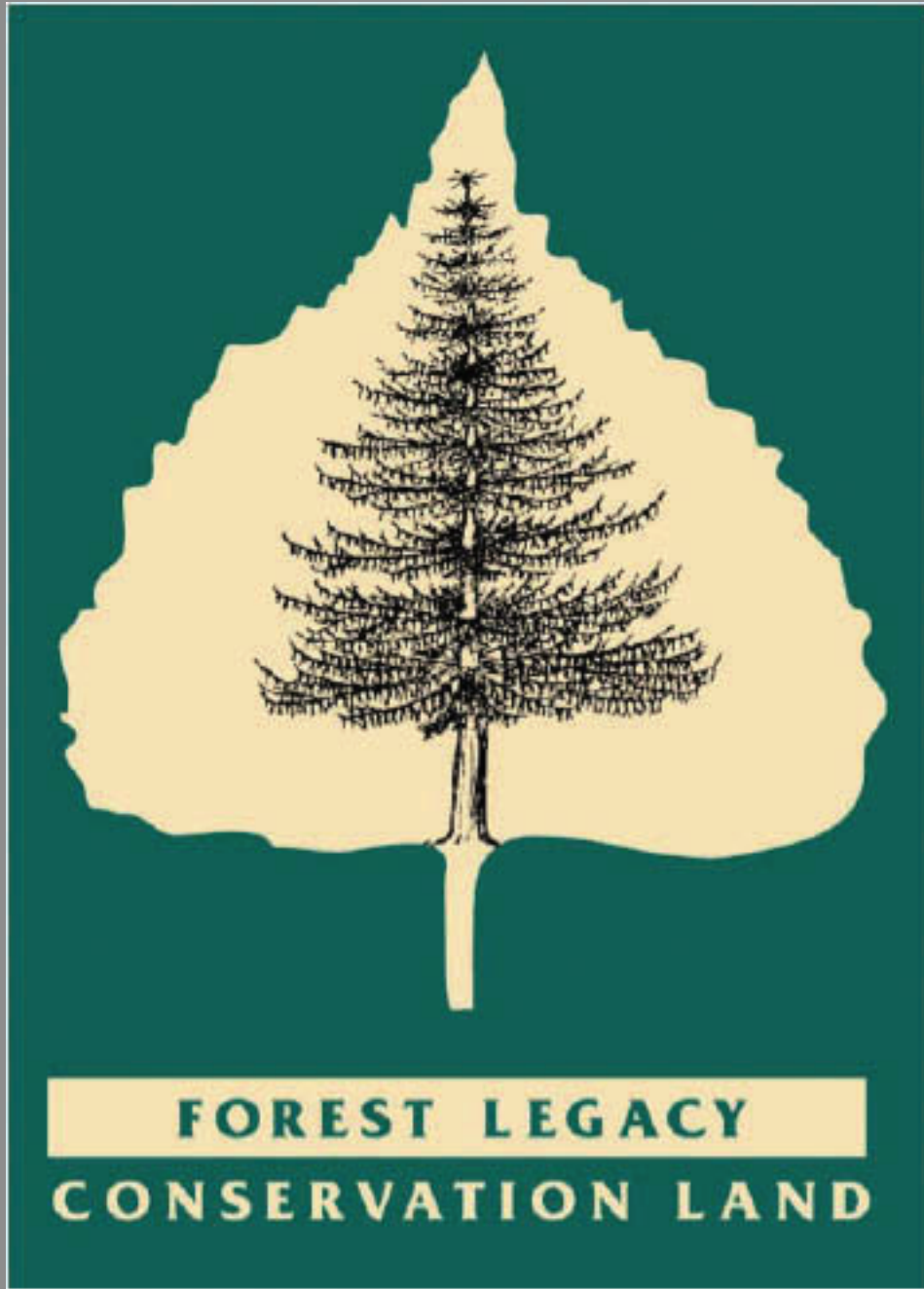




United States Department of Agriculture

Forest Legacy Program Implementation Guidelines



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United States Department of Agriculture

Forest Legacy Program Implementation Guidelines



Forest Service

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General Information for Landowners

The Forest Legacy Program (FLP) uses both fee-simple land purchases and permanent conservation easements to protect important forest areas from development and fragmentation in order to ensure conservation of the important public benefits that forests provide. The FLP is implemented as a grant program with State agencies, and those agencies hold the interest in the land acquired with FLP funds. The FLP operates on a willing buyer-willing seller basis, and the FLP may not use condemnation if negotiation does not result in a mutually acceptable agreement.

With fee transactions, the landowner conveys all his or her interest in the land by selling the land. In the case of a conservation easement, the landowner chooses to perpetually restrict certain uses of his or her land. Conservation easements restrict development, limit uses that impact the conservation values, and require adherence to a Multi-Resource Management Plan to protect values such as soil and water, biological diversity, recreation, timber, and more.

Projects are selected for funding through a competitive process—first at the State level and then at the national level. The process of applying, being selected, receiving funding, and conducting due diligence (appraisal and appraisal review, title review, survey, etc.) on a project can take several years. It requires a high degree of commitment from landowners and partners.

If a landowner is interested in participating in the FLP by selling his or her land or conveying a conservation easement, the first step is to get in touch with the State contact for the FLP in the State where the property is located to discuss general and State-specific program requirements. (General discussion of eligibility can be found in Section 8.) A list of State contacts can be found at https://www.fs.fed.us/spf/coop/library/flp_all_contacts.pdf.



I. Introduction to the Forest Legacy Program Implementation Guidelines

The Forest Legacy Program (FLP) was established in 1990 through an amendment to the Cooperative Forestry Assistance Act (CFAA) of 1978 (16 USC 2101 et seq.). The purpose of the FLP is to identify and protect environmentally important private forestlands that are threatened by conversion to nonforest uses and provide the opportunity for continuation of traditional forest uses, such as forest management activities and outdoor recreation.

Landowner participation in the FLP, including the sale of lands and interests in lands, is entirely voluntary. The U.S. Department of Agriculture, Forest Service, implements the FLP through State participation, consistent with these National FLP Implementation Guidelines, and as described in each State Forest Action Plan. The Forest Service and States also cooperate with tribal and local governments, other Federal agencies, forest landowners, land trust organizations, and other partners to implement the FLP.

The primary intended audience for these Guidelines are Forest Service and State program coordinators. These Guidelines provide direction to the Forest Service and State partners for implementation of the FLP.

Landowners may refer to Part 1, Sections 1 and 2, for general program information and Part III, Section 8 for discussion of project eligibility. Program implementation varies by State, so please go to <https://www.fs.fed.us/spf/coop/programs/loa/flp.shtml> website to find appropriate FLP contacts and information.

These Guidelines were first issued in 1992, and then updated in 1996, 2003, and 2011 in consultation with the States. This version replaces all previous versions and applies to future FLP activities. Open FLP grants that were awarded prior to the issuance of these revised Guidelines must follow the version in effect at the time of the grant award, or alternatively, existing grants could be modified to be guided by these new Guidelines. This document is organized into nine parts:

- Part I – Forest Legacy Program Overview
- Part II – Forest Legacy Program Structure and Funding
- Part III – Forest Legacy Project Eligibility and Selection
- Part IV – Forest Legacy Program Procedures and Grants Management
- Part V – Land-Acquisition Process and Requirements
- Part VI – Post-Acquisition Requirements
- Part VII – Program Oversight
- Part VIII – Forest Legacy Program Glossary of Terms and Acronyms
- Part IX – Appendixes

Part I



Part I – Forest Legacy Program Overview

1. Background and History

In the late 1980s, industrial timber land sales in northern New England caused New Englanders to realize that “paper company” lands, which had traditionally been open for public access and had provided timber products to numerous mills in the region, were in danger of conversion to other uses. This threat led Congress to direct the U.S. Department of Agriculture, Forest Service, to study the timberland resources of New York, Vermont, New Hampshire, and Maine, an area referred to as the Northern Forest Lands. The Governors of these four States commissioned a task force to work with the Forest Service in the development of the study. The task force’s purpose was to assess the resources, ownership patterns, and the impacts of conversion of timberlands in this area, and then identify strategies to protect their long-term integrity and traditional uses. One of the strategies identified in the Northern Forest Lands was to acquire lands and conservation easements to permanently protect key parcels from conversion to nonforest uses.

The Forest Legacy Program (FLP) was established in 1990 through an amendment to the Cooperative Forestry Assistance Act (CFAA) of 1978 (16 USC 2101 et seq.) to promote the long-term integrity of forestlands. This amendment recognized that:

- The majority of the Nation’s forest lands are in private ownership;
- Private landowners face increased pressure to convert their forest lands to other uses;
- Private lands provide a wide variety of products and services from working forests, including timber and other forest commodities, fish and wildlife habitat, watershed function, water supply and quality, aesthetic qualities, historical and cultural resources, and recreational opportunities; and
- Good stewardship of privately held forest lands requires a long-term commitment that can be fostered through a partnership of Federal, State, local government, and individual efforts.

When the FLP was originally authorized in the 1990 Farm Bill, initial FLPs were established in the States of Maine, New York, New Hampshire, and Vermont in furtherance of the recommendations in the Northern Forest Lands Study, and in the State of Washington. The law also directed the Secretary of Agriculture to establish additional FLPs throughout the country upon the completion of assessments of need for such programs.

The Secretary of Agriculture was directed to establish the FLP in cooperation with State, regional, and other units of government. The Secretary then delegated this authority to the Forest Service to carry out this mandate. The Forest Service is authorized to acquire lands and interests in lands in perpetuity for inclusion in the FLP. The FLP acquires and accepts donations of perpetual conservation easements that permanently limit property interests and uses of forest land to protect specific conservation values. In these cases, the properties remain in private ownership. The FLP also purchases and accepts as donations forested

properties in full fee. These properties are acquired by State or local governments and can become new State parks, State forests, wildlife management areas, and other public land. Landowner participation in the FLP is entirely voluntary.

Originally, all lands or interests in lands acquired through the FLP were held by the Federal Government. In 1996, Congress amended the law to permit the Forest Service to make FLP acquisition grants to States. This “State grant option” allows lands or interests in lands to be held by the State or local units of government.

The FLP is funded through the Land and Water Conservation Fund (LWCF). These funds are generated through royalties from off-shore drilling activities. Congress determines the FLP budget as part of the annual Forest Service appropriation.

Since 1990, the FLP has expanded across the country to include 49 States and 4 Territories. In the first 25 years of the program (1990–2015), 2.5 million acres were protected.

2. Purpose and Authority

Purpose of the Forest Legacy Program

The purpose of the FLP is to identify and protect environmentally important forest areas that are threatened by conversion to nonforest uses and to promote forestland protection and other conservation opportunities. Desired outcomes include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values. Traditional forest uses, including timber management, as well as hunting, fishing, hiking, and similar recreational uses are consistent with purposes of the FLP. The FLP acquires and accepts donations of perpetual conservation easements that permanently limit property interests and uses to protect forest values. The FLP also purchases and accepts as donations forestland in full fee. The FLP only works with willing sellers or donors.

Authority

The CFAA of 1978, as amended, (16 USC 2101 et seq.) provides authority for the Secretary of Agriculture (Secretary) to provide financial, technical, educational, and related assistance to States, communities, and private forest landowners. Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624:104 stat.3359; 16 U.S.C. 2103c), also referred to as the 1990 Farm Bill, amended the CFAA and directs the Secretary to establish the FLP to protect environmentally important forest areas that are threatened by conversion to nonforest uses. This authority continues indefinitely. Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; Public Law 104-127; Title III - Conservation; Subtitle G - Forestry; Section 374, Optional State Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out the FLP in that State, including the acquisition by the State of lands and interests in lands. (See Appendix A – Authorizing Legislation for the Forest Legacy Program for a copy of the authorizing language for the FLP from the CFAA.)

Delegations of Authority

The Secretary has delegated authority to administer all aspects of the FLP to the Under Secretary for Natural Resources and Environment (7 CFR 2.20(a)(2)(xvi)), who in turn has delegated the authority to the Chief of the Forest Service (7 CFR 2.60(a)(16)). These delegations only apply within the U.S. Department of Agriculture and its agencies.

3. Other Related Laws

The following laws and regulatory requirements guide and inform Federal actions and land acquisition activities. The applicability of these laws to FLP implementation is described below.

Uniform Act

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (“Uniform Act”; 42 USC 4601, et seq.) provides guidance and procedures for the acquisition of real property by the Federal Government, including relocation benefits to displaced persons. Department of Transportation regulations implementing the Uniform Act (49 CFR 24) have been adopted by the Department of Agriculture (7 CFR 21). However, the FLP is exempt from the Uniform Act regulatory impacts because the program meets the following criteria stated at 49 CFR 24.101(b)(1):

- (i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See Appendix A of the Uniform Act, §24.101(b)(1)(i).)
- (ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- (iii) The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- (iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (See Appendix A of the Uniform Act, §24.101(b)(1)(iv) and (2)(ii).)

National Environmental Policy Act

FLP project grants are subject to National Environmental Policy Act (NEPA) (NEPA; Public Law 91-190; 42 USC §4321) and will comply with Forest Service NEPA implementing procedures as described in 36 CFR 220, as well as the Council on Environmental Quality’s NEPA procedures at 40 CFR 1500-1508. Since FLP grants are to be used for transferring title and ownership of private lands to third parties and will not fund any ground-disturbing activities, FLP grants fall under the categorical exclusion provided in the Forest Service’s NEPA procedures for “acquisition of land or interest in land” 36 CFR 220.6(d) (6). As a result, FLP project grants are excluded from documentation requirements of an environmental assessment or impact statement. (See Appendix B – National Environmental Policy Act Categorical Exclusion Letter for a copy of the categorical exclusion letter.)

Civil Rights Act

Agencies that grant funds will ensure that their recipients and sub-recipients comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of services), and a variety of program-specific statutes with nondiscrimination requirements. In the case of FLP grants, the Forest Service will:

- Make sure our partners/recipients/sub-recipients read and comply with the body of Civil Rights laws, maintaining signed assurances for all who receive Federal money.

- Ensure the proper display of the “And Justice for All” U.S. Department of Agriculture poster (AD-475C) in the grant recipient’s public reception areas or other areas visible to the public, providing copies when requested.
- Ensure inclusion of the most current U.S. Department of Agriculture statement about nondiscrimination and how to file a complaint in your publications and outreach materials.
- Ensure a credit of affiliation with the Forest Service and recognition of the grant.
- Ensure efforts are made to provide FLP materials in alternative formats and language (for persons with disabilities or limited English proficiency).
- Comply with other administrative and accessibility requirements listed in Grants and Agreements pamphlet FS-850.

Endangered Species Act

The Endangered Species Act (ESA) of 1973 (ESA; 16 USC §1531 et seq.) is designed to protect critically impaired species from extinction. This law requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Oceanic and Atmospheric Administration (NOAA) Fisheries Service, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. Actions that may result in adverse modification require biological assessment and consultation with USFWS and/or NOAA. Federally funded FLP acquisitions do not negatively affect impaired species but rather can provide permanent protection of critical habitat by restricting activities that convert forests to other uses.

Since the FLP only funds acquisition of land and interests in land, and does not fund management activities, ESA consultation procedures do not apply to FLP grants.

Americans with Disabilities Act and Other Related Laws

The Americans with Disabilities Act (ADA) of 1990 (ADA; Public Law 101-336, 104 Stat. 328) prohibits discrimination on the basis of disability in the private and State and local government sectors. The Architectural Barriers Act (ABA) of 1968 and the Rehabilitation Act of 1973 require programs and activities using Federal funds to provide an equal opportunity for individuals with disabilities to participate as independently as possible. The United States Access Board develops and maintains accessibility guidelines for the construction and alteration of public facilities covered by these laws. For outdoor developed areas, such as campgrounds, picnic areas, viewing areas, and public trails, the Board has issued requirements that apply only to sites developed by the Federal Government. These requirements do not currently apply to Federal grants or loans, but this is subject to future rulemaking.

The FLP does not fund construction or alteration of any buildings, facilities, or outdoor developed areas, and thus the receipt of FLP grant funds does not trigger these Federal laws per se. However, if a completed project includes the construction or alteration of any facilities for public use, even though these activities are not funded by the FLP, the property owners (State and local government or private) should ensure they comply with all relevant ADA standards and guidelines.

See the following useful resources to help design accessible facilities and outdoor developed areas:

- U.S. Access Board Guidelines and Standards: www.access-board.gov/guidelines-and-standards
- USDA Forest Service Accessibility Guidebook for Outdoor Recreation and Trails, August 2012 (FS publication 1223-2806P-MTDC)

Section 106 National Historic Preservation Act

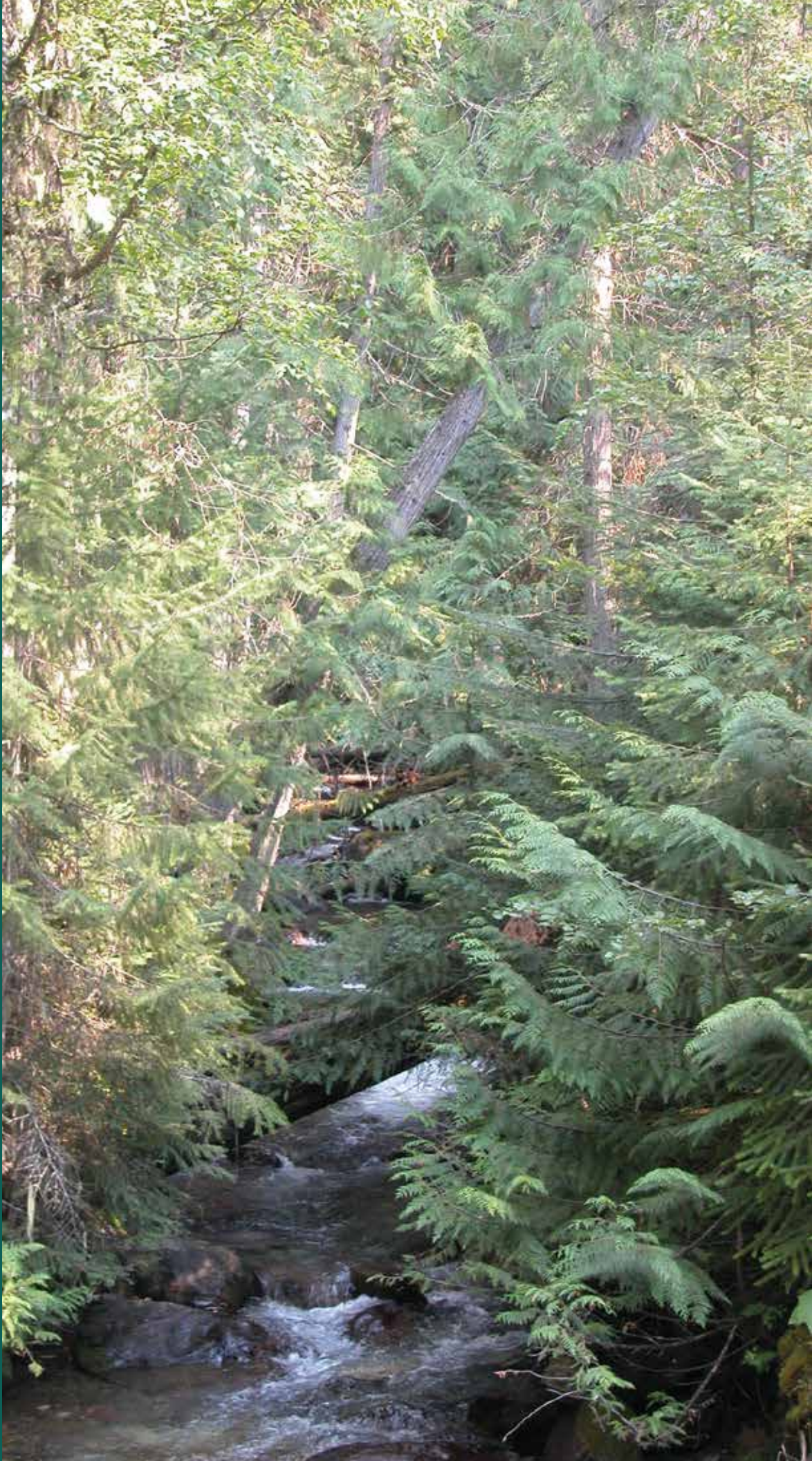
Section 106 of the National Historic Preservation Act (NHPA) of 1966 (NHPA; Public Law 89-665; 16 USC 470 et seq.) requires Federal agencies to consider the effects of their undertakings on historic properties. Regulations (36 CFR Part 800) issued by the Advisory Council on Historic Preservation outline the historic preservation review process mandated by Section 106. Federally funded FLP acquisitions do not negatively affect historic resources but rather provide permanent protection by restricting activities that convert forests to other uses. Since the FLP only funds acquisition of land and interests in land, and does not fund management activities, Section 106 procedures do not apply to FLP grants.

However, if a State plans to conduct other activities, such as construction of trails or harvest of timber, on an FLP tract and there is a potential impact on historic resources, then the State should consult with its State historic preservation officer on appropriate procedures and public involvement. This does not apply to conservation easements on private lands unless the landowner receives Federal funds for the activity in question. In those cases, the landowner should coordinate with the applicable Federal agency to determine if Section 106 requirements apply.

Federal and State Tax Laws

The FLP projects for which the landowner expects to receive tax benefits are subject to complex Federal and/or State tax law requirements that must be met in addition to the requirements of the FLP. These Guidelines do not provide advice regarding Federal or State tax law requirements. Landowners interested in qualifying for tax benefits should consult appropriate legal counsel.

Part II



Part II – Forest Legacy Program Structure and Funding

4. Options for State Participation

State Grant Option

The Forest Legacy Program (FLP) authorization was updated in the 1996 Farm Bill to include a “State grant option” which allows the U.S. Department of Agriculture, Forest Service, to provide grants to States for acquisition and allows States to hold the title to lands or interests in lands acquired with those funds. Each State, Territory, and Commonwealth (hereafter referred to as States) electing to participate in the FLP must assign a lead State agency to oversee FLP administration through a Governor-level designation or pursuant to State law. The State Lead Agency is usually a forestry agency, but may be another natural resource or land management agency. Each State wishing to enroll in the FLP must also complete a State Forest Action Plan that includes the required FLP elements. (See Section 6 – State Forest Action Plans for information on plan requirements; see Section 7 – Forest Legacy Program and Project Funds for information on the different types of grant funds; and Section 10 – Grant Requirements for States for guidance on grant requirements.)

Federal Acquisition Option

When the FLP was first authorized in the 1990 Farm Bill, only the Federal Government, acting through the Forest Service, could hold the title to lands or interests in lands acquired through the FLP. The State maintained the responsibility to manage lands and monitor conservation easements that were acquired through the FLP. After the State grant option was established in 1996, most acquisitions have been through the State grants, although occasionally a State has asked the Forest Service to hold the title to lands or interests in lands acquired through the FLP. All FLP Federal acquisitions must be requested by and coordinated with the State Lead Agency. (See Section 11 – Federal Acquisition Procedures for Federal acquisition procedures.)

