-confidential parts.

**How long does the WWAPP application take?** It is not a quick process. You will have about six weeks to complete the LOI and then about four months to complete the application. Several additional months are needed to allow time for the application review and to share those results with the LMF Board. If your project is approved for funding, it will likely take at least an additional year to complete the due diligence steps and prepare for closing, but this phase can take substantially longer. We estimate a year and a half at the absolute minimum, but projects often take two years or more to close (and you to get paid) after the application round is opened.

**When do I order the appraisal?** The appraisal will take place after the LMF Board has decided which projects to fund. The appraisal and all following steps are considered the due diligence phase of the application. The required appraisal can take several months to complete and is expensive, requiring \$5,000 or substantially more, depending on property size. It is best to wait to spend this money until you have confirmed that the LMF Board has decided to fund your project and you are in the due diligence phase. The appraisal ultimately determines how much money you will receive for participating in the WWAPP and if it is in your best interest to continue. The appraisal must also be current at the end of the process and the closing of the sale



of your development rights to the State. Your LMF contact will be available to answer questions about the appraisal and due diligence phases.

**How do I know how much money to request in my application if I haven't done an appraisal?** We suggest that applicants ask a local realtor to estimate the fair market value of their property when they are working on their application. In most cases, applicants are encouraged to use 25% of the realtor's estimate of fair market value as the estimated covenant value for their application.

**Do I have to have an education or outreach component on my property?** No. Mixed uses are allowed but are not required and will not necessarily improve your scoring. If you are considering it, you will need to make sure that the commercial uses are not displaced by the educational ones.

**Will I have to spend my own money on this application?** Yes.

**What are the costs associated with the WWAPP?** You will need to print copies of the application. If your project is chosen for funding by the LMF board, you will need to pay for the appraisal, property boundary survey, Phase I Environmental Site Assessment, and any legal fees involved with completing the due diligence phase, finalizing your covenant, and closing on the sale of your development rights. You can use the WWAPP award to reimburse yourself for these costs, but you will have to cover them upfront. That is why we encourage applicants to wait until the LMF board has made their initial funding decision before moving forward with the appraisal. We also recommend waiting until the LMF board accepts your appraisal (which determines your final award amount) before moving forward with the remaining items. At that point, you will have a better understanding of your total compensation and can decide if continuing with the WWAPP is in your best interests.

**What type of Environmental Site Assessment (ESA) do I need?** You will need a Phase I Environmental Site Assessment.

**How long will the Environmental Site Assessment and appraisal be current?** They both have a shelf life of one year and must be current when the project closes. For example, an appraisal dated to March 1, 2022, would only be current until March 1, 2023. Your LMF staff contact will be available to help you if you have any questions.

**I feel like the application was written for a different type of property.** Don't worry about it. The WWAPP has diverse applicants and not all questions will be relevant for every property. See "What assistance will I get from Maine DMR?"

**If I am an aquaculture farmer, do you want to see my farm's lease?** Nope! In this case, we are interested in the property itself, not your individual farms.