5. Roles and Responsibilities

Forest Legacy Program Participation

Private Landowners

Both nonindustrial and industrial private landowners can participate in the FLP. Projects are selected based on the tract qualities and benefits, in accordance with the national project selection criteria (see Section 9 – Project Selection Process). Selection is “blind” to landowner financial status, gender, ethnicity, race, sexual orientation, corporate status, and other landowner information. Participation in the FLP is voluntary, and a landowner can choose to withdraw a project from funding consideration at any time before the final closing and legal transfer of ownership/interests.

Landowners with completed FLP conservation easements on their property(s) have the long-term responsibility for managing their land in a manner consistent with the purposes of the FLP and the terms specified in the conservation easement and Multi-Resource Management

Plan. Landowners who purchase or inherit properties with FLP conservation easements also assume these long-term roles.

State and Local Governments

The State Lead Agency (as designated by the Governor) is responsible for overseeing FLP administration and can hold land or interests in land acquired through the FLP. Other State agencies and local units of government may participate in the FLP through agreements made with the State Lead Agency to help facilitate transactions, hold title to land, or hold the conservation easement. Governmental entities that hold title to land or conservation easements purchased through FLP have the long-term responsibility for managing their land in a manner consistent with the purposes of FLP and in accordance with the terms specified in the conservation easement and Multi-Resource Management Plan.

Tribal Governments

Federal- or State-recognized tribes can participate in the FLP in partnership with the State Lead Agency under either the State grant or Federal acquisition option. Only nontrust tribal allotment lands can qualify for protection using FLP funds. The FLP funds cannot be granted directly to a Tribal government but may be granted to the State Lead Agency in support of a project as proposed by a Tribal entity. In accordance with limitations in the FLP statute, FLP acquisition funds can only be granted to a State Lead Agency and the purchased land, or interests in land, must be held by a unit of State government.

Land Trusts and Other Nonprofit Organizations

Nonprofit entities, such as land trusts, are not eligible to hold land or interests in land that are purchased with FLP funds. However, qualified nonprofit organizations can hold land and interests in land for fully donated tracts enrolled in the FLP. Nonprofits can also work on behalf of State Lead Agencies to help facilitate project development, due diligence, and monitoring. Nonprofit roles vary in each State and may include:

- Identifying projects,
- Developing project applications,
- Serving on the State Forest Stewardship Coordinating Committee (SFSCC),
- Facilitating negotiations on behalf of the landowner or the State,
- Helping to secure sufficient cost share,
- Facilitating project completion,
- Acting as an intermediary to purchase and hold lands or interests in lands at the request of the State,
- Holding and managing cost-share properties,
- Monitoring conservation easements through agreements with the State, and
- Owning fee title or holding conservation easements for donated tracts.

Forest Legacy Program Administration

The FLP is administered through two Forest Service levels and through State Lead Agencies:

Washington Office refers to the Forest Service State and Private Forestry staff located within the Washington, DC, office. National roles include:

- Overseeing national FLP budget, including national redirection and reprogramming,
- Coordinating with Office of Management and Budget and Congress during Federal budget and appropriations development,

- Overseeing policy development,
- Providing leadership and oversight on national FLP issues,
- Coordinating with the National Association of State Foresters (NASF) and other national partners,
- Managing national competitive selection of projects, and
- Conducting regional FLP program reviews.

Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) refers to the units of the Forest Service responsible for FLP management and oversight within the Forest Service regions, Northeastern Area, or International Institute of Tropical Forestry (IITF). (See Appendix C – USDA Forest Service Map for a map of each R/A/I). Roles include:

- Identifying a program manager to serve as the primary point of contact for the State Lead Agency;
- Overseeing R/A/I FLP program budget, including administrative and acquisition grant allocations and regional redirection,
- Providing oversight and assistance for FLP and project implementation, appraisal services, project eligibility and documentation, and State Forest Action Plan updates,
- Participating in the review and selection of projects,
- Awarding and monitoring grants to States,
- Coordinating national, regional, and State-level FLP priorities and issues,
- Coordinating with regional and State partners, and
- Conducting State FLP program reviews and coordinate Quality Assurance Inspections (QAI).

North, South, and West regions refer to the broad geographic regions where R/A/Is and State Lead Agencies (see Appendix C – USDA Forest Service Map) work together to conduct regional FLP program meetings, training sessions, and pre-reviews of project proposals. These geographic regions mirror the regional divisions of the NASF.

State Lead Agency can only receive FLP funds after completion and approval of a State Forest Action Plan that meets all FLP requirements (see Section 6 – State Forest Action Plans). State roles include:

- Consulting with the SFSCC to achieve FLP purposes,
- Preparing and updating the FLP components of the State Forest Action Plan,
- Requesting, receiving, and managing FLP grants for FLP administration and acquisitions,
- Soliciting project proposals and obtaining the review and ranking of proposals by the SFSCC,
- Submitting projects for Forest Service consideration through the national process,
- Maintaining long-term project records,
- Coordinating completion of due diligence work for project development and completion,
- Conducting or coordinating long-term monitoring and enforcement of FLP conservation easements and report findings to the Forest Service,
- Assuring long-term management of FLP properties in accordance with Multi-Resource Management Plans, and

- Overseeing other agencies or units of government that hold land or interest in land acquired through the FLP to ensure that the land is managed in accordance with the purposes for which it entered the FLP.

State Forest Stewardship Coordinating Committees are established in each State in accordance with Section 19 of the Cooperative Forestry Assistance Act (CFAA) of 1978. Each committee should include, to the extent practicable, individuals representing the following: local governments, consulting foresters, environmental organizations, forest products industry, forest landowners, land-trust organizations, conservation organizations, State fish and wildlife agency, and the USDA Natural Resource Conservation Service’s State Technical Committee. States are encouraged to broaden this composition to include other relevant interests. SFSCC roles in implementation of the FLP include:

- Advising the State Lead Agency to help achieve FLP objectives;
- Providing input and advice for development and updates to the State Forest Action Plan, including establishing State FLP goals, FLP priority areas (Forest Legacy Areas), eligibility requirements and selection criteria;
- Reviewing and recommending project proposals at the State level; and
- Reviewing significant changes to projects that occur before the project closes, and providing recommendations on whether the project should still proceed.

6. State Forest Action Plans

Since the creation of the FLP in the 1990 Farm Bill, States interested in participating in the FLP have been required to demonstrate eligibility through development of an Assessment of Need (AON) that is approved by the U.S. Secretary of Agriculture through the Forest Service. The 2008 Farm Bill amended the CFAA to require each State to complete a Statewide Forest Resource Assessment and Long-Term Forest Resource Strategy (commonly known as a State Forest Action Plan) in order to receive funds under the CFAA. This includes both FLP project and administrative funds. The 2008 Farm Bill also states that, once approved, the State Forest Action Plans “shall be deemed to be sufficient to satisfy all relevant State planning and assessment requirements” under the Act. As a result, the previous FLP planning requirements that were manifested in the AON must now be incorporated into the State Forest Action Plan.

Forest Legacy Assessment and Identification of Forest Legacy Areas

In order to participate in the FLP, a State documents its need for inclusion in the FLP through an evaluation of current forests, forest uses, and the trends and forces causing conversion to nonforest uses as part of its State Forest Action Plan, as required by the 2008 Farm Bill. These elements must be incorporated into the State Forest Action Plan in one of two ways:

1. All required elements are integrated into the State Forest Action Plan. This is the preferred process, particularly if the lead agency is the State forestry agency.
2. A separate, standalone Forest Legacy Assessment document is developed and included as an appendix of the State Forest Action Plan.

If the State Lead Agency is not the State forestry agency, the State Lead Agency must coordinate with the State forestry agency to ensure all required FLP elements are included in the State Forest Action Plan.

For the purposes of the FLP, the State Forest Action Plan must define eligibility criteria that the State will use to identify and delineate important forest areas as Forest Legacy Areas, identify goals for each FLA, and outline the State’s project evaluation and prioritization procedures.

State Lead Agencies may utilize the services of land trusts or other entities to develop the required FLP information for inclusion in the State Forest Action Plan. Information from existing sources may be used, rather than initiating new studies that would duplicate existing data. Examples of appropriate sources include Wildlife Action Plans, State Comprehensive Outdoor Recreation Plans, growth management studies, State cultural site inventories, inventories of threatened and endangered species, and other State, regional, or local plans, studies, or reports. The State Forest Action Plan shall include relevant information about both public and private lands, address the issue of how best to maintain the integrity of forestlands for future generations, and address pertinent issues as identified by the State.

At a minimum, the State Forest Action Plan must address the following as they relate to the purpose of the FLP:

- a. Forest resources and benefits including:
 - Aesthetic and scenic values,
 - Fish and wildlife habitat,
 - Public recreation opportunities,
 - Soil productivity,
 - Forest products and timber management opportunities, and
 - Watershed values including water-quality protection.
- b. The present and future threat—as defined by the State—of conversion of forest areas to nonforest uses;
- c. Historic or traditional uses of forest areas, and trends and projected future uses of forest resources;
- d. Current ownership patterns and size of tracts, and trends and projected future ownership patterns;
- e. Cultural resources that can be effectively protected;
- f. Outstanding geological features;
- g. Threatened and endangered species;
- h. Other ecological values;
- i. Mineral resource potential;
- j. Protected land in the State, to the extent practical, including Federal, State, municipal lands, and private conservation organization lands; and
- k. Issues identified by the SFSCC and through the public-involvement process.

Using the above information the State Forest Action Plan shall include the following:

- a. Identification of applicable eligibility criteria;
- b. Identification of specific FLA(s) for designation;
- c. Specific goals and objectives to be accomplished by the FLP; and
- d. Process to be used by the State Lead Agency to evaluate and prioritize projects to be considered for inclusion in the FLP.

Eligibility Criteria Identification

The CFAA directs the Secretary to establish eligibility criteria for the designation of FLAs, in consultation with the SFSCC. These criteria should be based upon the FLP purpose to

protect environmentally important forest areas that are threatened by conversion to nonforest uses, and these criteria should be further developed through the State Forest Action Plan.

States are responsible for determining what defines “threatened” and “environmentally important forest areas” in the State. However, environmentally important forest areas shall contain one or more of the following important public values, as defined by the States:

- a. Timber and other forest commodities;
- b. Scenic resources;
- c. Public recreation opportunities;
- d. Riparian areas;
- e. Fish and wildlife habitat;
- f. Known threatened and endangered species;
- g. Known cultural resources; and
- h. Other ecological values.

Identification of Forest Legacy Areas

Based on the State Forest Action Plan, the State Lead Agency, in consultation with the SFSCC, identifies specific geographic FLAs that meet the eligibility criteria, and recommends them to the Forest Service for designation as an FLA.

The identification of proposed FLAs must include:

- a. Location of each geographic area on a map and a written description of the proposed FLA boundary;
- b. Summary of the analysis used to identify the FLA and its consistency with the eligibility criteria;
- c. Identification of important environmental values and how they will be protected and conserved;
- d. The conservation goals or objectives in each FLA;
- e. List of public benefits that will be derived from establishing each FLA;
- f. Identification of the governmental entity or entities that may hold lands or interests in lands (State grant option) or may be assigned management responsibilities for the lands and interests in lands enrolled in the FLP (Federal option); and
- g. Documentation of the public involvement process and analysis of the issues raised.

FLA boundaries must encompass forestlands with significant environmental and other resource-based values. Areas may also include nonforested areas, such as farms and towns if they are an integral part of the landscape and are within logical boundaries.

State Project Evaluation and Prioritization Process

The project evaluation and prioritization process outlined in the State Forest Action Plan should reflect the direction set forth in the CFAA to give priority to lands that can be effectively protected and managed, and that have important scenic or recreational values, riparian areas, fish and wildlife values including threatened and endangered species, or other ecological values.

Traditional forest uses, such as forest management activities, including timber management, and outdoor recreation opportunities are considered consistent with purposes of the FLP and are encouraged on FLP tracts when consistent with the State’s Forest Action Plan and the

conservation purposes for FLP tract acquisition. The prioritization process should implement a strategy that enhances existing protected forestlands or local and State conservation strategies, as outlined in the State Forest Action Plan.

Role of the SFSCC and Public Participation

The SFSCC should cooperate with the State Lead Agency in the identification of FLA eligibility criteria, the identification of proposed FLAs from which lands may be entered into the FLP, and recommendation of priority lands to be considered for enrollment in the FLP. (For more information about the composition and roles of the SFSCC, see Section 5 – Roles and Responsibilities).

Public participation and involvement in the development of the State Forest Action Plan and identification of FLAs is a State responsibility. In the absence of established State procedures, the National Environmental Policy Act (NEPA) may serve as an appropriate model for public involvement. The State Lead Agency must solicit involvement and comments from the public, including State and local governments. The goals of public involvement include hearing concerns and views from interested and affected individuals and organizations, receiving new information, and identifying and clarifying issues.

Forest Action Plan Approval – Forest Legacy Program Requirements

The State Lead Agency must submit the State Forest Action Plan, including proposed FLAs and eligibility criteria, to the R/A/I for review and recommendation of approval. The R/A/I reviews the State Forest Action Plan for compliance with FLP requirements and works with the State Lead Agency to revise the plan if necessary. Once finalized, the plan is submitted to the Forest Service Washington Office (WO) for the Secretary's approval. The Secretary or designee approves or remands the State Forest Action Plan for additional work. Final approval establishes the FLP for the State.

Information related to the FLP within the State Forest Action Plan shall be periodically reviewed (at least at 5-year intervals) by the State Lead Agency and the SFSCC to assess whether amendments or updates are necessary. Review procedures must be determined by the State Lead Agency and the results of reviews must be provided in writing to the R/A/I.

Forest Action Plan Amendments

The State Forest Action Plan may be updated to make significant amendments or minor changes related to FLP implementation.

Significant FLP-related amendments include the following:

- a. The identification of a new FLA and the associated conservation goals and objectives;
- b. Major FLA boundary adjustments (more than 10 percent of the current FLA size or more than 10,000 acres);
- c. Revision of the FLA eligibility criteria;
- d. Significant changes in policies or conditions affecting forestlands or existing FLAs.

Significant amendments require consultation with the SFSCC and with appropriate public involvement. FLAs and project evaluation criteria shall be of a scale and detail to effectively focus delivery of the FLP.

Significant amendments to the FLP components of a State Forest Action Plan will be reviewed and recommended for approval by the R/A/I. The Chief of the Forest Service, or designee, provides final approval of a significant amendment to a State Forest Action Plan.

Note – State Lead Agencies should seek guidance from Forest Service R/A/I staff regarding the most current submission and approval process for State Forest Action Plan amendments and revisions.

Minor FLP-related changes include the following:

- a. FLA boundary adjustment less than 10 percent of the current FLA size and less than 10,000 acres.
- b. Changes to the State project prioritization process.

These minor changes must be coordinated with the SFSCC and need review and approval by an R/A/I line officer (Regional Forester, Northeastern Area Director, International Institute of Tropical Forestry Director).

7. Forest Legacy Program and Project Funds

Allocation of Funds

Following passage of annual appropriations by Congress, the Forest Service WO allocates funds to the R/A/I for distribution. The R/A/I subsequently grants funds as applicable to State Lead Agencies. Funds are allocated in three categories: project funds, administration funds, and assessment funds.

Project Funds

Allocation of project funds is based on the results of the national project selection process and the final appropriations bill. Under the State grant option, R/A/Is award grants to States for the specific, identified projects that were reviewed and recommended for FLP funding by the National Panel. (See Section 9 – Project Selection Process for more details on this process.) Project funds may be expended by the State Lead Agency or the Forest Service, as applicable, to implement the specified project. (See Section 10 – Grant Requirements for States for eligible uses of project funds.)

Administration Funds

The WO distributes administration funds to R/A/Is. Each R/A/I requests these funds in consultation with the States to meet their FLP needs. Administration funds are granted to States under the State grant option separately from project funds. Administration funds are also used by the WO and R/A/Is to fund FLP management functions and activities that further the purposes of the FLP. As a goal, the WO strives to keep administration funds nationwide under 15 percent of the total funds appropriated. (See Section 10 – Grant Requirements for States for eligible uses of administration funds.)

Assessment Funds

Assessment funds may be made available to States to help defray the cost of preparing or amending the FLP portions of the State Forest Action Plan. Assessment funds may be provided either through an FLP administration grant or through a separate grant award.

Reprogramming

Congress defines reprogramming as the reallocation of funds from one budget activity to another. For FLP, reprogramming constitutes the reallocation of funds from one project to another and is subject to the specific language in the applicable appropriations year. A reprogramming request should be made only when an unforeseen situation arises, and then only if postponement of the project until the next appropriation year would result in actual loss or damage.

If a project fails or if there are cost savings from a project, then the R/A/Is will deobligate the grant funds accordingly. These funds will be returned to the WO, who may choose to seek reprogramming authority from Congress to shift funds to another FLP project.



Part III



Part III – Project Eligibility and Selection

8. Project Eligibility and Development

A proposed project's eligibility to be included in the Forest Legacy Program (FLP) is determined by both the Federal requirements included in this section plus any requirements identified by a State Forest Action Plan or other pertinent State law. For the purposes of these implementation guidelines, a proposed FLP tract meets the minimum eligibility if:

- It is within, or partially within, a designated FLA;
- It has a minimum of 75 percent forestland or a documented plan that includes sufficient landowner capacity to reforest to at least 75 percent forestland;
- It can be managed consistent with the purpose for which it was acquired by FLP;
- The landowner is willing to sell or donate the interest in perpetuity; and
- The landowner acknowledges that the conservation easement will be held by a government entity if Federal funds are used for the acquisition.

Applicant Information

States are required to evaluate project eligibility and quality as part of the State-level selection process. State FLP applications should include all information necessary for adequate evaluation. (For an example FLP application form, see Appendix D – Landowner Application.)

Landowners who wish to participate in the FLP will be asked to provide information to the State Lead Agency, prior to submission to the national competitive process. This information must include, but is not limited, to the following:

- a. Name, address, and phone number of applicant landowner;
- b. All other owners of record for this tract, and their addresses;
- c. Name, address, and phone number of authorized agent representing landowner(s), if applicable;
- d. Property location (e.g., location map, latitude/longitude);
- e. Map showing property boundaries (if only a portion of the property is being offered, that portion identified on a map showing it in the context of the entire tract);
- f. A reasonable estimate of tract acreage and total number of acres of forests and cleared/open land (to be verified by the State before submitting for funding consideration);
- g. For a conservation easement project, a statement or list of the proposed rights the landowner wishes to reserve;
- h. List of the significant scenic, water, recreational, wildlife, timber, historic/cultural, and other resource values contained on the property;

- i. List of existing permanent improvements on the tract, including houses, barns, reservoirs, man-made ponds, dams, wells, roads, and other structures, and total number of acres occupied by improvements;
- j. Identification of all **known** dumps or waste disposal sites on the property;
- k. List any **known** (recorded or unrecorded) encumbrances or liens existing on the property including, but not limited to, contracts, leases, access easements, severed mineral interests, and outstanding rights/agreements;
- l. Signed statement from the landowner giving the Forest Service and State Lead Agency permission to enter the property for review and appraisal purposes. If there is more than one landowner, all landowners or legally empowered representative must sign the statement.

Title and Third-Party Interests

Evaluating title and third-party interests is an important early step in developing an FLP project. Recorded and unrecorded third-party interests can make certain lands or portions of a property ineligible to enter the FLP. In the case of both conservation easement and fee acquisition, third-party rights can impact the conservation purposes for which the property is proposed to enter the FLP. Sometimes, the acquisition of mineral rights or an exclusion of the encumbered area might be necessary to fully protect the property. Title insurance may be secured for the full value of the encumbered property, but is not an alternative to an acceptable title.

To enter the FLP, the title to each tract of land must be free of encumbrances that allow uses incompatible with the FLP, including but not limited to:

- Mineral reservations,
- Right of ways,
- Contracts,
- Leases, or
- Any other instrument that creates a third-party interest inconsistent with the purposes of the FLP.

A third-party interest in land does not automatically make a property ineligible. There may be exceptions based on the particular facts of a given situation. The State may determine that third-party interests do not pose a threat to effective protection and management. If such a determination is made it must be supported by written documentation.

Evaluating third-party interests during project development

During project development, the State shall ask the landowner of known recorded or unrecorded third-party interests on the property that could impact its use or sale. While this request does not guarantee that all third-party interests are known by the State at the outset of acquisition or replace the role of title reports or title insurance, the knowledge can help identify eligibility issues early in the acquisition process, saving both time and money. If the State learns of outstanding rights that could impact the effective protection and management of a project, the project should not be submitted to the National Panel for funding consideration unless the State believes that either the outstanding rights can be acquired, extinguished, or demonstrated to pose a threat so remote as to be negligible.

Examples of third-party interests that have been encountered:

- Mortgages
- Existing oil and gas lease
- Utility rights of way, including telephone and electricity transmission
- Pipeline right of way
- Proposed water extraction for benefit of a property other than the subject property
- Reserved metallic minerals
- Reserved coal
- All minerals including sand and gravel
- Reserved rights to gravel by a governmental entity for future road building
- Severed mineral interest limited to royalty rights
- Reservation of all iron ore and associated minerals including right to process material on site and access to timber on site to support mining
- Right of way on existing road to access adjacent property
- Right of way to remove minerals on adjacent property
- Right of way across property to extract timber from adjacent lands
- Recorded or unrecorded timber supply agreements
- Life estate including the right to construct a dwelling and to use and enjoy the property for the remainder of an individual's natural life
- Reserved right to remove timber (time unspecified and time specified)
- Long-term leases limiting development
- Deed restriction that does not allow development
- Existing or planned cell tower sites, including prescribed rights of road construction
- Existing or planned wind towers, including roads and rights to construct roads
- Short- and long-term hunting leases
- Recreational camp leases

Determining eligibility when third-party interests are discovered

Below are some of the types of third-party interests and how to evaluate the impact of those interests:

Mortgages

For fee title projects, mortgages and other liens are generally resolved at closing if there are any. For conservation easement projects, mortgage holders must agree to subordinate the mortgage to the conservation easement.

Minerals

A State official can attest in a mineral determination letter that the possibility of surface disturbance related to exercise of the reserved right is so remote as to be negligible. The first step is often to determine if what is reserved is or could actually be there. For example, if coal is reserved and it is known that there is no coal near the location of the project, a determination can be quite easy. If the first determination cannot be made, a next step is to evaluate if the right is valid and still in effect as a matter of State law. Uniting title is the preferred option but this is often not a practical option. If the reservation is still valid and

there is occurrence of the reserved material, then sometimes a remoteness determination still can be made depending on:

- The extent of the deposit that can impact the economics of extraction,
- Legal and regulatory obstacles,
- Degree of fractured ownership, or
- Engineering obstacles to exploitation.

In cases where there are reserved mineral rights but these rights would not impact the surface of the subject property (for example, if the land is subject to forced pooling for extraction of oil or gas), then it may be acceptable if the exploitation of the existing reserved oil and gas is unlikely to negatively impact the property.

In cases where there are outstanding rights to explore and extract oil, and State law views mineral reservations to come with presumptive easements (that is, use of the land needed for extraction and storage is viewed as part of the reservation), then that land is probably not eligible. If all the mineral and use rights are controlled by a single entity and that entity is willing to enter a restrictive surface-use agreement that would limit the impacts and allow for effective protection of the land, such a property might be eligible. The State should work with the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) to evaluate the particular facts of each case and make a determination.

Timber Supply Agreements

In the case of a recorded or unrecorded timber supply agreement (TSA), the terms of the agreement are important. Some TSAs are as simple as the requirement to first offer timber harvested from the property to a certain entity at a price tied to current market conditions. This may not have an impact on FLP purposes, as it does not impact the landowner management objectives. However, some TSAs are tied to specific volumes over time or may limit future sales of the property (e.g., there may be an existing management plan that the landowner has agreed to as a contract term). In this case, the State forester or designee must review the management plan to ensure the plan is in accordance with the FLP purposes.

If the project includes an acquisition of a conservation easement, the State forester or designee must also review the timber supply agreement and/or management plan to ensure its compliance with the terms of the conservation easement. If the agreement or plan conflicts with the conservation easement or FLP purposes, then the property is ineligible to enter the FLP. This situation could be resolved if the beneficiary of the TSA consents to revisions or amendments to the existing plan such that it will bring it into compliance with the FLP and conservation easement purposes.

Right of Way

A right of way is a right to use a specific piece of land for a certain project, such as roads, rail lines, transmission utility lines, pipelines, and communication sites. The State should evaluate factors such as scope, use, timing, possible impact, and feasibility of the right of way together to determine property eligibility for FLP.

If the scope, size, or location of a right of way is minimal, it may not impact FLP purposes. However, a transmission line right of way across a large area of the property may cause a property or a portion of a property to be ineligible. Rights of way come in different forms, thus the State must make a determination on whether the right of way could be considered a forest use or compatible nonforest use; for example, a right of way for a public walking trail could qualify as a compatible forest use. Rights of way can be also time sensitive, allowing privileges for a specific use of the land for a specific period of time. The right of way may already be extinguished or so close to the end date that the possibility of exercising the right

of way is negligible. Finally, an authorization for a right of way may no longer be feasible. An isolated rail line right of way may exist but no longer be feasible given its isolation or adjacent land use.

Water Rights

Especially in the West, where water is crucial to running stock or irrigating pastures, it is not unusual to find that a property has a third-party interest in the form of a right to water. This right may be to use water on the property, for example, use of watering holes or tanks for cattle owned by someone other than the landowner. Or there could also be a right to use water coming off the property by some conveyance, such as a ditch or pipeline. In some States where water was necessary for mining, these interests may have been recorded many generations ago. Some landowners may not have knowledge of these older recorded interests.

In general, **recorded** third-party interest rights are listed in the Exceptions Section of the Preliminary Title Report as a right of someone, other than the landowner, to utilize water coming from a source other than that person's own property. For example:

“Any rights of (name of third party) in conjunction with the right to take water pursuant to a License Agreement recorded (some date), as instrumented No XXX-XXXXXX-XX in (some county) Records.”

The State must determine if another's right to take water or have access to water on the subject property is compatible with the conservation values being purchased through the FLP. Some of these agreements allow the holder of the water right to make improvements to the source and/or the conveyance of the water. This could mean new road construction, development to the spring or lake, or removal of vegetation along the conveyance (ditch or pipeline), any of which may not be compatible.

Compatible Lands and Uses

An early step to identifying, designing, and proposing an FLP project is to ensure all tracts (including cost-share tracts) consist of compatible land types, and that existing and future uses and improvements are compatible with the purposes of the FLP.

Compatible Land Types

All FLP tracts will include at least 75 percent forest lands. Each State should define what qualifies as a forest for the purpose of the FLP in its State Forest Action Plan. An FLP tract is defined as one or more contiguous legal parcels under a single ownership or beneficial control.

For projects with multiple tracts, each tract should meet the 75-percent forest land requirement. In some limited situations, multiple contiguous tracts under separate ownerships may be considered as a unified tract for the purposes of meeting the 75-percent forest land requirement if: (1) acquisition of all the tracts helps support the purposes of the FLP, and (2) all the tracts are acquired during the life of the FLP project grant. In this situation, the R/A/I may include additional requirements in the project grant on acquisition timing and priority order to ensure the project meets the forest land requirement upon completion.

Previously forested or lands with the potential to be forested can be counted as forest lands for the purpose of the FLP, as long as the Multi-Resource Management Plan completed by the time of closing includes: (1) specific areas targeted for reforestation/afforestation and planned activities; and (2) documentation of sufficient landowner capacity to reforest or afforest these areas. Reforestation/ afforestation activities should be completed within 10 years of project completion, if silviculturally possible. Any reforestation plan exceeding 10

years must be approved through the Multi-Resource Management Plan approval process (see Section 17 – Multi-Resource Management Plans). This requirement applies to both fee simple purchases and conservation easements.

An FLP tract may include up to 25 percent nonforest lands, as long as they are compatible with and do not negatively impact the values and benefits of the forested portion of the property. Compatible, nonforest lands often include, but are not limited to: cultivated farmland, pasture, grassland, shrub-land, open water, and nonforested wetlands. The State Lead Agency is responsible for making a determination of compatibility on a case-by-case basis consistent with the forest values and benefits of the specific project.

For a proposed acquisition of a tract with nonforest lands that exceed the 25-percent threshold, FLP funds can only be used to acquire the eligible portions of the tract (75 percent forested plus 25 percent compatible nonforest).

Compatible Uses

Continuation of traditional and other forest-based uses are integral to the purpose of the FLP. Compatible uses may include, but are not limited to: hiking; fishing; hunting; harvest of timber, syrup, mushrooms, and other forest products; camping; and bird-watching. Many activities and improvements support, enable, or enhance these forest uses while minimally impacting other forest values and benefits and thus may be compatible with the purposes of a specific FLP project.

FLP conservation easements and deeds should include restrictions on allowed activities and improvements to ensure long-term compatibility and consistency with forest values and benefits.

The State should make a determination of compatibility of any proposed activity or improvement on a *case-by-case basis* to ensure minimal impact. All activities, structures, and other improvements must be appropriately located and limited in size, scale, intensity, and/or duration to ensure minimal impacts on the forest values and benefits. Compatible uses that are commercial in nature, not contrary to the purposes of the FLP and other laws, and not contrary to the provisions of the conservation easement or deed may be acceptable. To help avoid issues during project implementation and management, States are encouraged to coordinate with the R/A/I if there are questions about proposed activities or improvements.

Examples of compatible activities may, *but not always*, include: livestock grazing, guided hikes, weddings, musical performances, and sporting competition events. Examples of compatible improvements may, *but not always*, include: gravel pits for onsite use, trails and trailhead parking areas, interpretive kiosks, sugar houses, canoe launches, archery ranges, primitive campgrounds, roads that support recreation and forestry uses, fences, fishing piers, water-quality testing stations, and interpretive amphitheaters.

(See Appendix E – Examples of Forest and Nonforest Uses for more detailed examples of compatible and noncompatible uses.) (See Appendix F – Compatibility Analysis Tool for a tool to help determine if a proposed activity or improvement is compatible with the purposes of the FLP.)

Noncompatible, Nonforest Uses

Some activities or improvements are not compatible with the purposes of the FLP. These are uses that are known to, or could, substantially and negatively impact the forest values and benefits and/or forest uses of the FLP tract or project. Any noncompatible activities should be addressed by: excluding the use or activity through conservation easement/deed

restrictions, removing the noncompatible use areas from the FLP project area, or restricting the uses through designated improvement areas within the conservation easement property or fee acquisition. (See next subsection, Structures and Other Improvements.)

Examples of noncompatible activities and improvements include, but are not limited to: multi-unit residential subdivisions, office buildings, commercial parking lots, hotels and resort developments, surface mining, sports fields, commercial signage, unmanaged off-road vehicle use, dumps, and casinos. Negative impacts of these activities could include: surface disturbance, permanent conversion/removal of forest cover, introduction of invasive species, dumping of hazardous materials and debris, unmanaged and high visitor usage, erosion and soil destabilization, impairment of scenic viewsheds, degradation of water and air quality, and/or habitat loss and fragmentation. (For more detailed examples of compatible and noncompatible uses, see Appendix E – Examples of Forest and Nonforest Uses.)

Other Uses – Linear Nonforest Corridors

Linear nonforest corridors include public utilities, highways, or other public service linear nonforest openings that require change of ownership (such as access easements). Proposed FLP tracts with existing or proposed linear nonforest corridors shall be evaluated for the compatibility with the forest values and benefits. The State should make the evaluation and consider location, size, scale, and intensity. If the State determines that the linear nonforest corridor has a significant negative effect on the forest values and benefits, then it should not submit the proposal for funding consideration. Proposed FLP tracts with linear nonforest corridors having minimal impacts on the forest values and benefits will be allowed to compete for funding.

Structures and Other Improvements

As discussed above, some FLP projects may include existing or potential future structures and other improvements that are compatible with the purposes of the FLP. To help ensure that these compatible improvements remain appropriately located and limited in size, scale, and/or duration for long-term compatibility with the FLP purposes, the State can choose to establish designated improvement areas within the conservation easement or fee simple deed. A designated improvement area is a specified area of land that is identified in a conservation easement or fee simple deed where specified improvements may be constructed, developed, or maintained. If the State Lead Agency decides to allow for existing or future compatible improvements, the conservation easement or deed language must be carefully crafted to identify the specific location and limit the allowed activities so that they will remain consistent with the conservation purposes of FLP project. (See Section 14 – Conservation Easement Language for guidance related to conservation easement language.)

In some cases, noncompatible improvements (existing or future) may also be included in a designated improvement area if the State determines that the long-term values of the FLP project will be better protected by restricting the improvements within the conservation easement or deed language instead of excluding these structures from the property (via survey) and thus allowing unrestricted improvements adjacent to or within the FLP project area. An example is when the structure is located deep within the property rather than on the periphery.

If a proposed FLP project includes existing structures, another consideration is whether FLP funds can or cannot be used towards the cost of purchase of these structures. Purchased structures must be compatible with the FLP purposes and not negatively affect the conservation values of the specific project. Noncompatible structures that do not benefit the use or management of an FLP tract must be excluded from the acquisition or shown in the appraisal as having no value. If noncompatible structures are included in the acquisition

and are not in a designated improvement area, then the management plan should direct their removal as soon as practical. A structure of historical or cultural significance identified as a conservation value can be acquired using FLP funds.

Ecosystem Goods and Services Market Compatibility

Depending on facts and circumstances, a property that is participating in an ecosystem service market (ESM), might, or might not, be eligible for participation in the FLP.

A property impacted by an encumbrance, contract, or agreement that limits how a piece of property may be managed may not be eligible for the FLP (already protected) or may receive a relatively low “threat” score during the project selection process.

If a project with an existing ESM agreement is selected for the FLP, then that agreement must be considered in the title evaluation and appraisal process. By having a complete understanding of the terms of an ESM, an appraiser can factor in the effects of participation in an ESM when determining the market value of a proposed FLP tract.

For guidance related to participation in an ESM after closing on a project, see Section 21 – Other Post-Acquisition Considerations.

9. Project Selection Process

The Forest Service will conduct a project evaluation process to arrive at a prioritized national project list for consideration in the President’s Budget for the upcoming fiscal year. The Washington Office develops the project evaluation process and calendar of due dates in consultation with the State Lead Agencies and R/A/Is (see Appendix G – Forest Legacy Program Project Selection Cycle for an overview of the current process and timeline).

The Forest Service will ensure that national evaluation and prioritization criteria are communicated to the States in a timely manner so that submitted projects adhere to strategic goals and objectives of the FLP. The Forest Service will ensure a transparent, competitive, and defensible ranking process that is well communicated to FLP participants and partners, and ensure fair, equitable, and thorough review of all projects at the regional and national levels.

Project selection steps are:

Step 1: Forest Service Releases a Project Request Letter. The Forest Service will review and update the process and scoring guidance as needed to ensure transparency and alignment with national FLP priorities. Any significant changes will be made in consultation with the States. Then the WO will issue a letter to the R/A/Is with due dates and scoring guidance for the national project review and evaluation process. Finally, the R/A/Is will send requests for project submissions to the State Lead Agencies.

Step 2: Applications submitted to the State Lead Agencies. Each State Forest Action Plan should outline the State application process and criteria. The process and State deadlines (if any) should be accessible to the public either through a public announcement or through a public website. Landowners can choose to work with land trusts and other organizations to help them submit an application. (See Appendix D – Landowner Application for a sample landowner FLP application form.)

Step 3: State Project Prioritization and Submission. The State Forest Stewardship Coordinating Committee (SFSCC) reviews and evaluates project proposals according to the criteria identified in the State Forest Action Plan, in an authorizing statute, and in other relevant direction and policy. The SFSCC then provides recommendations to the State Lead Agency. Project briefs approved by the State Lead Agency are assigned

priority order (if any) and forwarded to the R/A/I for funding consideration. Only projects submitted through this process will be deemed eligible.

Step 4: Develop Project Brief and FLIS Data Entry. Information from a landowner application, coupled with additional tract information (such as tract cost and cost share, environmentally important resources, the threat of conversion, and area conservation strategies), are combined to describe the merits and conditions of the proposed project. This information is entered in the Forest Legacy Information System (FLIS) producing a five- to eight-page project brief. Additional information on FLIS is found in Section 18 – Forest Legacy Information System (FLIS).

Step 5: Forest Service Regional Review(s). R/A/Is will review submitted projects to assess project eligibility and viability and ensure the State has met FLP requirements as discussed in the reply due project call letter. R/A/Is will work with State Lead Agencies to address any project or FLP deficiencies in advance of the final submission. R/A/Is may also conduct optional pre-reviews to provide input and advice to help States improve project proposals in advance of the final deadline.

Step 6: National Review Panel; Develop National Project List. The WO will develop a national list of ranked projects by convening a National Review Panel. The composition of the panel will be developed by the Forest Service in consultation with the State Lead Agencies, and will include FLP representatives from national, regional, and State levels.

National project evaluation is based on the following national core criteria:

- Importance – The public benefits gained from the protection and management of the property, including environmental values and the economic and social benefits;
- Threatened – Conversion to nonforest uses is imminent or likely and will result in a loss of forest values and public benefits; and
- Strategic – Contributes to larger conservation plans, strategies, and initiatives, complements existing Federal land and other protected areas, and enhances previous conservation investments.

States and Territories newly entering FLP may be awarded New-State Start-Up funds for an initial FLP project to be included on the National Project List. To receive these funds, the State must have a Forest Service-approved FLP component of the State Forest Action Plan, and the funded project must meet national core criteria and the State's evaluation criteria.

Step 7: Submit National FLP Project List for Consideration in the President's Budget. Each fiscal year, the WO will submit a project list to the Office of Management and Budget for funding consideration in the President's Budget.

Step 8: Final Budget Direction With List of Funded Projects and Grant Awards. After passage of the final annual appropriations legislation by Congress, and following apportionment by the Office of Management and Budget, the WO will release a final list of funded projects through the FLP budget direction to the R/A/Is. Then, R/A/Is will work with each applicable State Lead Agency to issue a grant award for each funded project. In cases where a State has opted out of the State grant option, the R/A/I will work directly with the landowners and other partners to implement the project.

Multi-State Projects

States are encouraged to cooperate in the identification of FLP projects that cross State boundaries and work together to coordinate acquisitions that have complementary purposes. Multi-State project proposals are submitted by States as individual projects in the normal FLP project submission process.

Part IV



Part IV – Forest Legacy Program Procedures and Grant Requirements

10. Grant Requirements for States

The State grant option allows the U.S. Department of Agriculture, Forest Service, to provide grants to States participating in the Forest Legacy Program (FLP) for the acquisition of private forests. All FLP-funded acquisitions shall be transacted by the State with title vested in a unit of State government (State agencies or local governments). In the situation where land or interest in land is fully donated to the FLP, the title can also be held by a qualified land trust as well as a unit of State government. FLP grants under the State grant option must have a minimum of 25 percent non-Federal cost share.

The State Lead Agency is responsible for ensuring that all FLP tracts in the State are managed according to the recorded documents, the grant agreement, and the FLP Implementation Guidelines. This includes FLP tracts being held by other State or local agencies and cost-share tracts. If violations on FLP tracts held by any entity are discovered, the State Lead Agency shall notify the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) and (if necessary) determine a remedy to restore and protect the resource values. For additional direction on monitoring, see Section 20 – Stewardship of Forest Legacy Program Tracts.

The Forest Service may provide each State with a grant to administer the FLP and assist with due diligence costs for acquisitions. Forms SF 424 A and B are used for administrative grants. Projects are selected through a national competition and then awarded to the State via a project grant. Forms SF 424 C and D are used for project grants.

Grant Regulations

All FLP grants will comply with the Office of Management and Budget (OMB) Circulars and Department of Agriculture regulations relating to Federal financial assistance for State governments, as outlined below (see Appendix H – Grant and Cost-Share Requirements for additional information).

- 2 CFR 200 (as adopted and implemented by the Department of Agriculture in 2 CFR 400), Omni Circular – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Grant Administration

Grant administration requirements are listed below. (See Appendix I – Forest Legacy Program Award Provisions for additional information.)

- a. For each grant, States must, at minimum, submit an annual performance report and an annual financial status report (SF 425). The annual financial status report is due 90 days after the reporting period ends. R/A/Is may require the performance report and/or the

financial status report to be submitted semiannually or quarterly; these reports are due 30 days after the end of the reporting period. Following the completion of the grant duties, a final performance report, a final request for reimbursement, and a financial status report must be submitted within 90 days. If there are funds remaining, the State must request these funds to be de-obligated.

- b. Funds appropriated for the FLP shall not be included in consolidated-payment grants made under authority of Section 12 of the Cooperative Forestry Assistance Act (CFAA).
- c. The State shall maintain current and complete financial records in accordance with requirements contained in the Omni Circular, 2 CFR 200.

Use of Forest Legacy Funds

Project grants provide funds that are used to purchase lands and pay for acquisition-related expenses. These funds cannot be used for general expenses of the FLP, indirect costs, or for other project costs outside the project area of the grant award, except for qualified donations located in other Forest Legacy Areas as discussed below. Project grant funds can be used to pay for:

- Acquisition of lands or interests in lands. FLP project funds can only be used for eligible portions of the tract (see Section 8 – Project Eligibility and Development, Compatible Lands and Uses subsection).
- Directly related real estate transaction costs incurred by or at the request of the State, including but not limited to: Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or Yellow Book) appraisals and appraisal review, land surveys, closing costs (document preparation and recording fees), establishing baseline information, title work, purchase of title insurance, conservation easement negotiations and drafting (travel and attorney fees), and other real estate transaction expenses for the project tracts (see Section 13 – Due Diligence for Acquisition and Section 16 – Appraisal and Appraisal Review).
- Development of a Multi-Resource Management Plan for the FLP project tract(s) (see Section 17 – Multi-Resource Management Plans).

Project funds may also be expended to facilitate donations of land or interests in lands to a qualified and willing donor for FLP purposes by paying for expenses directly related to the donation, including but not limited to, UASFLA (Yellow Book) appraisals, land surveys, conservation easement drafting, title work, and establishing baseline information. Qualified donations must be located within an active and approved Forest Legacy Area. Donations used to meet cost share do not have to be located within the same FLA as the purchased interest but must be clearly documented in the grant agreement and in the Forest Legacy Information System (FLIS).

Any changes such as size of project or attributes to be acquired on the project as described in the project brief and grant narrative must be made in consultation with the R/A/I.

Approval of project changes: The grant recipient must submit in writing any significant changes to the project configuration as described in the grant narrative for approval to both the State Forest Stewardship Coordinating Committee (SFSCC) and the Forest Service. Such changes could include, but are not limited to: changes in status of public access, change in proposed reserved rights by landowners, change in acreage, and change in conservation values of the property.

Administrative grants are for general FLP administration and to pay for direct acquisition-related expenses. These funds are not to be used to purchase lands or interest in lands. Administrative grants can be used to pay for, but are not limited to, the following:

- Salaries, fringe benefits, travel, equipment, supplies, and contracts that directly support the FLP. (Equipment is defined as tangible nonexpendable personal property having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit.)
- Associated indirect costs (once a rate has been established).
- Promoting the FLP, including through websites, education seminars, public outreach, and support of public relations events and/or meetings. Acceptable costs for promotional or celebration meetings/events may include rental of facilities, chairs, public address systems, portable sanitary facilities, and promotional materials.
- Soliciting and developing potential FLP projects.
- Evaluating and prioritizing FLP project applications with SFSCC input and other technical meetings. Acceptable costs of technical meetings may include food, drinks, and rental of facilities.
- Directly related real estate transaction costs for tracts funded by project grants. (See the Project Grants subsection, above, for details on allowable real estate transaction costs.)
- Facilitating the donation of lands or interests of lands into the FLP. (See the Project Grants subsection, above, for details on allowable costs for donations.)
- Coordinating the acquisition process within State government.
- Establishing and documenting baseline conditions and developing a Multi-Resource Management Plan for FLP project tracts.
- Assessing the current forests, forest uses, and trends leading to forest conversion and the subsequent amending of that information in the State Forest Action Plan.
- Managing, evaluating, and updating the State’s FLP policies and procedures.
- Hosting and/or participating in technical training courses or seminars related to forest land protection.
- Hosting and/or participating in regional and national FLP meetings.
- Planning for the long-term conservation integrity of lands or interests in lands that are entered into the FLP, including the establishment of State policy related to long-term conservation easement stewardship and monitoring.
- Recordkeeping.

Assessment grants may be made available to States to help defray the cost of preparing or amending the FLP portions of the State Forest Action Plan. R/A/Is can request these funds to meet the needs of their States—especially for States or Territories that are new enrollees to the FLP and have substantial analysis needs.

Ineligible Costs for Forest Legacy Program Grants

Specific costs charged to FLP grants will meet the cost principles as described in the Omni Circular at 2 CFR 200. Unacceptable costs for promotional or celebration events include, but are not limited to: food, drinks, entertainment, and souvenirs. However, food, drinks, and rental of facilities may be allowable to support FLP technical meetings. (See Appendix H – Grant and Cost-Share Requirements for additional information.)

FLP funds (Administration, Project, or Assessment) may not be used for monitoring, management, or enforcement activities, including costs associated with setting up an endowment or stewardship fund for the project. FLP funds also may not be used to pay for an appraisal that does not meet UASFLA (Yellow Book) standards.

Availability of Funds

States are encouraged to work diligently to acquire the funded tracts within the initial grant period of 2 years. If there is appropriate justification, a grant can be extended to a maximum duration of 5 years to complete the purpose of the grant. Modifications to grants are made by formal request. Modifications may be made to the termination date, the scope of work, the principal contacts, the budget line item amounts, or to add additional funding. Modification requests must be approved by the R/A/I. However, budget line item amount changes to grants that are under \$150,000 in total (Federal plus match) or under 10 percent of the Federal share can be made at the discretion of the State Lead Agency. Additional funding of a project in a subsequent year can be added to the existing grant or a new grant awarded.

Payment of Funds

States receive grant funds through reimbursements or advances. The majority of payments for FLP grants are made by reimbursements. States can be reimbursed for allowable expenditures by submitting an SF 270 which is approved by the R/A/I. For large expenditures such as an acquisition, the State can request an advance of funds up to 30 days before the planned expenditure, also using an SF 270. Cash advances are limited to the minimum amounts needed and should be timed to be as close as is administratively feasible to the actual cash outlay. An Authorized Certifying Official for the State must sign the form, verifying that *“I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.”*

Expenditures made before a grant award are normally not reimbursable. However, the State may submit a request to the R/A/I for approval of pre-award costs in the grant award. The appropriate Forest Service line officer in the respective R/A/I determines if the will of Congress would be met by making this reimbursement and that the cost would normally be reimbursed if it occurred after the grant was awarded.

Third-Party Payment of Funds

In some instances, States may wish to employ a third-party payment, in which the Forest Service makes a direct payment through a title company or attorney to the landowner. This is not a sub-grant, nor is it granting money to another party. The intent of the project grant is to purchase land or interest in land with title being held by the State. The State must advise the R/A/I at the time of the grant award, or as soon as practical, if a third-party payment is needed, to ensure adequate time to process the request. Third-party payments are allowed only under specific conditions, and the only allowable third-party payee is the title company that is managing the acquisition/sale. Funds cannot be directed to another State agency, organization, or directly to a landowner. All tracts within a given project should use the same title company. If the State wishes to use multiple title companies, approval must first be secured from the R/A/I.

Overview of third-party payment process:

- a. The grant will be awarded to the State Lead Agency.
- b. The State must formally request that payment be made to a title company on its behalf. This must be in writing and signed by the State Lead Agency signatory. An email request is not acceptable.
- c. The title company must be registered in SAM (System for Award Management) at www.sam.gov, and provide its Data Universal Numbering System (DUNS) and Employer Identification Number (EIN).

- d. The Forest Service will draft a modification to the grant showing a title company as an alternate payee. The request letter from the State Lead Agency must be attached as documentation. Both the State and the Forest Service will sign the modification.
- e. No sooner than 30 days before closing on the purchase, the State Lead Agency must submit an SF-270, or HHS-PMS payment request. The SF-270 must show the State as the award recipient in block 9 and a title company or attorney as the payee in block 10. The request for payment must be signed by the State.
- f. The State Lead Agency is responsible for all financial and program reporting, as well as any audit. There is no grantee/grantor relationship between the third-party and the Forest Service.

Cost-Share Requirements

All FLP grants require a 25-percent non-Federal cost share, with the FLP funds contributing no more than 75 percent of the project costs. The cost share can be cash, in-kind services, and/or donation of land or interest in land. All cost share needs to be consistent with applicable cost principles and grant regulations identified in the Grant Regulations subsection, above. In addition, State FLP files must contain sufficient documentation substantiating the source and monetary value of the project grant cost share. The R/A/I will provide oversight to ensure that sufficient cost share is obtained and documented (see Appendix J – Examples of Cost-Share Calculations for additional information).

For cost-share tracts, the grantee must determine the value of the donation. The grantee may use an existing appraisal, a new appraisal, or another documented analysis to determine value. Appraisals for cost-share tracts do not have to be UASFLA (Yellow Book) compliant, and an appraisal review is also not required. All documentation determining the value of donated land or interest in land must be filed in the appropriate FLP project file and a copy provided to the R/A/I. The use of FLP funds to conduct due diligence for a donated tract does not trigger the need for a UASFLA (Yellow Book) appraisal, however only UASFLA (Yellow Book)-compliant appraisals can be funded through FLP funds (see Section 16 – Appraisal and Appraisal Review). All cost share must be incurred during the life of the grant, including acquisition of cost-share tracts (see Section 12 – Cost-Share and Donated Tracts).

Endowment funds for conservation easement stewardship or ongoing management of the property cannot be used as cost share since their intent is to be used for management purposes after the acquisition is completed.

Through both the Federal Financial Report (SF 425) and the Request for Reimbursement or Advancement form (SF 270), the grantee certifies the amount of cost share provided for a grant. These documents are sufficient for certifying that the grantee has provided the required 25-percent cost share, including from donated tracts.

The SF 425 instructions state that the amount of cost share specified on this form “...should not include cost sharing and match amounts in excess of the amount required by the Federal agency.” In other words, the SF 425 should reflect the required FLP cost share of 25 percent. However, other FLP project documents and information in the FLIS should describe the actual cost share provided for the project.

Cost share proposed in the project brief above the 25-percent requirement can be a factor in positioning a proposed project for funding in the competitive process. When it is determined that the cost-share target will not be achieved, the State should report this to the R/A/I. The R/A/I should gather information and document in the project file the changed conditions causing the reduction in cost share.

If a grantee plans to use mitigation funds for cost share (these could be fines from a private firm resulting from a Federal violation or mitigation funds for a planned offset related to permitting or licensure), the grantee must ensure that an official determination has been made that the funds can be treated as non-Federal (as through a regulatory agency policy or decision, court settlement, Federal legislation). If no determination has been made, contact the R/A/I for assistance in obtaining an official determination if funds may be treated as non-Federal funds for the purposes of cost share.

Acquisition of Lands Within a Designated Federal Boundary

Lands and interests in lands located within a Forest Legacy Area and simultaneously within Federal boundaries of national forests, national parks, national wildlife refuges, or other Federal Government boundaries are eligible for the FLP using the State grant option. If a property that is located within a Federal Boundary is proposed for the FLP, a letter of concurrence from the top official of the Federal agency (such as the National Forest supervisor, National Park administrator, or National Wildlife Refuge manager) must be provided to the R/A/I and filed by the State in its State project files before it is submitted for a national call for projects. The concurrence letter must include:

- The name of the FLP Project;
- A statement that the Federal agency agrees with the acquisition of the land or interests in land through the FLP through the State grant option.

Tribal Governments

Tribal governments can participate in the State grant option in partnership with the State Lead Agency to protect non-trust tribal allotment lands or other non-tribal lands of interest. In these cases, the State Lead Agency and the tribal government should agree to specific roles and responsibilities for project implementation and long-term stewardship and management. However, in accordance with limitations in the FLP statute, the Forest Service can only grant FLP funds to the State Lead Agency and the land or interest in land must be held by a unit of State government. Tribal governments also have the option to work with States and the Forest Service through the Federal acquisition option (see Section 11 – Federal Acquisition Procedures).

11. Federal Acquisition Procedures

At the request of the State, the Forest Service can hold the title to lands or interests in lands acquired through the FLP. The State maintains the responsibility to manage lands and monitor conservation easements that are acquired through this option.

In the furtherance of the purposes of the FLP, the State Lead Agency, with involvement of the SFSCC and the Forest Service, will review property owner applications, prioritize tracts, obtain State approval, and submit properties to the appropriate R/A/I for review and submission for consideration in the competitive process. Upon approval of funding, the Forest Service will proceed to acquire from willing sellers conservation easements and/or fee simple acquisition. FLP funds in the Federal acquisition option require a minimum of 25 percent non-Federal cost share.

Federal Acquisition Procedures will be followed when Federal funds are used to complete an acquisition of land or interests in land using FLP authority. These procedures include:

- a. Federal appraisal standards will be met;
- b. The landowner must be informed in writing of the appraised market value and that the sale of the property is strictly voluntary or the property will not be purchased;

- c. Federal payment to the landowner for lands or interests in lands is not more than the market value determined by an appraisal;
- d. Assurance that title is free and unencumbered relative to the purposes of the FLP; and
- e. If relocation is involved, the requirements in PL 91-646 (42 U.S.C. 4601) will be followed and the Forest Service will advise the landowner before the acquisition.

Certain lands are not eligible for the Federal option under FLP authority because other authorities and funding sources are available for acquisition of lands or interests in lands within these federally established areas. These include lands located within the proclamation boundaries of national forests, national parks, national wildlife refuges, or other congressionally established boundaries. (See Section 10 – Grant Requirements for States for State grant option guidance on lands within federally established areas.)

Conveyance of a conservation easement to the Federal Government neither enhances nor diminishes the landowner’s responsibility to comply with Federal environmental laws that apply to private lands, such as the Endangered Species Act and the Clean Water Act.

Memorandum of Understanding for Coordination of the Forest Legacy Program

If the Federal acquisition option is used, a Memorandum of Understanding (MOU) between the State Lead Agency and the Forest Service is required. The MOU will define and facilitate partnerships between the State Lead Agency, Forest Service, and other participating entities in implementing the FLP, acquiring interests in lands, and sharing the costs of the FLP. The MOU shall determine how costs are shared between parties, including administrative, management, monitoring, and maintenance expenses.

If individual FLP tract-MOUs are needed, they become an addendum to the State-level umbrella MOU. The umbrella MOU between the State Lead Agency and the Forest Service shall be developed following the U.S. Secretary of Agriculture’s approval of the State’s Forest Action Plan and the establishment of the State’s FLP.

The Forest Service/State MOU specifies roles and responsibilities for implementing the FLP, and may address the following items:

- a. Costs and Funding:
 - i. Identify direct and indirect costs expected to be incurred in establishing the FLP, and acquiring and administering interests in lands. Revise or renew these cost estimates as appropriate.
 - ii. Identify and propose sources of cost share.
- b. Planning:
 - i. Document the amount of work required to complete the State Forest Action Plan and identification of FLAs.
 - ii. Define a process for creating and updating multi-resource forest management plans.
 - iii. Identify how specific tract acquisition needs and priorities shall be established by the State.
- c. Acquisition:
 - i. Identify who is responsible for title work, appraisals, surveys, and similar pre-acquisition work.
 - ii. Define a process for determining the value of donated interests in lands.

d. Management:

- i. Define responsibilities for management of interests in lands acquired or dedicated to the FLP.
- ii. Identify possible activities needed to enhance, restore, or maintain resources to meet the intent of the FLP and general responsibilities in carrying out such activities.

e. Administration:

- i. Estimate the staff work required to implement the FLP.
- ii. Define responsibilities for processing applications to the FLP.
- iii. Establish procedures for monitoring and enforcing the terms of reserved interest deeds and conservation easements and identify who will be responsible.
- iv. Identify responsibilities for periodic reports summarizing the achievement of FLP goals in the State.

Transition to State Grant Option

If a State elects the State grant option and there are active cases being pursued by the Forest Service under Federal acquisition, all parties—Forest Service, State, and landowner—may agree to transfer cases to a State. The FLP acquisition funds are then transferred to the State by a Forest Service grant. To facilitate projects transferred to the State, the Forest Service may provide the State with copies of any appraisals, appraisal reviews, title reports, option contracts, and other pre-acquisition materials for lands that have been under negotiation by the Forest Service.

Under the current FLP statute, FLP tracts in Federal ownership will remain in Federal ownership except for the State of Vermont. The FLP statute allows Vermont to request the transfer of FLP tracts in Vermont; these tracts can be conveyed to the State by quit-claim deed without consideration.

Tribal Governments

Tribal governments can participate in an FLP Federal acquisition in partnership with the State and be included as a participating entity in the MOU (see above) to protect non-trust Tribal allotment lands or other non-tribal lands of interest. In accordance with the specific MOU, tribal governments could assume responsibility for certain aspects of project implementation and long-term management, including ongoing land management and conservation easement monitoring. Under this option, the title to the land or interest in lands will be held by the Federal Government as represented by the Forest Service. Tribal governments also have the option to work with States and the Forest Service through the State grant option (see Section 10 – Grant Requirements for States).

12. Cost-Share and Donated Tracts

States can choose to accept donations of land or interests in land to further the purposes of the FLP. All donated lands, whether used for grant cost share or not, will meet the following requirements:

- a. The landowners request that their donation be included in the FLP.
- b. The land contributes to the objectives and priorities of the State FLP as set forth in the State Forest Action Plan.
- c. All or part of the tract being donated must be within the boundaries of an FLA.
- d. The land must comprise at least 75 percent forested land and include compatible uses (see Section 8 – Project Eligibility and Development for additional information on compatible uses).

- e. The donation of land or an interest in land must contain perpetual easements or covenants to assure that the tract will be permanently protected and managed in a manner compatible with the goals for which the FLA was established.
- f. The donee (holder of donated rights) is a unit of government, or is a nonprofit conservation organization (land trust) that meets the eligibility requirements for holding a conservation easement established by the Internal Revenue Service and has as its purpose the management of lands or interests in land consistent with FLP purposes.

For donated tracts that the State uses as non-Federal cost share, the following additional requirements will also be met:

- a. The donor documents his/her desire that value of the interests may be used as cost share for the FLP project.
- b. If the donation is in the form of a conservation easement, then the deed needs to contain a provision that directs all of the easement holder's proceeds from a subsequent sale or exchange of interests in land be used in a manner consistent with the conservation purposes identified for the subject interests in lands (for example, conservation of additional land consistent with the purposes of the FLP).
- c. The respective portion of the donation must not have been previously credited towards any Federal program's non-Federal cost share.
- d. The State Lead Agency approves the donation as contributing to the cost share.

Donations of land or interests in land must be documented in the State FLP records to count as part of the non-Federal cost share. The title does not need to be transferred to the State or Federal Government in order for the donation to qualify as cost share. However, if in the future, the donated lands are conveyed or the rights or title are modified in a way that is inconsistent with the purposes of the FLP, then the State must restore the cost-share value dedicated in the grant agreement. (For additional guidance on cost-share tracts, see Section 10 – Grant Requirements for States, Section 13 – Due Diligence for Acquisition, Section 14 – Conservation Easement Language, Section 17 – Multi-Resource Management Plans, and Section 20 – Stewardship of Forest Legacy Program Tracts.)

Part V



Part V – Land Acquisition Process and Requirements

13. Due Diligence for Acquisition

The acquisition of land requires certain activities to ensure the appropriate use of Federal funds, and that landowners are justly compensated. Additional activities, such as Baseline Documentation Reports and Multi-Resource Management Plans, are necessary to ensure the resource values are protected and conserved in perpetuity.

An acquisition involves the following tasks, in this approximate order. However, there could be reasons for deviating from this order. For instance, if the initial field visit to the property found an agricultural dump of old vehicles and machinery, a Phase I Environmental Assessment may be warranted before any other expenses, such as a preliminary title search.

Title Search and Title Insurance

The title of the interest acquired must be free of encumbrances inconsistent with the purposes of the Forest Legacy Program (FLP). Title insurance may be secured for the full value of the encumbered property, but is not an alternative to an acceptable title. Title issues can be a major cause of problems in the acquisition of properties. As early as practicable, a title search should be done to help determine the issues that must be addressed for a successful acquisition. A title search may uncover such common issues as the existence of mortgages, liens, contracts, court actions, reserved rights, utility or road easements, and other recorded legal considerations. A title search is generally performed by a title insurance company, an attorney, or a title abstractor. (See Section 8 – Project Eligibility and Development for additional information on title and third-party interests.)

For conservation easement projects, a mortgaged tract can only be accepted into the FLP if the mortgage holder subordinates the mortgage interest to the conservation easement. This is to avoid the potential situation of a bank dissolving a conservation easement if the landowner defaults on the loan.

The information provided in a title report may not always provide an accurate assessment of the title. Thus, title insurance is a protection that can be purchased to cover errors in the title report. When FLP funds are used in acquiring lands or interests in lands, the FLP requires assurance of a title free of encumbrances inconsistent with the FLP purposes. This can be met via an opinion from the State agency through legal counsel, State Attorney General, or by purchasing title insurance for the full value of the property that names the interest holder as the beneficiary. Title insurance protects the holder from any loss sustained because of defects in the title other than those specifically excluded in the policy. Title insurance does not guarantee acceptable title.

Legal Description/Survey

A legal description of the estate, whether it is a fee title or a conservation easement, is an essential element of the transaction. Acceptable legal descriptions should be derived by field survey, metes and bounds, measurement methods to State standards, or by the Public Land

Survey System (PLSS), whereby a plat of the estate is recorded, or by reference to another recorded document developed by one of these methods. In every case, acreage must be stated to the accuracy required by State standards or by the PLSS standards to assure that the estate appraised is the estate purchased by the FLP. For conservation easements, a survey should be obtained if the easement only covers a portion of the tract, unless the easement area can be easily identified by natural features.

The State should consider obtaining a survey especially when there are known boundary line disputes, or when there are concerns about the reliability or accuracy of the survey—for example, if the survey is very old. All known boundary disputes should be resolved before the drafting of the final legal description. The legal description fails if it does not clearly define what the grantor is conveying to the grantee.

Surveys can provide reliable information to develop maps for management plans, trails, or other important resources that need to be spatially displayed.

Phase I Environmental Assessment

States are encouraged to do a preliminary scoping of the environmental conditions, and if warranted, a Phase I Environmental Assessment. The potential for hazardous and toxic substances to be found on acquired land, and the associated economic liabilities, should be a concern in each acquisition. Cleanup of hazardous sites or off-site contamination can be expensive. Even the legal costs to assign proper liability for hazardous sites can challenge State or local government budgets. Environmental assessments can minimize the legal liability of later discovering a hazardous site on an acquisition. If the results of the assessment reveal environmental concerns, the State must consider the Federal and State laws concerning hazardous waste liabilities.

Minerals Determination

The minerals ownership must be determined before acquisition, and if there are severed mineral interests, then the outstanding mineral interests must be acquired to the extent possible. In the case where the mineral rights are not, or cannot be, acquired, a determination by a qualified geologist must be obtained as to the likelihood of mineral development (see Section 8 – Project Eligibility and Development for additional information on title and third-party interests). The acquisition can proceed if the possibility of mineral development is so remote as to be negligible. If severed mineral rights cannot be acquired, and those severed rights pose a threat to surface disturbance (that is, the “remoteness” standard cannot be met), that portion of the property is not eligible. Limited (impact, footprint, duration) oil and gas extraction might be permissible if it is determined that the conservation values can be protected and the activity will not have negative impacts. Surface mining must be excluded from FLP tracts except for gravel sites in support of allowed activities on the property and, on a case-by-case basis, on adjacent properties where such uses are in support of those same conservation values, for example, reciprocal road-maintenance agreements for timber management.

Document Preparation and Legal Advice

It is recommended that the States use their State Attorney General’s office, agency counsel, and other conservation experts to develop and review acquisition documentation. The complexities of legal considerations and the diversity of landowner interests require expertise in the development of conservation documentation. FLP grants can be used to pay for legal assistance on behalf of the State for FLP acquisitions.

Conservation Easement and Deed Language Drafting

All FLP conservation easements and deeds must include certain provisions to ensure the FLP tracts are protected in perpetuity and managed consistent with the purposes of the FLP, and

to ensure the FLP conservation investment is maintained in perpetuity. (See Section 14 – Conservation Easement Language and Section 15 – Fee Simple Purchase Deed Language for required and suggested language for conservation easements and fee simple deeds.)

In addition, conservation easement language must be negotiated and drafted to adequately protect the conservation values (forest values and benefits) of the FLP project, and to ensure that the easement terms can be monitored and enforced through time to protect these values. Conservation easement language must also meet all applicable State legal requirements (see Section 14 – Conservation Easement Language” for guidance).

All deed and conservation easement language must be reviewed by the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) before finalizing, to ensure consistency with FLP purposes and requirements.

Baseline Documentation

All FLP conservation easement tracts, including cost-share tracts, must have a Baseline Documentation Report (BDR). A baseline is a compilation of information that documents the current condition and conservation values of the property at the time a conservation easement is granted. The BDR is used as part of the monitoring and enforcement of the conservation easement and must be completed and signed by the landowner or an authorized agent of the landowner and the conservation easement holder before closing.

The BDR documents—through narrative descriptions, maps, geographic information system (GIS) files, and photo images—existing features and attributes of a tract on the day it becomes restricted by a conservation easement. The report must document the conservation values to be protected by the conservation easement and the relevant conditions of the property. The information in the BDR is necessary to monitor, manage, and enforce the conservation easement. During monitoring of FLP conservation easements, any material departure from the BDR should be noted and documented. (See Appendix K – Baseline Documentation Report Sample for a sample outline and content for the report.)

While some data (vegetation types, soil types, species composition, certain fixed measurements, location of watercourse crossings, etc.) may be collected relatively early in the process, the BDR must accurately reflect the conditions of the property at the time of closing. (See Section 20 – Stewardship of Forest Legacy Program Tracts for details regarding conservation easement monitoring and enforcement.)

Multi-Resource Management Plans

All FLP-funded conservation easements and fee acquisitions must have a Multi-Resource Management Plan that addresses the resource elements of the U.S. Department of Agriculture, Forest Service, Forest Stewardship Program. These plans must be reviewed and approved by the State forester or designee. Cost-share and donated tracts are required to have an approved Multi-Resource Management Plan only when management activities are anticipated. Multi-resource management plans shall be reviewed by the landowner and the State forester or designee periodically, at a minimum of every 10 years, and following a change of ownership. They also must be updated as needed (see Section 17 – Multi-Resource Management Plans for additional guidance on these plans).

Appraisal and Appraisal Review

The market value of properties acquired using FLP funds must be determined by an appraisal that meets Federal appraisal standards known as the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and Uniform Standards of Professional Appraisal Practice (USPAP).

First, a review appraiser must be appointed to the appraisal case who will issue instructions to the appraiser. All appraisal instructions must be recorded in the appraisal report. (See Section 16 – Appraisal and Appraisal Review for more details on this process.)

Amicable Agreement Acknowledgment

The entity acquiring the land or interest in land is required to notify the landowner in writing, prior to closing, of two things:

1. The value of the property interest to be conveyed to the State or Federal Government as determined by an approved appraisal, and
2. That the sale of the property or interests in property is strictly voluntary and that eminent domain will not be used if negotiations do not result in an amicable agreement.

The landowner shall sign this notification. (See Appendix L – Amicable Agreement Acknowledgment Letter for an example.)

14. Conservation Easement Language

Overview

All FLP conservation easements are required to have certain provisions to ensure the FLP tracts are protected in perpetuity and managed consistent with the purposes of the FLP. In addition, conservation easement language must be negotiated and drafted to: (1) adequately protect the conservation values (forest values and benefits) of the FLP project, (2) not include reserved rights that could negatively impact the conservation values being protected, and (3) ensure that the conservation easement terms can be monitored and enforced through time to protect these values. Where “mandatory language” is shown in this section, the language must be used verbatim unless there is a conflict with an individual State’s legal requirements. Changes made to comply with State legal requirements must not weaken the Federal position or the permanent protection of the conservation values of the FLP project and must be approved by the R/A/I.

Below is a list of required and suggested conservation easement provisions to help guide conservation easement drafting and review for FLP projects. Conservation easement language must also meet all applicable State legal requirements. Other funding sources may also have conservation easement requirements. The State FLP Coordinator must coordinate and communicate the draft conservation easement requirements with the R/A/I.

In addition to meeting FLP requirements, each State has the responsibility to develop conservation easements that do not conflict with their State Forest Action Plan. Each State should supplement the list with restrictions or requirements outlined in their State Forest Action Plan.

The R/A/I must review easement language before finalizing the easement to ensure consistency with FLP purposes and requirements and to ensure all required provisions are included. If changes are made to an easement after it is provided to the appraiser, the appraiser must review the changes and document if the changes have an impact on the appraised value.

Ensuring all items on the list below are addressed in a conservation easement does not assure that the easement will fulfill FLP purposes or be eligible to enter the FLP. The entire conservation easement must be reviewed and evaluated as a whole to determine if it meets FLP requirements.

Forest Legacy Program Conservation Easement Provisions

The following is a list of easement provisions that must be included in an FLP easement. In some cases, noted by an asterisk, specific mandatory language must be included in these provisions.

- A. Purpose and Authority
- B. Prohibition or Limitation on Subdivision
- C. Industrial or Commercial Uses
- D. Limitation on Structures
- E. Designated Improvement Areas (as applicable)
- F. Prohibition on Surface Disturbance
- G. Duties of Owners
- H. Multi-Resource Management Plan
- I. Limits on Compatible Nonforest Use
- J. Baseline Documentation
- K. Right To Enter the Property for Monitoring
- L. Enforcement Provisions
- M. Linear Nonforest Corridors and other Easements
- N. Ecosystem Service Markets Allowance/Prohibition*
- O. Transfer, Amendment, and Extinguishment*

*Mandatory language is provided below in ***bold italic***.

A. Purpose and Authority

The purpose and authority provision must specify that the acquisition of the conservation easement supports FLP goals, and also must include a citation to the FLP authorizing legislation. (See Appendix M – Conservation Easement Language Examples, examples 1, 2, and 3, for sample purpose provisions that States have used to meet this requirement.)

B. Prohibition or Limitation on Subdivision

The conservation easement must be clear on whether subdivision can take place or is prohibited, and ensure that if subdivision is allowed that the easement will be rerecorded and continue to apply in perpetuity to all subdivided parcels. If there is to be a division of a reserved right, it must also be clear how it will be divided.

Residential subdivision is a noncompatible use; however, division of the property into smaller parcels may be compatible with the FLP in certain limited circumstances. In some cases, it may be appropriate to allow limited future division of very large projects into smaller parcels. Often landowners entering into conservation easements for large acreage properties wish to reserve the right to divide ownership into a few parcels. The same is sometimes true for family holdings where the current owner wants to reserve the right to convey a portion of the property to a child or grandchild. If the project allows for subdivision, then how and where this will occur must be clearly laid out in the conservation easement; the area(s) where subdivision can occur should be legally described using a survey or accurately depicted on a map, or the minimum size and maximum number of subdivisions specified. Note that subdivisions can quickly double or triple the administrative demands of a project. In other words, the work increases but the land protected does not.

Pursuant to State law and the State Forest Action Plan, leases (depending on the purpose and terms) and bona fide boundary line adjustments are normal and acceptable exceptions to subdivision prohibitions.

C. Industrial or Commercial Uses

Industrial or commercial uses that are inconsistent with maintaining forest cover and that could negatively impact the conservation values protected by the easement must be prohibited. Allowable uses should be addressed in the State Forest Action Plan. (See Section 8 Project Eligibility and Development for guidance on compatible and noncompatible uses.)

D. Limitation on Structures

The easement must contain language limiting or prohibiting structures on the protected property. The purpose of this provision is to limit negative impacts associated with structures and ensure consistency with the FLP and conservation purposes identified in the easement. (See the subsection on Structures and Other Improvements in Section 8 Project Eligibility and Development, and Appendix M – Conservation Easement Language Examples, examples 4 and 5, for easement language.)

E. Designated Improvement Areas (as Applicable)

If a State chooses to provide allowances for structures or other improvements in an FLP easement, a designated improvement area may help ensure these uses remain compatible with the FLP and conservation purposes of the easement. If a State decides to include a designated improvement area within a conservation easement, then the easement language must identify the specific location and limit of the allowed activities.

For any existing or proposed future structures and other improvements, the State must first determine whether they are compatible with the purposes of the FLP. (See the subsection Compatible Lands and Uses in Section 8 – Project Eligibility and Development for guidance on determining compatibility.) For uses deemed compatible, establishing designated improvement areas within the conservation easement can limit changes to existing structures and restrict new improvements to ensure these uses remain compatible with the purposes of the FLP in the long run. For noncompatible existing or proposed future uses on the property, these areas are not allowed and should be excluded (via survey) from the project to the extent possible. (See the subsection Structures and Other Improvements in Section 8 – Project Eligibility and Development for guidance on allowing structures and other improvements in FLP projects.) However, in some cases, uses that are noncompatible and not allowed may be inseparable from the land holding or the long-term values of the FLP project and the project could be better protected by establishing designated improvement areas for such uses within the easement, instead of allowing for unrestricted use within or adjacent to the FLP project area.

The location of designated improvement areas must be identified (surveyed or otherwise located) and appropriately addressed in the appraisal. The appropriate size of a designated improvement area depends upon the scale of the project and the suite of values protected by the conservation easement. For example, if threatened and endangered species habitat is identified as an important project characteristic, the designated improvement area cannot include that habitat or impact that habitat. In addition, the designated improvement area that includes an important project characteristic may not be subdivided from the protected property. The State is required to monitor over time and defend the conservation easement in case of violations.

There also may be a need to allow for temporary placement of structures to support compatible uses, such as structures related to timber harvest. When drafting language related to temporary structures, the extent and duration of the uses should be clear. The conservation

easement should be clear that such uses will be outlined in the Multi-Resource Management Plan. (See Appendix M – Conservation Easement Language Examples, example 6, for conservation easement language.)

F. Prohibition on Surface Disturbance

Noncompatible surface disturbance activities must be excluded from FLP projects through prohibitions in the easement or by removing the noncompatible use areas from the FLP project area. Limited excavation of sand and gravel for onsite use for roads and landings that support allowable activities may be allowed, depending on the project circumstances and conservation purposes. The extent and location of such activities must be clearly outlined in the conservation easement. The size and extent of such uses will be determined through consultation between the State and R/A/I. Such activities should also be addressed in the Multi-Resource Management Plan.

Limited oil and gas extraction that does not negatively impact the purposes of the FLP may also be allowable. The impact of such use must be limited and localized. Any lease or surface-use agreements must be subordinate to the conservation easement and must be developed in consultation with the State Lead Agency. For guidance on structures and other improvements in FLP projects, see the Structures and Other Improvements subsection in Section 8 – Project Eligibility and Development.

Any preexisting severed mineral reservations or leases must be evaluated to determine if the property is eligible. For guidance on evaluating mineral rights, see the subsection on Evaluating Third-Party Interests during Project Development in Section 8 – Project Eligibility and Development. For conservation easement language, see Appendix M – Conservation Easement Language Examples, examples 7 and 8.

G. Duties of Owners

The easement must include a provision requiring the landowner to manage the property in a manner that is consistent with the purposes for which the land entered the FLP and prohibiting the landowner from converting the property to other uses. (See Appendix A – Authorizing Legislation for the Forest Legacy Program, section (d)(i) Duties of Owners in the FLP authorizing legislation.)

H. Multi-Resource Management Plan

The easement must include a provision outlining the requirements for the Multi-Resource Management Plan. The provision should be very clear that management activities on the land must be done in accordance and be consistent with the plan. The plan must be approved by the State forester or designee before closing and the plan must be updated at least every 10 years or when the property changes hands. (For guidance, see Section 17 – Multi-Resource Management Plans; see Appendix M – Conservation Easement Language Examples, example 9, for conservation easement language.)

I. Limits on Compatible Nonforest Use

The conservation easement must include a provision that ensures minimum forest cover of at least 75 percent. Compatible nonforest uses must be no greater than 25 percent of the total FLP tract, or less if the State Forest Action Plan has a lesser percentage requirement. Tracts with greater than 25 percent compatible nonforest uses must have an approved Multi-Resource Management Plan that ensures reforestation. Reforestation should take place within 10 years of project completion, if silviculturally possible. Any reforestation plan exceeding 10 years must be approved through the Multi-Resource Management Plan approval process (see Section 17 – Multi-Resource Management Plans). FLP funds may only be used on tracts of land meeting the definition of forestland in the State Forest Action Plan

and the State's percentage criteria for compatible nonforest land. (See Section 8 – Project Eligibility and Development for guidance on determining compatible nonforest uses.)

J. Baseline Documentation

The conservation easement must refer to the BDR. (See Section 13 – Due Diligence for Acquisition – Baseline Documentation and Appendix M – Conservation Easement Language Examples, example 10, for conservation easement language.)

K. Right To Enter the Property for Monitoring

The conservation easement must provide the right to enter for monitoring. This provision should notify the landowner that this is an activity that will occur at least annually. The provision may include language that outlines how the landowner will be notified of planned monitoring.

L. Enforcement Roles

The easement must contain provisions that establish the roles of all parties involved and determine the responsibility to address conservation easement violations.

M. Linear Nonforest Corridors and Other Easements

Conservation easements must include terms that limit additional easements, leases, or contracts that negatively impact the conservation purposes of the conservation easement. The conservation easement must also include language to ensure any subsequent easements or agreements are approved in advance by the State Lead Agency (grant recipient), the holder of the easement if different than the State Lead Agency, and the Forest Service. This requirement is consistent with the Office of Management and Budget (OMB) grant assurance that limits change in use or title without approval and instructions from the Forest Service. The grant recipient must ensure that additional long-term or permanent agreements do not negatively impact the protected conservation values or the purposes of the FLP or limit the allowed uses of the land; especially if the limitation would be contrary to the reasons the land was entered into the FLP. Such approval may be conditional, denied, or granted at the discretion of the grant recipient and the Forest Service. An example of an additional noncompliant easement would be a strict preservation easement that allows no timber management when a purpose of the conservation easement is to support the local timber economy. (See Appendix M – Conservation Easement Language Examples, examples 11 and 12, for conservation easement language.)

N. Ecosystem Service Markets Allowance/Prohibition (mandatory language provided if allowed)

A State Lead Agency may choose to include the following language that discusses engaging in ecosystem service markets (ESMs). Alternately, if the State has a compelling policy reason, it may choose to include language that limits participation in ESMs. If the State does not wish to limit participation, then the State Lead Agency must use the following mandatory language and not other language:

Landowners/grantor/owner may engage in ecosystem services markets under other programs but such action must not adversely affect the interest granted under the easement to the grantee or the grantees right of enforcement or be inconsistent with or defeat the conservation purpose for which the easement was acquired.

No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the FLP purposes, terms of the easement, or other documents incorporated by reference. If the owner wishes to enter into such an agreement, the owner of the fee title will notify the holder of the easement of any proposed

participation in ecosystem service markets the owner deems compatible with the Purposes and Terms of the Easement and related documents and explain why they believe market participation is compatible. The easement holder (in consultation with the State Lead Agency if the holder is not the State Lead Agency) will determine the compatibility of the market participation. As needed and appropriate to make the determination, [Insert name State Lead Agency] will consult with the USDA Forest Service. If it is determined to be compatible, the easement holder will provide an approval and authorization letter to the landowner and include the letter and ESM participation documentation as an attachment to the current Multi-Resource Management Plan/Forest Stewardship Plan. The easement holder may review and monitor all ecosystem service market participation for compatibility with FLP purposes and requirements.

O. Transfer, Amendment, and Extinguishment (mandatory language)

To ensure compliance with the FLP authorizing statute, accomplishment of FLP purposes, and the protection of the United States' interests, all FLP conservation easements (cost-share and non-cost share) must include the clause below. For cost-share tracts where no FLP funds are used in the acquisition of the conservation easement, this language can alternatively be included in a notice of grant agreement that is recorded in addition to the conservation easement (see Appendix M – Conservation Easement Language Examples, example 16, for agreement language). After cost-share requirements are met for a particular FLP tract, excess eligible cost-share funds can be used to meet cost-share requirements for other FLP tracts. The State FLP coordinator will consult with the R/A/I to identify the appropriate easement language (from the selections below) for this section.

Required language for an FLP Conservation Easement (Article 3 for non-cost share and Article 3a for cost share)

The provisions of this section shall apply notwithstanding, and in addition to, any other conditions or limitations that may be imposed on the transfer, amendment, or extinguishment of this Easement.

1. Transfer. This Easement may be transferred or assigned only (i) to a government entity that (a) is eligible to hold this Easement under the Forest Legacy Program (FLP), (b) is willing and able to hold this Easement for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed on the holder by the terms of this Easement and (ii) with the consent of [Insert name State Lead Agency]. If the Easement Holder ever ceases to exist, or is no longer willing and able to hold this Easement for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this Easement, the [Insert name State Lead Agency] must identify and select an appropriate entity to which this Easement must be transferred.

2. Amendment. This Easement may be amended only with the written approval of the [Insert name State Lead Agency] and the USDA Forest Service FLP [Insert Region/Area/ITTF] program manager, and they are under no obligation to agree to any amendment or consult or negotiate regarding any amendment. An amendment may be approved by the [Insert name State Lead Agency], [also Insert Name of Easement Holder if different than State Lead Agency], and the USDA Forest Service FLP [Insert Region/Area/ITTF] program manager only if it will (i) serve the public interest and not diminish the benefits provided to the public, (ii) have a beneficial or neutral effect on the conservation values protected by this Easement, (iii) be consistent with the purpose of the FLP and the purpose of this Easement, (iv) not confer an economic benefit on private persons (private inurement or private benefit in the case of a charitable organization holder), (v) be consistent with the intent of the original grantor of this Easement and any funding entities, (vi) not diminish the perpetual duration of this Easement or negatively affect the

status or rights of the Easement Holder, [also, Insert name State Lead Agency if different from the Easement Holder], or the United States with regard to this Easement, and (vii) otherwise comply with all applicable Federal, State, and local laws and regulations. Amendments to make boundary line adjustments are permitted only in the case of technical errors made in the survey or legal description. The Easement Holder, if different than the State Lead Agency, must provide written notice to the [Insert name State Lead Agency] of any proposed amendment, along with the information needed to evaluate the proposed amendment under the criteria set forth above. Only include this sentence if Easement Holder and State Lead Agency are different. Any approved amendment must be recorded in the appropriate local land use records and a copy of the recorded amendment must be provided to the [Insert name State Lead Agency] and the [Insert USDA Forest Service Region/Area/IITF] program manager within 30 days of recordation. Any purported amendment that is recorded without the prior written approval of the [Insert name State Lead Agency] and the [Insert USDA Forest Service Region/Area/IITF] program manager will be null and void.

[Article 3 language is for non-cost share]

3. Extinguishment. The Grantor and the Easement Holder acknowledge that USDA Forest Service Forest Legacy Program funding for the acquisition of this Easement is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq), and pursuant to the grant agreement [Insert Grant Name and Full Grant Number] awarded by the United States Department of Agriculture (USDA) Forest Service on [Insert Grant Date] to the [Insert name State Lead Agency]. The grant agreement is housed in the USDA Forest Service Regional/Area Office at [Insert USDA Forest Service Regional/Area/IITF Office Address] or in an archival facility per Agency policy. The Grantor and the Easement Holder acknowledge and agree that this Easement cannot be extinguished, in whole or in part (whether through release, termination, exchange, or otherwise) unless the USDA Secretary of Agriculture (Secretary), in the Secretary's sole and absolute discretion, consents in writing to the extinguishment and the United States is reimbursed its proportionate share of the value of this Easement or the portion thereof that is extinguished at the time of extinguishment. The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This Easement shall not be deemed extinguished in whole or in part until the United States receives reimbursement as provided in this paragraph.

The United States' "proportionate share" is [__%], which was determined by dividing the FLP's contribution to the acquisition of this Easement by the value of this Easement at the time of its acquisition, and expressing the result as a percentage. The United States' proportionate share shall remain constant over time.

The "value of this Easement or the portion thereof that is extinguished" shall be the value of such interest immediately before the extinguishment as determined using the before and after or similar appraisal method in an appraisal that meets the Uniform Acquisition Standards of Federal Land Acquisition (UASFLA) and is completed by a certified general appraiser approved by the Grantee and the R/A/I.

No inaction or silence by the Secretary shall be construed as approval of an extinguishment or as an abandonment of this Easement in whole or in part. Any purported extinguishment executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial extinguishment.

If the Grantor or the Easement Holder is notified of a proposal to condemn all or any portion of the property subject to this Easement, the [Insert name State Lead Agency] and the USDA Forest Service must immediately be notified.

[Article 3a language is for cost share]

3a. Extinguishment.

The Grantor and Easement Holder acknowledge that this Easement serves as a cost-share tract to the USDA Forest Service Forest Legacy Program authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq) pursuant to the grant agreement [Insert Grant Name and Full Grant Number] awarded by the United States Department of Agriculture (USDA) Forest Service on [Insert Grant Date] to the [Insert name State Lead Agency]. The grant agreement is housed in the USDA Forest Service Regional/Area Office at [Insert USDA Forest Service Regional/Area/IITF Office Address] or in an archival facility per Agency policy. The Grantor and the Easement Holder acknowledge and agree that this Easement cannot be extinguished, in whole or in part (whether through release, termination, exchange, or otherwise) unless (i) the [Insert name State Lead Agency] consents in writing to the extinguishment, (ii) the Easement Holder reimburses or makes whole the [Insert name State Lead Agency] for the United States' proportionate share of the value of this Easement or the portion thereof that is extinguished, and (iii) the [Insert name State Lead Agency], in turn, reimburses or makes whole the United States for its proportionate share of the value of this Easement or the portion thereof that is extinguished. The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) must be approved by the [Insert name State Lead Agency] and acceptable to the USDA Secretary of Agriculture but shall in all events be used for FLP or similar conservation purposes. This Easement shall not be deemed extinguished in whole or in part until the United States receives reimbursement as provided in this paragraph.

The United States' "proportionate share" is [__%], which was determined by dividing the portion of the value of this Easement that, at the time of its conveyance, was used to meet the cost-share requirement by the value of this Easement at that time, and expressing the result as a percentage. The United States' proportionate share shall remain constant over time. The "value of this Easement or the portion thereof that is extinguished" shall be the value of such interest immediately before the extinguishment as determined using the before and after or similar appraisal method in an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) and is completed by a certified general appraiser approved by the [Insert name State Lead Agency].

No inaction or silence by the [Insert name State Lead Agency] shall be construed as approval of an extinguishment or as an abandonment of this Easement in whole or in part. Any purported extinguishment executed without the prior written consent of the [Insert name State Lead Agency] will be null and void. The provisions of this paragraph shall survive any partial extinguishment.

If the Grantor or the Easement Holder is notified of a proposal to condemn all or any portion of the property subject to this Easement, the [Insert name State Lead Agency] and the USDA Forest Service must immediately be notified.

Note: When the acquisition of a cost-share tract is completed in advance of the FLP-funded tract for which it is serving as cost share and the percent proportionate share is unknown, the use of a notice of grant agreement may be used.

Other considerations when drafting conservation easements

- If the landowner plans to take advantage of Federal tax benefits in connection with the conveyance of the conservation easement, the landowner may request that additional language be included in the easement. Work with legal counsel to ensure any requests for language are appropriate.
- Restrictions should be related to the purposes of the FLP and the purposes of the conservation easement.
- Quantify restrictions and reservations and avoid ambiguity. If terms such as “reasonable,” “appropriate,” “to the extent possible/practicable,” “limited,” “unnecessarily,” or other nonspecific terms are included in the easement, the easement should be clear about who must determine what is “appropriate,” “reasonable,” etc. and how such determination must be made. Generally, the easement holder should make these determinations. A conservation easement that is clear and unambiguous benefits both the easement holder and the landowner.
- Do not include restrictions that are not tied to the conservation purposes. In some cases a landowner may want restrictions beyond what would normally be included in an easement. For example, a landowner may want a much wider stream buffer or other restrictions beyond State policy or what is dictated by science to protect water quality and habitat. This not only limits future landowner management options beyond what is needed to protect the conservation values, but may also increase the administrative and monitoring burden of the holder. A conservation easement holder does not have to agree to all the restrictions that a landowner wants.
- Consider including terms that prohibit using property as a set aside to allow for greater development elsewhere. If such an action is allowed, there may be no net conservation gain by the protection of the property.
- Avoid discretionary approval provisions, as they can significantly undermine easement protections by granting holders the discretion to approve activities and uses that are not authorized or are prohibited by the easement.

See Appendix M – Conservation Easement Language Examples, examples 13, 14, and 15, for conservation easement language.

15. Fee Simple Purchase Deed Language

The following deed provisions are required for FLP deeds. Mandatory language is shown in bold italics and example language is shown in italics.

- A. Purpose and Authority
- B. Management Objectives
- C. Ecosystem Service Markets (As Applicable)*
- D. Transfer and Disposal*

*Mandatory language appears below.

A. Purpose and Authority

The purpose and authority provision indicates that the acquisition supports FLP goals, specifies that the property will be managed consistent with the purposes of the FLP, and must include the following citation to the FLP authorizing statute. Example language includes:

Example 1:

WHEREAS, the Conservation values of the Property are consistent with the goals of the Forest

Legacy Program and the establishment of this property, known as project name, will provide public benefits by:

preventing conversion of forest land and forest resources; protecting and enhancing water quality and water supplies; protecting wildlife habitat and maintaining habitat connectivity and related values to ensure biodiversity; protecting riparian area; maintaining and restoring natural ecosystem functions; and maintaining forest sustainability and the cultural and economic vitality of rural communities.

This property will hereby be managed in accordance with a Multi-Resource Management Plan and in a manner consistent with the Forest Legacy Program to ensure permanent protection of these public benefits.

This acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq).

Example 2:

The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq), on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian areas, and other ecological values, and to ensure that the Property is available for the sustainable and cost effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program. The purposes also include encouragement of management for and the production of economically sustainable and commercially viable forest products consistent with the other purposes of this easement and also include the long-term protection of the Property's capacity to produce economically valuable forestry products, and the encouragement of management of the property for industrial or commercial forestry only if consistent with the other purposes of this acquisition.

This property will hereby be managed in a manner consistent and in accordance with the Forest Legacy Program and a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest land and forest resources.

Example 3:

The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values. This property will hereby be managed in a manner consistent and in accordance with the Forest Legacy Program and a Multi-Resource Management Plan to ensure permanent protection of the forest land and its ecological values.

B. Management Objectives

This required provision indicates how the property will be managed consistent with the purposes of the FLP and in accordance with a Multi-Resource Management Plan. Example language includes:

The property will be managed in a manner consistent with the Forest Legacy Program and according to a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest resources and other conservation values for which the property was acquired. Management activities must take into account the long-term viability and health of the ecosystem. There may be no activities or uses of the property which are not compatible with the long-term forest health and sustainability. This limitation includes limitations on activities of short duration that may have long-term impacts such as soil compaction or disturbance of fragile systems.

There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails if such uses were articulated as a purpose of the acquisition, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition. There may be limited extraction of sand or gravel for onsite management activities. These activities will be outlined in the Multi-Resource Management Plan. Protection of the forest is the primary purpose of this acquisition any management, structures, disturbance or alteration will be done only if needed for effective protection, management or restoration of the forest.

There will be no conveyance or subdivision of the subject property except that limited portions may be conveyed as part of bona fide boundary dispute resolutions in consultation with the appropriate Court. The holder of the subject property shall not enter into long-term contracts, agreement, leases or easements that could impact the long-term title of this property or the purposes for which the property entered the Forest Legacy Program.

C. Ecosystem Service Markets (mandatory language, as applicable)

As discussed in Section 8 – Project Eligibility and Development, a State may choose to include a provision allowing participation in ecosystem service markets. If a State wants to make this allowance, it must include the following mandatory language:

No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the Purposes or Terms of this Deed, the terms of the Forest Legacy Program grant, [State of XX] Forest Action Plan or other documents incorporated by reference. If the [State of XX] wishes to enter such an agreement it must notify the USDA Forest Service explaining what the State proposes to do and explain why it believes market participation is compatible. The USDA Forest Service will respond with its denial or approval and include instructions if applicable.

D. Transfer and Disposal (mandatory language)

To ensure compliance with the FLP authorizing statute, accomplishment of FLP purposes, and the protection of the United States' interests, all FLP fee simple deeds (cost-share and non-cost share) must include the terms below.

Transfer Provision

This deed may be transferred or assigned only (i) to a government entity that (a) is eligible to hold this deed under the Forest Legacy Program (FLP), (b) is willing and able to hold this deed for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed by the terms of this deed and (ii) with the consent

of the [Insert name State Lead Agency]. If the deed holder ever ceases to exist, or is no longer willing and able to hold this deed for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this deed, the [Insert name State Lead Agency] must identify and select an appropriate entity to which this deed must be transferred.

Select from the following provisions the deed language to be used according to the holder of the deed. If the tract serves as cost share for the project use, the last provision in this section.

Disposal held by State Lead Agency:

[Insert name State Lead Agency] the owner of the Deed, pursuant to the grant agreement [Insert Grant Name] [Insert Full Grant Number] awarded by the United States Department of Agriculture (USDA), Forest Service on [Insert Grant Date] to the grant recipient, [Insert name State Lead Agency], acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq), and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange or disposition upon the grant recipient's [Insert name State Lead Agency] tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service [Insert Region/Area/IITF] Office at [Insert USDA Forest Service Region/Area/IITF Office Address] or in an archival facility per Agency policy.

The United States' proportionate share is [__%], which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage.

The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient [Insert name State Lead Agency] and the R/A/I.

The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This fee simple deed shall not be deemed disposed in whole or in part until the United States receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the [Insert name State Lead Agency] and the USDA Forest Service must immediately be notified.

Disposal held by other governmental entity (not the State Lead Agency):

[Insert Name of Deed Owner], the owner of the Deed, pursuant to the grant agreement [Insert Grant Name] [Insert Full Grant Number] awarded by the USDA Forest Service

on [Insert Grant Date] to the [Insert name State Lead Agency], acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq), and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the Deed Owner's tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service [Insert Region/Area/IITF] Office at [Insert USDA Forest Service Region/Area/IITF Office Address] or in an archival facility per Agency policy.

The United States' proportionate share is [__%], which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage.

The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient [Insert name State Lead Agency] and the R/A/I.

The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This fee simple deed shall not be deemed disposed in whole or in part until the United States receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the [Insert name State Lead Agency] and the USDA Forest Service must immediately be notified.

Disposal of a Cost-Share Tract

The grant recipient [Insert Name of State Lead Agency], and the owner of the Deed [Insert Name of nonprofit or other state agency Deed Owner], pursuant to the grant agreement [Insert Grant Name] [Insert Full Grant Number] awarded by the United States Department of Agriculture (USDA) Forest Service on [Insert Grant Date] to the [Insert Name of State Lead Agency], acknowledge that this acquisition serves as a cost-share tract in the USDA Forest Service Forest Legacy Program authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq), and that the interest acquired cannot be sold, exchanged, or otherwise disposed of, in whole or in part. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the grant recipient's tender of equal valued land or an interest or interests in land acceptable to the Secretary. If land or an interest or interests in land acceptable to the Secretary cannot be identified, the United States must be reimbursed its proportionate share of the market value of the interest at the time of the disposal. The grant agreement is housed in the

USDA Forest Service [Insert Region/Area/IITF] Office at [Insert USDA Forest Service Region/Area/IITF Office Address] or in an archival facility per Agency policy.

The United States' proportionate share is [__%], which was determined by dividing the portion of the market value of the interest that, at the time of its acquisition, was used to meet the cost-share requirement by the value of the interest at that time, and expressing the result as a percentage.**

The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) and is completed by a certified general appraiser approved by the grant recipient [Insert name of State Lead Agency] and the R/A/I.

The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This fee simple deed shall not be deemed disposed in whole or in part until the United States receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the [Insert name of State Lead Agency] and the USDA Forest Service must immediately be notified.

*Note: If the acquisition of a cost-share tract will be completed in advance of the FLP-funded tract for which it is serving as cost share and the percent proportionate share is unknown, the State FLP coordinator should consult with the R/A/I to identify appropriate language for this section.

16. Appraisal and Appraisal Review

All acquisitions using FLP funds must determine the market value of the acquisition with an appraisal report that meets Federal appraisal standards known as the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and Uniform Standards of Professional Appraisal Practice (USPAP). The Federal payment to the landowner cannot be more than the market value determined by the appraisal.

As a component of UASFLA (Yellow Book), the appraisal must be reviewed by a qualified review appraiser. Qualified appraisers and review appraisers may be State employees, contractors, or Federal employees. However, in some cases the review appraiser must be a Federal review appraiser. These instances are identified by the R/A/I by evaluating tract and State FLP risk factors (as discussed in the subsection Evaluating Appraisal Risk Factors). Even if a Federal review appraiser will not be the review appraiser, the State may be asked to consult with a qualified Forest Service review appraiser before or during the appraisal process.

Appraisal and Review Process

Before the appraiser begins work, the appraiser and a qualified review appraiser must engage in an initial consultation before the tract appraisal takes place. The review appraiser must develop tract specific appraisal instructions for the appraiser as a result of this consultation. These instructions must be included in the appraisal report. The appraisal must be completed by an appraiser licensed in the State where the tract is located and who also

meets the qualifications specified below. The effective date of value must reflect current market conditions.

Upon completion of the appraisal report, a qualified review appraiser must prepare a technical appraisal review report that determines whether the appraisal report, including any amendments or supplements, complies with the UASFLA (Yellow Book) and the terms and conditions outlined in the statement of work regarding the estate to be appraised. The review does not approve or disapprove the determined market value. FLP funds will not be advanced or reimbursed without documentation of an approved appraisal report. Appraisal and appraisal reviews shall contain a statement certifying that the appraiser has the knowledge of the assignment and the competency to determine the market value of the property assigned.

Following the completion of the appraisal and appraisal review, and prior to the completion of the acquisition, the appraiser or review appraiser may receive information that the estate appraised has changed (this may be substantive in nature or could be a change to conservation easement language that appears to be minor). The review appraiser shall review this information to determine if it must be addressed in the appraisal. The conclusions regarding the evaluation of the new information by both appraiser and review appraiser shall be documented in the project file. The following are the required qualifications for an appraiser and review appraiser:

Appraiser

In order to be a qualified appraiser for purposes of FLP appraisals, an individual must:

- a. Be a staff appraiser for a Federal land acquisition agency (Federal land acquisition agencies are the member agencies of the Interagency Land Acquisition Conference) who is certified as a general appraiser in compliance with OMB Bulletin 92-06; or be a non-Federal staff or fee appraiser who is certified as a general appraiser in the State where the appraised property is located, or can obtain reciprocity or a temporary practice permit in the State where the appraised property is located.
- b. Be competent to perform the appraisal assignment in compliance with the Competency Rule of the USPAP.
- c. Have completed training in application of the current edition of UASFLA (Yellow Book) approved for appraiser education credit in the State where the appraiser is certified. If the standards are updated and training has not yet been provided this requirement can be waived by the R/A/I in consultation with the Regional Appraiser.

Review Appraiser

In order to be a qualified review appraiser for purposes of FLP appraisals, an individual must:

- a. Be a staff appraiser for a Federal land acquisition agency who is certified as a general appraiser in compliance with OMB Bulletin 92-06, and holds specific delegated authority to review and approve or recommend appraisals for agency use; or be a non-Federal staff or fee appraiser who is certified as a general appraiser in the State where the appraised property is located, or can obtain reciprocity or a temporary practice permit in the State where the appraised property is located.
- b. Be competent to perform the appraisal review in compliance with the Competency Rule of the USPAP.
- c. Have completed training in application of the current edition of UASFLA (Yellow Book) approved for appraiser education credit in the State where the appraiser is certified.

Evaluating Appraisal Risk Factors

Using Appendix N – Guide to Evaluating Appraisal Risk Factors, the R/A/I must evaluate the state FLP and tract risk factors to determine if a Federal review appraiser should be, and to what extent, involved in an FLP appraisal.

All FLP acquisition of land or interests in land using Federal funds must comply with Federal appraisal standards (UASFLA). These standards require every appraisal to be reviewed by a qualified review appraiser. Qualified review appraisers can be State or Federal employees, or a contractor from the private sector. Depending on risk factors, the determination will be: (1) a Federal review appraiser being the reviewer of record, (2) a Federal review appraiser providing technical assistance to a non-Federal review appraiser, or (3) a State review appraiser or contract review appraiser working independently.

This decision of whether or not to involve a Federal review appraiser will be based upon the risk factors of the State FLP and the tract(s) to be appraised. The evaluation may also consider the amount of the Federal investment. Identifying one or more risk factors should not automatically result in a determination that a Federal review appraiser will be involved in the appraisal. The State FLP coordinator and the R/A/I will evaluate and discuss the State FLP and tract risk factors. The R/A/I will then determine the degree of involvement of a Federal review appraiser in a tract appraisal (see Appendix N – Guide to Evaluating Appraisal Risk Factors).

Quality Assurance Inspections (QAI) provide an evaluation of whether a State has sufficient guidelines to ensure compliance with Federal appraisal standards, as well as, whether a State has complied with those standards. If there are substantial issues identified in a QAI, and the State FLP has not sufficiently addressed the followup recommendations, the R/A/I may require the involvement of a Federal review appraiser until the State FLP has made changes to ensure compliance with Federal appraisal standards. (See Section 25 – Quality Assurance Inspections” for more details regarding QAIs).

17. Multi-Resource Management Plans

Landowners who enter into the FLP have a duty to manage the tracts for the purposes of the FLP. The FLP authorizing legislation (section (d)(i) Duties of Owners) states: “Under the terms of a conservation easement or other property interest acquired (for the FLP), the landowner shall be required to manage property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program.” The requirement to manage the property for the purposes that it was entered into the FLP is met managing the property according to the terms of a Multi-Resource Management Plan. For FLP tracts acquired in fee, this requirement can be met by the creation of a Multi-Resource Management Plan or by amending an existing plan that incorporates the additional tracts into the larger plan.

State Forester Review and Approval

Multi-resource management plans must meet the following requirements:

- Comply with the stipulations in the conservation easement or deed and not conflict with the purposes of the FLP;
- Address all of the plan criteria, plan elements, and additional information items necessary to comply with a Forest Service Forest Stewardship Program Forest Stewardship Plan described in Appendix O – Sample Content of a Multi-Resource Management Plan;
- Meet or exceed the State FLP guidelines; and
- Comply with Federal, State, and local laws, regulations, and permit requirements.

The State forester, or representative of the State forester, is responsible for reviewing and approving Multi-Resource Management Plans using a signature page within the plan. If a representative of the State forester is assigned to approve a Multi-Resource Management Plan, then this person must be an employee in the State forestry agency. If the State Lead Agency is not the State forestry agency, then the designee must have normal duties to review forest management plans or receive review assistance from the State forestry agency.

Third-Party Certification

Third-party certification of the forest management practices may be an acceptable substitution for a Multi-Resource Management Plan created by or at the direction of the landowner. If a proposed FLP tract is certified through a third party, the State forester or representative of the State forester is responsible for reviewing the planning and resource requirements of participation in the third-party certification. During the review, the State forester or representative of the State forester should determine that the third-party certification program meets or exceeds all of the plan criteria, plan elements, and additional information items necessary to comply with a Forest Service Forest Stewardship Program described in Appendix O – Sample Content of a Multi-Resource Management Plan. The State Lead Agency determines if the third-party certification meets the requirement of a Multi-Resource Management Plan, either as an overall State acceptance or on a case-by-case basis. The third-party certification unit must be the same area as the FLP tract proposed for protection; if it is not, it does not meet the requirement.

If an FLP tract is no longer certified, the landowner must develop an FLP Multi-Resource Management Plan within 6 months of no longer being third-party certified.

Multi-Resource Management Plan Requirements for Conservation Easement Acquisitions

Multi-Resource Management Plans must be prepared by a natural resource professional in accordance with landowner objectives. These plans describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, fish and wildlife resources, and other conservation values identified on the tract (see Appendix O – Sample Content of a Multi-Resource Management Plan for assistance in developing a plan). Approvals of new plans must occur before the closing of an FLP acquisition.

Multi-Resource Management Plans, including revisions, must be approved by the landowner acknowledging that the plan meets their objectives. Evidence of the landowner's approval can be a signature on the signature page in a plan. A Multi-Resource Management Plan must be reviewed by the landowner and the conservation-easement holder at least every 10 years, and updated as needed. If there is a change in land ownership, then the Multi-Resource Management Plan must be reviewed and updated. It must also be updated if the landowner objectives change.

Multi-Resource Management Plans that were accepted into the State Forest Stewardship Program before the involvement of the FLP should be reviewed. Written evidence of this review and approval on existing plans must accompany the Multi-Resource Management Plan and be provided to the Forest Service. This includes updates to a signature page or a letter of approval that the existing planned activities do not conflict with the FLP purposes.

The State forester or designee must review and approve any modifications or updates to a Multi-Resource Management Plan to ensure that the updated plan meets the requirements of an FLP Multi-Resource Management Plan.

Management Plan Requirements for Forest Legacy Program Fee Acquisitions

For tracts acquired in fee, a Multi-Resource Management Plan must be created for the FLP tract or the tract must be incorporated into an existing management plan for surrounding conservation lands. Multi-Resource Management Plans must be prepared by a natural resource professional and shall include provisions to meet the purposes of the FLP. Such plans identify the management objectives of the property and describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, fish and wildlife resources, and other conservation values identified on the FLP tract. The State forester or designee is responsible for approving the plan if it meets the plan requirements.

The Multi-Resource Management Plan covering the tract must be reviewed by the landowner and the State forester or designee at least every 10 years, and updated as needed. This review must also occur for all existing plans if the FLP acquisition is being added to an existing conserved land. Written evidence of this approval must accompany the plan and be provided to the Forest Service for the files.

A number of reasons may prevent an FLP Multi-Resource Management Plan from being completed on a fee tract before acquisition (for example, access to the property by the State or the State's required public participation process regarding public lands). Under most circumstances, the Multi-Resource Management Plan should be approved by the State forester or designee before the grant is closed out. If this is not possible, the State FLP coordinator shall consult with the R/A/I to establish a timeline for completion.

Management Plan Requirements for Forest Legacy Program Cost-Share and Donation Tracts

If a landowner of an FLP cost-share tract or an FLP-donated tract desires to manage the forest resources, then a Multi-Resource Management Plan is required. Review, approval, and periodic review requirements are the same as for other types of Multi-Resource Management Plans. If the landowner is not planning management activities, the plan is not required at the time of donation. However, if the landowner later decides to manage the property, then a management plan must first be developed and approved.

Part VI



Part VI – Post-Acquisition Requirements

18. Forest Legacy Information System

Function

The Forest Legacy Information System (FLIS) is an online accessible database that is used for many purposes in the Forest Legacy Program (FLP). FLIS is housed at the U.S. Department of Agriculture, Forest Service, National Information Center (NIC). FLIS is available through a website and has secure access with a unique user name and password for each user. Users, depending on their roles, are expected to keep FLIS up to date to ensure accurate reporting of accomplishments.

Purpose

FLIS has three main purposes which can only be fulfilled completely if users submit accurate information and keep the information up to date.

Project submission – For a new FLP project to be considered by the National Review Panel for recommendation for funding, project details must be entered into FLIS by the deadline stated in the call- for-projects announcement. Projects must be submitted in a thorough and complete manner, as the FLP project will be ranked only based on the information contained in the FLP Project Briefing Report that is automatically created by FLIS, based on the information entered by the FLIS user.

Forest Legacy Program tract accomplishment reporting – As FLP tracts are completed, it is vital that the final numbers (acres, funding amounts and sources, and dates of required diligence activities) and final geographic information system (GIS) boundary (see Appendix P – Tract Boundary Submission Standards for Forest Legacy Information System for data standards) are updated in FLIS within 30 days of the tract closing. Tracts that close in the latter half of September must have the accomplishment report completed by October 15, unless otherwise notified by the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I). By keeping information up-to-date, accomplishments involving the FLP can be reported with confidence. In addition to providing numbers for responding to administrative or legislative inquiries, the uploading of the final FLP conservation easement or fee boundary is used to calculate the annual performance measure to OMB. The acres proposed, acquired, and reported as FLP accomplishments (purchased, cost-share, or donated) should only reflect the FLP-eligible portions of the tract.

Forest Legacy Program tract monitoring reporting – All FLP conservation easements must be monitored at least annually. Each year, the dates the monitoring reports are submitted for each FLP conservation easement must be entered in FLIS. If any potential issues are identified through monitoring, that information is to be entered in the monitoring section of FLIS. In subsequent years, resolution to issues or violations must be reported in the monitoring section of FLIS as well.

Roles and Responsibilities

Federal Role

National – The national role in FLIS is to answer national inquiries on the accomplishments of the FLP by referencing the numbers as reported in FLIS. The national role is also responsible for reporting the annual numerical accomplishments and spatial (geographic information system) measure. During the project selection process, the national role is to download the project brief reports from FLIS that will be reviewed by the project review panel in the project selection process. The national role is to also archive project brief reports at various steps in the project selection process for the purpose of official recordkeeping. Archiving of reports occurs when projects are submitted for funding, when projects appear on the President’s Budget request, and when projects are funded.

Forest Service regions/Northeastern Area/Institutional Institute of Tropical Forestry – The R/A/I role in FLIS is to assist States with FLP project and tract information, submit their respective R/A/I projects for funding consideration, update FLP project and tract information for archiving information for projects listed in the President’s Budget and projects selected for funding, and certify FLP accomplishments within their R/A/I.

The R/A/Is assist States in providing information and offer suggestions when projects are submitted for funding consideration and reporting on individual FLP tract accomplishments.

In the submissions process, the R/A/Is review projects submitted by States for consideration by the National Panel. After the review, the R/A/I is responsible for forwarding all projects to the National FLP Project Selection. After the FLP project selection process and the President’s Budget is released, the R/A/Is are responsible for identifying which tracts within projects in their R/A/I are to be marked as President’s Request and submit that list for archiving. After projects are selected for funding, the R/A/Is are responsible for identifying which tracts within projects in their R/A/I are to be marked as funded and submit that list for archiving.

The R/A/I role in certifying information is to review individual FLP tract accomplishments certified by the State and approve that FLP tract accomplishment. Additionally the R/A/Is will also certify the annual certified accomplishment report submitted by each State in their R/A/I and approve the State report accomplishments.

State Role

The State role in FLIS (with help from other State or organization roles) is to enter accurate information on FLP projects and tracts. State actions include:

- Submitting projects for funding consideration,
- Reporting FLP tract accomplishments,
- Certifying FLP individual tract accomplishments,
- Certifying annual FLP accomplishments,
- Reporting on monitoring (Monitor Role can assist), and
- Reporting on violations observed during monitoring (Monitor Role can assist).

All FLP State Lead Agencies must submit report annual accomplishments in FLIS. Annually the State FLP coordinator must:

- Submit proposed projects in FLIS in accordance with the call for FLP projects for funding consideration (even if no projects are submitted that year, the State must report that no projects are submitted);

- Certify the accuracy of all individual tract accomplishments as complete and accurate
- Submit an annual accomplishment report certifying that the reported accomplishments for the previous fiscal year are accurate in FLIS (even if no FLP acquisition accomplishments occurred the State must report and certify this in FLIS).

Organization Role

An organizational user is a member of an FLIS-involved organization who identifies and inputs tract information for projects/tracts associated with his or her organization on behalf of the State. In addition, an organizational user can identify, create, and edit projects, as well as tracts within projects to which the State has given data entry permission to the organization.

Monitor Role

A monitor user's primary function within the FLIS application is to report monitoring activity for conservation easement tracts. Monitors, write/edit access is limited to monitoring reports for their State for State-level users and to projects assigned to an organization for organization-level users. All other functionality within the FLIS application is limited to read-only for State monitor users.

19. Recordkeeping Policy

This section specifies which FLP records must be retained. (See Appendix Q – Forest Legacy Program Recordkeeping for a checklist of required records.)

Background

On December 21, 2011, a new FLP recordkeeping policy was established identifying required documents to be retained as records. This policy covered FLP project and program information for both the Forest Service and the State. Before that date, the FLP Implementation Guidelines only made recommendations for certain documents to be retained as permanent records. The policy in this document and the December 21, 2011, policy are not retroactive to previous FLP project and program activities.

The recordkeeping policy in this document incorporates the December 21, 2011, document lists and adds new mandatory documents to be retained in the project files. While this policy is not retroactive to existing or closed FLP projects, records now considered mandatory that are present in any project or program file must continue to be maintained.

The FLP files (FLP project, FLP tract or State FLP) dated before the recordkeeping policy of December 21, 2011, or recordkeeping policy of these current Implementation Guidelines are **not** to become findings in State FLP Program Reviews or State Quality Assurance Inspections (QAI). In addition, there are grant documentation requirements for recordkeeping for all projects regardless of date.

Project Records

Forest Service

The following specifies what documents are required or recommended to be held in perpetuity for the FLP at the Federal level for each closed tract. These documents are separated into two categories: (1) Mandatory—documents that the Forest Service is required to obtain and maintain; and (2) Recommended—documents that are good for the Forest Service to obtain, but existing guidance does not require it. This is consistent with the Forest Service Records Management Handbook (FSH 6209.11-2013-4 issued September 18, 2013), which requires that all records pertaining to the use of Federal funds to acquire lands or interest in land under FLP will be filed under File Code 3360. Once the grant has been

finalized, the grant documents should merge with FLP documents to make the file complete. The Federal program manager should require the State to send copies of mandatory documents before closing out the grant. (See Table 1 in Appendix Q – Forest Legacy Program Recordkeeping for which documents are required or recommended for conservation easements, fee purchase, and donated fee tracts and conservation easements.)

Mandatory

1. Grant documents
 - a. Application for Financial Assistance SF 424, SF 424c, and SF 424d (SF 424a and SF 424b for older FLP project grants);
 - b. Pre-award letter with all signatures;
 - c. Grant narrative;
 - d. Final Performance Report/Grant Close out report;
 - e. SF 425 Federal Financial Forms, signed by authorizing official, as appropriate;
 - f. FS 6500-235, De-Obligation/Close-out Request Form; and
 - g. All amendments, modifications, and invoices.
2. Copy of recorded acquired interest in land (whether conservation easement or fee deed, including any conservation easement amendment(s)) with signatures, and book and page stamp from recording.
3. Final title insurance policy or letter from the State assuring title.
4. Minerals determination (if mineral rights are severed).
5. Cover and signature page(s) of the original Multi-Resource Management Plan.
6. Appraisal Review Report indicating appraisal conformance to Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book).
7. Amicable Agreement acknowledgment or documentation that the landowner has been notified of the appraised value and understands that FLP is a voluntary program.
8. Cover and signature page(s) of Baseline Documentation Report (not required if fee purchase).
9. Geographic information system (GIS) shapefiles of the boundaries of the conservation easement or fee acquisition.
10. Documentation establishing value for cost-share tracts, if used for cost share.*
11. Amendments to conservation easements.*

*New items - Not required in December 21, 2011, Recordkeeping Policy

Recommended

12. Copy of Settlement/Closing Statement, including signatures, or other proof of payment, such as a copy of a check or electronic funds transfer.
13. Maps of FLP tracts of conservation easement or fee acquisition and cost-share tracts.
14. Documents crediting Forest Service FLP as a source of funding for the project through a publicly available periodical or photographic proof of the posting of an FLP sign.

State

The following specifies what documents the State Lead Agency is responsible for in accordance with the State's recordkeeping policy for each closed tract. If a policy does not exist, see the last paragraph of this section for recommended best practices for long-term storage of FLP records. These documents are separated into two categories: (1) Mandatory—

documents that the State is required to obtain and maintain; and (2) Recommended—documents that are good for the State to obtain, but existing guidance does not require it. All final documents shall be held in perpetuity by the State Lead Agency or its designee (required State central archive) in a safe location. Copies of required FLP documents shall be easily accessible for inspection during QAI or FLP Program Reviews. No later than 3 months after closing, a complete set of documents shall be in its safe location and copies of any outstanding documents forwarded to the Forest Service (see Table 2 in Appendix Q – Forest Legacy Program Recordkeeping).

Mandatory

1. Current landowner contact information (name, address, phone, email).
2. Original signed Baseline Documentation Report and all updates.
3. Recorded acquired interest in land (whether conservation easement or fee deed) with signatures and copy of deed for each subsequent landowner.
4. Final title insurance policy or letter from the State assuring title.
5. Minerals determination (if mineral rights are severed).
6. Final appraisal, with appraisal instructions, and appraisal review report indicating appraisal conformance to Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book). (Donated tracts can use another documented value analysis and appraisal instructions are not required.)
7. Certification of appraiser and non-Federal review appraiser, in accordance with Section 16 – Appraisal and Appraisal Review.
8. Current Multi-Resource Management Plan.
9. Settlement/Closing Statement, including signatures, or other proof of payment, such as a copy of a check or electronic funds transfer.
10. Monitoring records/history. (Not required for fee acquisitions.)
11. Amicable Agreement acknowledgment or documentation that the landowner has been notified of the appraised value and understands that FLP is a voluntary program.
12. Documentation of establishing value for cost-share tracts if used for cost share.
13. For donated tracts, letter or other form of documentation of the landowner’s willingness to use property as cost share for FLP.
14. Copy of grant documents.
15. Amendments to conservation easements.*

*New item - Not required in December 21, 2011, Recordkeeping Policy

Recommended

16. Copies of any leases, covenants, or other restrictions on the use of the property.
17. Environmental site inspection/assessment documentation, including hazardous materials review.
18. Documentation of location of transaction/negotiation summary and history
 - a. Landowner inspection consent agreement (some States may not enter one)
 - b. Option agreement (some States may not enter one)
 - c. Notification of county or local government (if required)
 - d. Maps of FLP tracts of conservation easement or fee acquisition and cost-share tracts.

Program Records

The following mandatory program documents are required to be held in perpetuity at the Federal and State level. In addition, recommended documents, if kept, are required to be held in perpetuity. Federal records should be filed under File Code 3360. (See Table 3 for Federal and Table 4 for State in Appendix Q – Forest Legacy Program Recordkeeping.)

Forest Service

Mandatory

1. Annual State monitoring report summary for all State conservation easements as documented in FLIS.
2. State’s “self-certifying statement” for all fee tracts acquired through the FLP, documenting condition and confirming that they have not been converted to another use.
3. State and R/A/I FLP program review reports.
4. Quality Assurance Inspections and QAI follow-up reports.
5. State Forest Action Plans, including Assessment of Needs incorporated by reference.

Recommended

6. Tract monitoring plan or copy of established State policy for monitoring conservation easements.
7. Statement of Assurance identifying the State’s safe location for FLP records.
8. FLP applicable State policies, including enforcement policy, monitoring policy, and recordkeeping policies.

State

Mandatory

1. Self-certifying statement for all fee tracts acquired through the FLP, documenting condition and confirming that they have not been converted to another use.
2. State FLP program reviews.
3. Quality Assurance Inspections and QAI follow-up reports.
4. State Forest Action Plans, including Assessment of Needs incorporated by reference.
5. FLP applicable State policies, including enforcement policy, monitoring policy, and recordkeeping policies.

Recommended (to assist with succession planning and continuity of the State FLP)

6. Documentation of the State’s policy on FLP, which may include but is not limited to, FLP promotions and annual solicitation for new FLP projects and outreach efforts.
7. Action plans from FLP program reviews and QAIs.
8. Documentation of State Forest Stewardship Coordinating Committee meetings.

Recommended Recordkeeping Storage Practices

To ensure the documents are in a “safe location” and held in perpetuity, it is recommended that States follow industry standards for recordkeeping as described in Practice 9G of the Land Trust Standards and Practices found at www.landtrustaccreditation.org. These standards include:

- Keep originals and copies of all documents in separate locations;

- Protect original documents from daily use and from fire, floods, and other foreseeable hazards; and
- Develop systems for electronically stored documents that will ensure the data are updated periodically so the documents can be accessed using current technology.

20. Stewardship of Forest Legacy Program Tracts

The long-term stewardship of FLP-funded conservation easements and fee simple purchased land, including monitoring and enforcement of violations, is ultimately the responsibility of the State Lead Agency as the grantee recipient of the FLP funds. This responsibility can be assigned to other governmental entities through agreements made by the State Lead Agency as applicable to each project. The State Lead Agency has the responsibility for reporting monitoring activity and any major violations to the R/A/Is.

For cost-share tracts, the entity holding title in the land or interests in land has certain notification and enforcement responsibilities as specified in the extinguishment/disposal provisions of the easement or deed (see Section 14 – Conservation Easement Language and Section 15 – Fee Simple Purchase Deed Language).

Conservation Easement Monitoring Policy and Procedures

The State Lead Agency shall develop written monitoring policies and procedures that provide guidance for monitoring conservation easements and associated interests in lands. The policy at a minimum should include:

- Purpose
- Frequency and method of monitoring
- Documentation
- Recordkeeping
- Steps for violation enforcement
- Who should monitor
- How monitors shall be trained
- Process and criteria for when to update Baseline Documentation Report
- Roles and requirements for when conservation easements are held by other entities (including cost-share tracts)

Procedures should describe each step of the monitoring process to ensure that all properties are inspected in a consistent and effective manner regardless of who conducts the monitoring visits. Monitoring policy and procedures, as well as revisions, must be submitted to the R/A/I for review and input.

Conservation Easement Monitoring

The State Lead Agency and other governmental entities holding title to interests in land acquired through the FLP must monitor and manage those interests in perpetuity. For cost-share tracts, this responsibility is held by the applicable holder of the conservation easement.

At a minimum, monitoring FLP conservation easements must occur at least once a year. Monitoring consists of a visual inspection appropriate to the size and restrictions of the property, documented by a written report to catalog the condition of the conservation values on the property at time of inspection. Depending on the character of the land and type of conservation values protected, a visual inspection could include an on-the-ground assessment by foot, an assessment from a plane or boat, or even analysis of remote sensing or satellite imagery for particularly large properties. At a minimum, the written report must address:

- Name of monitor
- Date(s) of inspection
- Landowner and location
- Presence or absence of landowner on the property during visual inspection
- Description of the condition of the property and of specifically restricted areas

Any material departure on the property from the terms of the conservation easement, Baseline Documentation Report (BDR) (see Section 13 – Due Diligence for Acquisition) and Multi-Resource Management Plan (see Section 17 – Multi-Resource Management Plans) must be recorded by the monitor (see Section 19 – Recordkeeping Policy). The following information must be documented in FLIS: the date the monitoring inspection report is completed, any items of concern and associated plan of action, and whether there is a need to subdivide or merge the tracts. FLP grant funds cannot be used to fund monitoring inspection activities.

Periodically, the original BDR may need to be updated to reflect current conditions or to incorporate missing information. The State should notify the R/A/I of any BDR updates or corrections, and include this document in the permanent project file. FLP funds may be used to update BDRs.

Conservation Easement Violations and Enforcement

The holder of the conservation easement should immediately address any violation of the conservation easement with the landowner. The landowner should have the opportunity to correct the breach. After a reasonable time period (such as 30 days), if the breach is not corrected, enforcement action may be taken, including but not limited to, legal means. The governmental entity holding the conservation easement has the initial responsibility to enforce the conservation easement. In some cases, there may be additional entities that have executory rights of enforcement. All major violations (those activities or uses that violate the conditions of the conservation easement and are expected to cause substantial negative impact) and associated plan of action must be reported to the State Lead Agency and R/A/I, and documented in FLIS.

Fee Simple Monitoring (Self-certifying statement)

A fee simple purchase acquired under the FLP is not subject to annual monitoring requirements for conservation easements. Instead, for all FLP fee simple and cost-share tracts, the State Lead Agency must monitor the condition of each tract periodically, including those owned and managed by other governmental entities within the State (such as other State agencies or local governments), and every 5 years submit a self-certifying statement to the R/A/I as part of the State FLP program review. Similarly, for fee simple cost-share tracts held by a qualifying nonprofit conservation organization, the State Lead Agency must acquire from the fee interest holder a self-certifying statement for submission to the R/A/I as part of the State FLP program review.

The self-certifying statement must identify and document the condition of each fee tract, including changes in title; land conversions to nonforest uses; or uses inconsistent with the purposes of the FLP. If there are deviations from FLP purposes, the statement must describe the actions taken or to be taken to address documented deviations. For any major deviations or violations (activities or uses that are expected to cause substantial negative impact on the property), the State Lead Agency should notify the R/A/I as soon as possible—not wait for the 5-year review—to discuss and develop an associated plan of action.

Cooperative Partnerships

Optimal management and monitoring of FLP tracts is based upon partnerships between landowners, private nonprofit organizations owning or managing lands, and State and Federal officials. While land trusts and other private organizations may not own land or title to interests in land purchased with FLP funds, they may cooperate with or contract for monitoring and implement specific management activities. Land trusts and private organizations can also be key partners for monitoring collaboration and training to ensure monitors are current on best practices.

The State Lead Agency and other governmental entities (as applicable) holding title to interests in land acquired with FLP funds (conservation easement or fee simple holders) are responsible for the monitoring and management of those interests in perpetuity. The holder may delegate or assign monitoring and management but must retain enforcement responsibilities. The delegation or assignment of responsibility must be documented by a written agreement and the R/A/I must be notified.

The monitoring and management of federally owned interests in lands is reserved to the Forest Service but may be assigned to State or local governments, or another Federal agency through mutual agreement. The R/A/I must approve agreements involving any interests in lands held by the Federal Government before such delegation or assignment. Once interests in lands are acquired, the State Lead Agency, R/A/I, and others as appropriate, may negotiate a tract-specific Memorandum of Understanding (MOU) as necessary to specify management and monitoring responsibilities for the interests in lands.

For cost-share tracts, the entity holding title in the land or interests in land must fulfill the notification and enforcement responsibilities as specified in the extinguishment/disposal provisions of the easement or deed, and must notify the State Lead Agency accordingly. (See Section 14 – Conservation Easement Language and Section 15 – Fee Simple Purchase Deed Language.)

Transfer of FLP Tracts

Once a tract is officially entered in the FLP, there are limitations on the transfer of ownership or custody. The underlying fee ownership of tracts with a conservation easement, including those easements purchased with FLP funds, easements given as a donation, and easements being used as cost share, can be conveyed to another owner as long as the new owner is subject to all the conditions set forth in the conservation easement. Fee simple tracts held by a government entity can only be transferred to another government entity and that entity is required to manage the tract according to the purposes of the FLP and protect the conservation values identified in the deed.

A conservation easement holder of a tract purchased with FLP funds is permitted to transfer the easement's vested property rights, with the consent of the State Lead Agency, only to another government entity and that entity must be committed to protecting the conservation values identified in the easement and enforcing the terms of the easement. A conservation easement held by a nonprofit, including both donation and cost-share tracts, can transfer the easement's property rights to another qualified nonprofit with the consent of the State Lead Agency.

In a case where a conservation easement holder ceases to exist and has not designated a successor, the State Lead Agency must initiate the process of legally assigning a qualified entity to resume the duties of the easement holder. If a conservation easement holder abandons his or her duties as an easement holder without a successor, the State Lead Agency must initiate the legal process, if required, to designate a qualified entity to assume the duties of the easement holder.

Conservation easements, where Federal tax incentives were claimed, are subject to the Federal Treasury Regulations which limit the easement holder's right to transfer to another entity. A subsequent conservation easement holder must meet the Treasury Regulations as well as the FLP Implementation Guidelines in this section. In these cases it is important to seek knowledgeable legal advice for transfers.

21. Other Post-Acquisition Considerations

Linear Nonforest Corridors

Linear nonforest corridors exist in many FLP tracts. Creation of new corridors would result in conversion of forest land to nonforest use. This is contrary to the purpose of the FLP. As such, proposed linear nonforest corridors in an existing FLP tract should be considered noncompatible unless the State in consultation with the R/A/I determines that this nonforest use would have minimal impact on the forest values and benefits. The evaluation should consider location, size, scale, and intensity. According to OMB grant assurances, any change in use or title must be approved by the Forest Service and undertaken with instructions from the Forest Service.

If a linear nonforest corridor is expanded or a new corridor is added to an existing FLP tract, the loss in value must be determined and the FLP must be compensated by providing additional land, services, or funds returned to the National Treasury, as discussed in the transfer/amendment/extinguishment provisions. (See Section 14 – Conservation Easement Language and Section 15 – Fee Simple Purchase Deed Language for required language for conservation easements and deeds.)

Ecosystem Service Market Participation

Ecosystem service markets (ESM) are evolving market-based tools to secure a public good from private lands. Some have raised the question of who owns “credits” related to ESMs if there is a conservation easement in place on a property or in cases where the Federal Government has supported acquisitions of fee land by a State agency. In some cases, the acquisition of a conservation easement or fee interest may have secured the desired outcome of an ESM and there may be no right or credit to sell. However, in some cases, landowners might be able to participate in ESMs as long as the proposed management actions are consistent with the FLP purposes, Implementation Guidelines, provisions of the conservation easement, approved Multi-Resource Management Plan, requirements of the grant agreement, and the State Forest Action Plan. If the owner/grantor engaged or proposed to engage or not engage in management actions allowed by the conservation easement, management plan, or grant agreement and those actions give rise to some type of credit that another party was interested in purchasing, the owner of the fee interest would be the party selling that credit (that is, the owner of the credit created through the exercise of reserved management rights).

If participation in an ESM requires entering into a contract or title restriction, landowners must seek permission through the State Lead Agency to enter into market agreements for ecosystem services. If the participation in an ESM impacts use or title to the property, the State Lead Agency must seek review and permission from the R/A/I.

The following criteria should be used to determine if participation in an ESM is consistent with FLP purposes on a case-by-case basis for fee and conservation easement holding of FLP tracts, including cost-share tracts. Compatibility should be assessed by the landowner, the conservation easement holder, and the State Lead Agency, in consultation with the R/A/I.

Subject to R/A/I review and approval, fee and conservation easement holdings of FLP tracts, including cost-share tracts, may be determined to be compatible with ESM if **all** of the following are satisfied:

- Meeting the requirements of the ESM does not convert the forest to nonforest use and does not encumber or modify the title or conservation easement to reduce the perpetual protection of the FLP lands, as required by 16 U.S.C. 2103c.
- Meeting the requirements of the ESM preserves the requirement of “promoting forest land protection and other conservation opportunities,” as required by 16 U.S.C. 2103c.
- The management requirements and terms of ESM participation are consistent with the goals, actions, and updates to the Multi-Resource Management Plan and the management requirements are consistent with these Implementation Guidelines, the grant agreement, and the State Forest Action Plan.
- Where an FLP conservation easement is present, the easement holder provides notice and concurrence of compatibility to the landowner with a letter stating ESM participation is compatible with the conservation purposes and other restrictions in the easement. The management plan must be updated to include ESM participation, if appropriate.

ESMs are incompatible with FLP fee and conservation easement holdings, including cost-share tracts, if **any** of the following are true:

- Participation in the ESM requires, encourages, allows, or could be seen generally to promote the conversion of FLP land to a nonforest use.
- Participation requires an additional party to have interest in the land or conservation easement.
- Meeting the requirements of the ESM is incompatible with the defined purposes or terms of the FLP conservation easement or deed requirements.
- Meeting the requirements of the ESM would violate Federal, State, or local law regarding implementation of the FLP or conservation easements.

Implementation

If an FLP property satisfies all of the compatibility requirements listed above, the following steps must be taken before a landowner participates in ESM:

1. The landowner requests a determination of compatibility from the conservation-easement holder. If the holder is not the State Lead Agency, the lead agency must be consulted in addition to the holder as it is the grant recipient.
2. If the conservation-easement holder (in consultation with the State Lead Agency as needed if it is not the holder) agrees that market participation is compatible, then the State Lead Agency will provide a letter to the landowner documenting determination of compatibility or noncompatibility. That assessment and letter become part of the project file.
3. As needed and warranted—based on the complexity of the project, inexperience with ESMs, concern, confusion, or potential that the proposed action could impact the FLP purposes or the terms of the grant agreement—the State Lead Agency should consult with the R/A/I as part of the determination process. If the R/A/I determines that participation requires a change in use or title, approval of the Forest Service is required, in accordance with the provisions of the grant agreement.

During technical assistance visits and 5-year program reviews, the Forest Service will review ESM participation documentation. This documentation, along with monitoring information, must be made available for review upon request.

22. Amendments to Conservation Easements

FLP conservation easements, including cost-share tracts, are acquired for the purpose of permanently protecting the conservation values of the subject lands. Over time, however,

there may be a need to modify the terms of a conservation easement to ensure that it remains a viable land protection tool. Amendments to FLP conservation easements should not be a common occurrence but may be useful if circumstances change or situations arise that were not addressed in the easement. The potential ability to amend should not encourage amendments but rather provides a limited mechanism for amendment if modification becomes absolutely necessary. In accordance with the OMB grant assurances used for FLP project grants, changes to the use of or title to properties acquired through the FLP require review by and written approval of the R/A/I.

An amendment to an FLP conservation easement may be approved only if it would satisfy the following requirements:

- The amendment would serve the public interest and not diminish the benefits provided to the public.
- The amendment would have a beneficial or neutral effect on the conservation values of the land protected by the conservation easement.
- The amendment would be consistent with the purpose of the FLP and the purpose of the conservation easement.
- The amendment would not confer an economic benefit on private persons (referred to as private inurement or private benefit if a charitable organization is the conservation easement holder).
- The amendment would be consistent with the intent of the original grantors of the conservation easement and any funding entities.
- The amendment would not diminish the perpetual duration of the conservation easement or negatively affect the status or rights of the easement holder, the State Lead Agency, or the United States with regard to the easement.
- The amendment would otherwise comply with all applicable Federal, State, and local laws and regulations.

Holders of FLP conservation easements are encouraged to have a written policy to guide the acceptance and processing of proposed amendments. An amendment policy helps to ensure that the evaluation of amendment requests is consistent and fair, and may deter landowners from making unwarranted requests. Suggestions for the development of an amendment policy are located in Appendix R – Supplemental Amendment Information.

New or amended FLP conservation easements must include a standard amendment provision specifying the circumstances under which the easement may be amended. (See Section 14 – Conservation Easement Language for the required amendment provision for FLP conservation easements.)

FLP conservation easements may be amended only with the written approval of the State Lead Agency and the R/A/I. Before requesting approval from the R/A/I, the State Lead Agency has the responsibility to confirm that the proposed amendment satisfies the requirements listed above.

Reasons To Amend

Reasons to amend a conservation easement may include the following, provided the amendment would satisfy the requirements listed above.

- To correct an error in original drafting; for example, to correct a legal description (survey description), to correct errors in conservation easement exhibits, or to include exhibits inadvertently omitted.
- To clarify an ambiguity in the conservation easement.

- To add new provisions that strengthen the protection of the conservation values of the land subject to the conservation easement.
- To delete reserved rights, such as the right to build structures.
- To enlarge the area protected by the conservation easement (as when a project is phased over several years or the landowner wants to add additional acreage), though sometimes it may be more appropriate for the additional land to be treated as a new FLP project with a separate conservation easement.
- To make a boundary line adjustment to correct a technical error made in the survey or legal description.
- To address issues created by new legislation.
- To address unanticipated forest or nonforest uses.
- To relocate approved uses or reserved rights (designated improvement areas, driveways, utilities, etc.).
- To address conflicting language or language that limits actions that would benefit the protection of the conservation values of the land subject to the conservation easement.

Reasons Not To Amend

Conservation easements may be amended only if the proposed amendment would satisfy the requirements listed above. Examples of proposed amendments that would be denied include those that would:

- Permit commercial activity that would involve the conferring of an economic benefit on private persons (private inurement or impermissible private benefit in the case of a charitable organization holder),
- Allow additional development or subdivision, or
- Create an inconsistency with the purposes of other funding sources.

Legal Considerations

The legal issues raised in this section are not exhaustive and are meant to raise awareness of the complexity of the subject and encourage consultation with appropriate legal experts and authorities.

Federal Tax Considerations – Many acquisitions of FLP conservation easements involve bargain sales in which the grantors received Federal tax benefits. Amending such conservation easements could have tax implications for the grantor as well as implications for a nongovernmental easement holder in the case of a cost-share or fully donated tract (for example, loss of tax-exempt status, intermediate sanctions, or loss of status as an “eligible donee” of tax-deductible easements). Some amendments may require appraisals to determine if the changes would involve private benefit or private inurement. Determinations of private benefit and private inurement should be made by legal experts. Additionally, Federal tax law does not allow the modification of the perpetual nature of a conservation easement.

State Conservation Laws – Some States and Territories have specific laws governing conservation easements that do not allow the public benefit to diminish as a result of an amendment. Amendments must comply with these laws, which may require judicial, State Attorney General, or other third-party review and approval of proposed amendments. Amendments may also be affected by other laws, including State laws governing charities, State laws governing the administration of charitable assets held by either governmental or charitable entities, contract law, constitutional prohibitions on a government entity’s transfer of public assets to private persons, and public trust law. It is suggested that legal review of a proposed amendment that clearly meets the requirements listed above be directed to

an agency's legal counsel. If a proposed amendment may, but does not clearly, satisfy the requirements for an amendment (that is, involves judgment calls about which reasonable people could disagree), then the State Attorney General's office should be consulted and given the opportunity to review the proposed "substantive" amendment.

Coordination

If a non-lead government agency holds an FLP conservation easement, that agency must notify the State Lead Agency of any proposals to amend the easement and provide the State Lead Agency with the information needed to evaluate whether the proposed amendment would satisfy the amendment requirements listed above. Regardless of which agency holds a conservation easement, the State Lead Agency has the responsibility to determine if the merits of the proposed amendment should be further evaluated and, if so, to forward the case to the R/A/I. The State Lead Agency and the R/A/I must determine if the proposed amendment would satisfy the above amendment requirements. If a disagreement occurs, then the determination should be decided by appropriate agency legal counsel. When a proposed amendment meets the minimum amendment requirements and is otherwise found to be acceptable, the State Lead Agency is responsible for preparing a draft amendment.

For cost-share tracts, the conservation-easement holder (which may be a land trust) must notify the State Lead Agency of any proposal to amend a cost-share easement and provide the agency with the information to evaluate whether the proposed amendment would satisfy the amendment requirements. It is the State Lead Agency's responsibility to notify the R/A/I of a proposed amendment and together determine if the amendment requirements are met. If it is determined that the proposed amendment would not satisfy the amendment requirements or would cause the value of the conservation easement to be reduced below the required cost-share amount, the State Lead Agency should reject the proposed amendment. If the State Lead Agency, in consultation with the R/A/I, determines that a proposed amendment would satisfy the amendment requirements and otherwise be acceptable, then the agency should prepare a draft amendment.

The State Lead Agency is responsible for ensuring that the draft amendment is reviewed by the necessary legal experts and is in compliance with applicable Federal, State, and local laws. It is suggested that the State Attorney General's office be consulted and given the opportunity to review draft substantive amendments. The R/A/I must review the final draft and approve the amendment in writing before finalization and recordation of the amendment.

The R/A/I will document all amendment decisions, whether they are approved or denied, and the documentation will be kept in the project files. The documentation should describe the reasons for approving or denying the proposed amendment.

The State Lead Agency and the R/A/I are under no obligation to agree to any amendment or to consult or negotiate regarding any amendment.

Documentation

All documentation associated with an amendment to a conservation easement must be retained in the associated State and Federal project files in perpetuity. Documentation required to process and approve an amendment will depend on the extent of the requested change. At a minimum, the signed and recorded amendment and written approvals by the State Lead Agency and R/A/I must be added to the project file. Additional documentation needed for the project file might include the following:

- Maps
- Baseline Documentation Report
- Title report

- New appraisal and review
- Survey
- Amended Multi-Resource Management Plan
- Minerals determination
- GIS shapefiles
- Correspondence

Amendments should be evaluated to determine if updates must be made in the FLIS database. Not all amendments will require a change or addition to the database. Increases in acreage should be handled by adding a new tract with the associated information, including acres, value, dates, and shapefiles. Unusual amendment cases and the editing of data in older FLIS records will require assistance from the FLIS User Helpline.

23. Extinguishment of a Conservation Easement; Disposal of Fee Land; Reimbursement

FLP conservation easements and fee simple deeds, including cost-share tracts, are acquired for the purpose of protecting the conservation values of the subject lands in perpetuity. The conservation easements and deeds are also acquired after an extensive and highly competitive national selection process that identifies projects that will best accomplish the purpose of the FLP: to protect environmentally important forest areas that are threatened by conversion to nonforest uses and as well as important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values (16 USC 2103c(a)). Accordingly, extinguishment (whether through release, termination, exchange, condemnation, or otherwise) of a conservation easement in whole or in part, or the sale, exchange, or other disposal of fee land in whole or in part, should be a rare occurrence and requires the written consent of the Secretary or designee and reimbursement to the United States, as provided below.

Reimbursement calculations for non-cost-share tracts are based on the United States' proportionate investment in the project (that is, the extent to which total acquisition costs were paid for with FLP acquisition funds, excluding due diligence costs). The United States' proportionate share will be expressed as a percentage and documented in the appropriate required provision for each conservation easement or fee simple deed. Reimbursement calculations for cost-share tracts are based on the percentage of the value of a cost-share tract that was used to meet the cost-share requirement. This percentage also will be documented in the appropriate required provision.

Rare circumstances in which the Secretary determines that there is no alternative and consents to the extinguishment of a conservation easement, the disposal of fee land or an exchange, in whole or in part, could include the establishment of utility right of ways, highway right of ways, water reservoirs, or other public works projects. If the Secretary consents to an extinguishment, disposal, or exchange, the Secretary may condition the consent on the project including direction to minimize harm to FLP interests and purposes. The Secretary is under no obligation to consent to extinguishments, disposals, or exchanges.

New or amended conservation easements and fee simple deeds must include a standard provision specifying the requirements that must be met for extinguishment or disposal. (See Section 14 – Conservation Easement Language for the required easement provision and Section 15 – Fee Simple Purchase Deed for the required fee simple deed provision.)

Where Federal tax incentives are claimed, conservation easements are additionally subject to Internal Revenue Code and Treasury Regulation requirements that mandate that easements be extinguished only by judicial proceedings and upon a finding of impossibility or impracticality and provide direction on the disbursement of funds. (See Section 22

– Amendments to Conservation Easements, Legal Considerations.) In these cases, it is important to seek knowledgeable legal advice for extinguishments.

If the Secretary consents to the extinguishment of an FLP conservation easement in whole or in part (and any other conditions or limitations imposed on the extinguishment are complied with), the FLP requires the State Lead Agency, at the Secretary’s discretion, to take one of the following actions:

1. In the case of an FLP conservation easement that is not a cost-share tract, reimburse the United States for the value of the extinguished interest in proportion to the FLP funds used in the original FLP acquisition;
2. In the case of an FLP conservation easement that is a cost-share tract, reimburse the United States for the value of the extinguished interest in proportion to the value of the conservation easement that was used to meet the cost-share requirement at the time of the conservation easement’s conveyance (the “reimbursement amount”);
3. Use the reimbursement and corresponding cost-share amounts to acquire FLP-eligible lands or interests in lands of at least equal value; or
4. Accept other FLP-eligible lands or interests in lands of at least equal value to the reimbursement and cost-share amounts.

The following illustrate how the reimbursement calculation should work in general terms.

- If an FLP conservation easement that is not a cost-share tract is extinguished in whole and 75 percent of the funds used to acquire the easement came from the FLP, the amount to be reimbursed to the United States is 75 percent of the value of the easement when extinguished.
- If an FLP conservation easement that is not a cost-share tract is extinguished in part and 50 percent of the funds used to acquire the easement came from the FLP, the amount to be reimbursed to the United States is 50 percent of the current value of the part of the easement that is extinguished.
- If an FLP conservation easement that is a cost-share tract is extinguished in whole and 90 percent of the value of the easement at the time of its conveyance was used to meet the FLP cost-share requirement, the amount to be reimbursed to the United States is 90 percent of the current value of the easement.
- If an FLP conservation easement that is a cost-share tract is extinguished in part and 100 percent of the value of the easement at the time of its conveyance was used to meet the FLP cost-share requirement, the amount to be reimbursed to the United States is 100 percent of the current value of the part of the easement that is extinguished.

The provision included in the conservation easement addressing extinguishment (previously referred to as the reversion provision), outlines the financial responsibility between the State Lead Agency and the Federal Government, and between the landowner and the governmental entity holding the easement.

If the Secretary consents to the sale or disposal of fee land in whole or in part, the FLP requires the State Lead Agency, at the Secretary’s discretion, to take one of the following actions:

1. In the case of a disposal of fee land that is not a cost-share tract, reimburse the United States for the value of the disposed interest in proportion to the FLP funds used in the original FLP acquisition;

2. In the case of a fee land that is a cost-share tract, reimburse the United States for the value of the disposed interest in proportion to the value of the fee land that was used to meet the cost-share requirement at the time of the conveyance (the “reimbursement amount”);
3. Use the reimbursement amount to acquire FLP eligible lands or interests in lands of at least equal value; or
4. Accept other FLP-eligible lands or interests in lands of at least equal value to the reimbursement amount.

If the Secretary consents to an exchange of fee land, in whole or in part, the State Lead Agency must ensure that the newly acquired land is of at least equal value to the land released from the FLP.

The provision included in fee simple deeds addressing disposal outlines the financial responsibilities of the governmental entity and the State Lead Agency.

Avoidance of Extinguishment or Disposal

To assess whether the extinguishment of a conservation easement or the disposal of fee land can be avoided, the following steps should be taken.

1. The State Lead Agency must promptly inform the R/A/I of the situation and address specific issues related to the possible action that could cause an extinguishment or disposal.
2. The State Lead Agency and the R/A/I should work together to determine if there is an alternative to the action or a condition that can be mitigated. If an acceptable action or successful mitigation can be found, there is no need for an extinguishment or disposal.
3. The R/A/I will determine if the actions or conditions are compatible with the purposes of the FLP and can be subordinated to the conservation easement or fee simple deed (see Section 8 – Project Eligibility and Development about discussion on compatible lands). If appropriate, the action should be legally subordinated to the conservation easement or the fee simple deed to avoid extinguishment or disposal.

Extinguishment or Disposal and Reimbursement Procedures

State Lead Agency Procedure

1. Define the proposal to extinguish the conservation easement, dispose of the fee land or exchange, whether in whole or in part, and determine the best course of action regarding reimbursement of the United States (see alternatives described above).
2. The proposal must be presented to original project donors and funding entities for awareness and input.
3. Present the proposal to the SFSCC, which may choose to make a recommendation to the State Lead Agency official.
4. The State Lead Agency must officially notify the R/A/I in writing of the proposed action and provide the manager with all relevant supporting documentation.
5. The R/A/I will review the case file and make a recommendation to the Secretary or designee regarding whether to consent to the proposal.

Department of Agriculture Procedure

1. The Secretary or designee will either consent to or decline the proposal and direct the State Lead Agency regarding the steps to be taken to resolve the situation.
2. If the Secretary consents to the proposal, the State Lead Agency should determine the value of the interest to be extinguished or disposed of by Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) appraisal and, if applicable, the value of the property to be acquired through exchange or purchase (also by UASFLA appraisal). If the value of the interest to be extinguished or disposed of, or the value of the property to be acquired through exchange or purchase, is too small to justify an appraisal (that is, the cost of the appraisal would equal or exceed such value), the Secretary or designee, after consultation with the R/A/I, may consent to completing the transaction based on good faith estimates from available information and without a formal appraisal.
3. If the Secretary consents to the proposal, it is the State Lead Agency's responsibility to determine and take all appropriate legal steps to extinguish the conservation easement or dispose of the land, in whole or in part. This may require court approval and involvement of the State Attorney General and other government entities or officials.

Example of Extinguishment and Reimbursement

Example 1: A State Lead Agency acquires an FLP tract. Seventy-five percent of the cost of acquisition was supplied by FLP funds and the remaining 25 percent was provided by State funds. On the date of acquisition, the property unencumbered by the conservation easement had a value of \$2 million, the property encumbered by the easement had a value of \$1.5 million, and the easement had a value (determined under the "before and after" method) of \$500,000.

Thirty-five years later, the conservation easement is extinguished in whole upon approval of a court of competent jurisdiction and the consent of the USDA Secretary. Immediately before extinguishment, the property unencumbered by the conservation easement had a value of \$3 million, the property encumbered by the easement had a value of \$1.5 million, and the easement had a value (determined under the "before and after" method) of \$1.5 million.

Upon extinguishment, the State must pay the United States a proportionate share (75 percent) of the conservation easement value, which is \$1,125,000.

Note: If a property owner, under different conditions than the example above, takes a Federal tax incentive following the initial encumbrance, there are specific Federal tax laws that govern the disbursements associated with such extinguishments and appropriate legal advice should be sought.



Part VII



Part VII – Program Oversight

24. Forest Legacy Program Reviews

U.S. Department of Agriculture, Forest Service Directives require periodic Forest Legacy Program (FLP) reviews to assess if an FLP is being implemented as intended at both regional and State levels. The purpose of these reviews is to determine whether desired FLP results or benefits are achieved, objectives established by legislation are met, regulations are followed, and whether agencies have considered alternatives that might reduce costs or increase outputs.

Consistent with the Forest Service Manual (FSM), the Washington Office (WO) will conduct reviews of the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) FLPs, focusing on what is working well and identifying findings and recommendations on how to improve the FLP. These reviews should be conducted every 5 years, but if an issue arises that needs attention sooner, the WO may conduct the review sooner. FSM 1410 outlines requirements for WO reviews of R/A/Is.

The R/A/Is will conduct a review of each State FLP, focusing on what is working well and identifying findings and recommendations on how to improve the FLP. A review should be conducted every 5 years, but if an issue arises that needs attention, the R/A/I may conduct the review sooner. FSM 1460 outlines the requirements for Cooperative Program Reviews of State programs conducted by the R/A/I.

The objective of each review is to review FLP implementation, identify findings, and develop an action plan to address the findings. All reviews will be documented in a final report, signed by the leadership of each Forest Service unit, that includes an introduction, summary of the review, commendations, statement of findings, and an agreed-upon action plan. When all actions have been completed, the review will be formally closed. (See Appendix S – State Forest Legacy Program Reviews for the suggested state review processes and questions and Appendix T – Forest Service Regions/Northeastern Area/International Institute of Tropical Forestry Forest Legacy Program Reviews for the suggested R/A/I review processes and questions.)

25. Quality Assurance Inspections

Quality assurance inspections (QAI) will be conducted by an appraiser to evaluate a State agency's appraisal program to determine compliance with the Federal appraisal requirements—Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser will generate a report to document inspection findings related to the appraisal process. (See Appendix U – Process for Conducting Quality Assurance Inspections for process and questions.)

States are reviewed on an approximate 5-year cycle when they have at least two completed acquisitions. The first QAI in a State will be onsite, while subsequent QAIs can be conducted onsite or virtually, depending on the preference of the State agency and the availability of

electronic information. The national FLP program manager will make the determination of onsite or virtual. Subsequent QAIs in a State will only review tracts completed after the previous QAI.

At the completion of the inspection, the appraiser will report the findings to the R/A/I, who will communicate the findings to the State. The QAI report should be limited to providing findings and not offer direction or guidance. QAI findings regarding appraisal and appraisal review reports shall document the level of compliance with UASFLA (Yellow Book), USPAP, and the accepted appraisal techniques and procedures. The QAI report should support findings with reference citations.

The QAI report preparer will provide the R/A/I and the WO FLP program manager with a draft report for review and then follow up with a final report. The R/A/I may share the final QAI report with the State or prepare a separate document with the key findings.

The State must submit a follow-up document to the R/A/I within 60 days of the date QAI findings are provided to the State. This document must include a list of action items, an explanation of how the State is addressing or plans to address the findings, and a rationale for specific findings with which the State does not agree.

Twice a year—at the end of June and December—the R/A/I will submit a report to the WO assessing the progress each State has made in its appraisal program action plans. Consequences of not implementing the State's QAI response will be addressed in the annual Forest Service Reply-Due letter soliciting upcoming proposed projects.



Part VII



Part VIII –Forest Legacy Program Glossary of Terms and Acronyms

26. Glossary of Terms

Affirmative obligation – Specified actions or activities that the landowner must fulfill to be in compliance with the terms of a conservation easement or rights granted to the easement holder to access the property or make improvements.

Amendments, conservation easement (CE) – The changing of the terms of a CE due to an exceptional circumstance that maintains or improves public interests without changing the intent or the conservation purposes.

Amicable agreement letter – A letter addressed to the landowner disclosing the appraised value of the landowner's land and stating that the acquisition of their land is on a willing seller/willing buyer basis.

Appraisal – A document that determines the market value of a property; for the FLP, this document must meet Federal acquisition guidelines.

Appraisal review report – A document that approves or rejects an appraisal specifically required in Federal acquisitions.

Assessment of Need (AON) – See Forest Legacy Assessment.

Authorized agent – The party given authority by the landowner(s) to sign and bind the landowner(s).

Bargain sale – A land transaction where the owner discounts the sale price below the appraised value.

Baseline/Baseline Documentation Report (BDR) – A report establishing the initial conditions of an FLP conservation easement tract necessary to monitor and enforce the conservation easement.

Compatible nonforest land types – See nonforest land, compatible.

Compatible uses – Activities, structures, or other improvements that are consistent with the purposes of the FLP and do not negatively impact the forest values and benefits.

Conservation easement (CE) – A legal agreement a property owner makes with a governmental entity or a nonprofit organization to restrict activities allowed on the land in order to protect specified conservation values. Conservation easement restrictions are tailored to the particular property and to the interests of the individual landowner. All FLP conservation easements are held in perpetuity.

Conservation easement holder – The party holding the nonpossessory rights or interests transferred through a conservation easement or conservation restriction.

Conservation purposes – Purposes stated in a conservation easement or fee simple deed identifying one or more conservation values to be protected. The purpose provision includes the general definition of the conservation values to be protected and how these meet the purpose of the FLP.

Cooperative Forestry Assistance Act (CFAA) – The Cooperative Forestry Assistance Act of 1978 Public Law 95-313, 92 stat. 365, 16 USC 2101 et seq. (as amended through Public Law 110-246, May 22, 2008) authorized the Forest Legacy Program.

Cost share – Non-Federal assets or in-kind goods or services used to meet the minimum cost-share requirements of the FLP. See also non-Federal cost share.

Cost-share tract – A tract of land or interest in land given to the State FLP at the request of the landowner, in which no Federal dollars were used to pay the landowner for the land or interest in land acquired (although, program or administration funds may have been used for due diligence), and is used as all or part of the non-Federal cost share for an FLP project grant.

Deed – A written instrument that documents and affirms an interest in property and serves to document transfer of the interest in land from one party to another. It must define the property and name the grantor of the interest and grantee of the interest.

Designated improvement area – Designated areas where nonforest uses (such as house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use, or provisions made through cost and time to cure and treatment.

Due diligence – Activities conducted to ensure that no financial harm occurs to the buyer during the acquisition of a tract of land or as a result of purchasing the land (such as an unknown obligation). Examples would be survey and title search.

Ecosystem goods and services – Generally, the benefits that flow from an ecosystem that are of relatively immediate benefit to humans and occur naturally.

Ecosystem Service Markets (ESM) – Institutions or settings in which numerous individuals voluntarily trade permits or credits of an ecosystem service, typically using money as the means of exchange. For the purposes of the FLP, the extraction of timber and non-timber forest products, and hunting leases are excluded from this definition of ecosystem service markets.

Eligibility criteria – A set of factors developed by the State Lead Agency, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC), to evaluate geographic areas to determine if they contain significant environmental values to be considered an “important forest area” and contain “threats” of conversion to be eligible as a Forest Legacy Area (FLA).

Executory rights or interests – An interest in property (particularly real estate) that will only pass to another in the future if certain events occur.

Federal appraisal standards – Standards contained in the publication *Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2016*, or subsequent amendments or updates, also known as the Yellow Book. These standards are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9328 or online at: <https://www.justice.gov/file/408306/download>.

Final reports – The final written program performance report and financial report prepared by the grantee and submitted to the Forest Service disclosing the accomplishments and financial expenditures. All final reports must be submitted no later than 90 calendar days after the grant expiration date.

Financial report (Federal) – A required financial report (SF-425) prepared by the grantee and submitted to the Forest Service. The frequency of reporting is determined by the terms and conditions of the Federal award, but no less than annually nor more than quarterly while the grant remains open.

Forest or forest lands – A tract of land that is principally covered with trees. The FLP requires tracts to be at least 75 percent forested. The determination that a tract is a forest depends on species type, stand density, age, and geographical location. Each State defines what qualifies as a forest for the purposes of the FLP in its State Forest Action Plan.

Forest Legacy Area (FLA) – A geographic area with important forest and environmental values that satisfies identified eligibility criteria and has been delineated, described, and mapped in a State’s Forest Action Plan. Acquisition of lands and interests in lands for the FLP can only occur within approved FLAs.

Forest Legacy Area (FLA) boundary adjustment – A minor change to an existing FLA to create a more logical or manageable boundary.

Forest Legacy Assessment – An assessment conducted by a State, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC), containing a description of the forest resources within the State and the trends affecting those resources. This assessment establishes the eligibility criteria for tracts to be considered for inclusion in the FLP, identifies Forest Legacy Areas (FLAs), and creates a guide to implementation of FLP in the State. Previously, this was an independent document called an Assessment of Need (AON), but it is now embedded in a State Forest Action Plan.

Forest Legacy Information System (FLIS) – The database that stores pertinent information about tracts, projects, and accomplishments of the FLP. Also, it is the system where applications for projects are developed.

Forest Legacy Program (FLP) – Authorized by the Cooperative Forestry Assistance Act of 1978, as amended, 16 USC 2103c. The purpose of the Forest Legacy Program is to ascertain and protect environmentally important forest areas that are threatened by conversion to nonforest uses.

Forest Legacy Program (FLP) project – A project can be a single tract or multiple tracts in a distinct geographic area. An FLP project can have a single funding event or multiple funding events over a series of fiscal years. If a successive phase is proposed in an FLP project, each proposal is treated as an independent unit in the project selection process and funding is not guaranteed.

Forest Legacy Program tract – A tract of forested land identified, protected, and managed for the purposes of the FLP that consists of one or more contiguous legal parcels under a single ownership or beneficial control.

Forest Service Program Manager – The Federal employee responsible for the Forest Legacy Program at the national or R/A/I level.

Forest Service Regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) – The field units of the Forest Service responsible for FLP management and oversight within the Forest Service regions, Northeastern Area (Area), or International Institute of Tropical Forestry (IITF).

Forest Stewardship Plans – See Multi-Resource Management Plans.

Forest Stewardship Program – Authorized by the Cooperative Forestry Assistance Act of 1978, as amended, 16 USC 2103a. The purpose of the Forest Stewardship Program is to encourage the long-term stewardship of nonindustrial private forest lands by assisting the owners of such lands to more actively manage their forest and related resources.

Forest uses – Traditional and other forest-based uses that maintain or enhance forest values and benefits, such as hiking; fishing; hunting; harvest of timber, syrup, mushrooms, and other forest products; camping; and bird watching.

Forest values and benefits – Environmental, social, and economic purposes that benefit the public for which a tract is to be conserved in perpetuity by the FLP, such as scenic, cultural, recreation, historic, fish and wildlife habitat, rare and unique plant communities, water supply and quality, and production of timber and other forest products.

Fee purchase – A land conveyance where a purchaser acquires all rights, title, and interest in a property from a seller or owner. It is also known as fee simple or fee acquisition.

Geographic regions – The collection of States that makeup the National Association of State Foresters (NASF) Regions. The three regions are:

- North – consisting of the States within the Forest Service Northeastern Area
- South – consisting of all the States within the Forest Service Southern Region, and the Territories of Puerto Rico and U.S. Virgin Islands administered by the International Institute of Tropical Forestry)
- West – consisting of all the States within the Forest Service Northern, Rocky Mountain, Intermountain, Southwestern, Pacific Southwest (including the Commonwealth of the Northern Mariana Islands, Guam, and American Samoa), Pacific Northwest, and Alaska Regions.

See Appendix C – USDA Forest Service Map for a map of the Forest Service’s R/A/I.

Governmental entity – A State governmental entity (in some cases this might include local units of government) that is eligible to own land or interests in land purchased using FLP funds. States are recognized by the U.S. Constitution and State constitutions. Local governments are generally political subdivisions of States, and in most cases, the State legislature must approve the creation or incorporation of a local government. Local government units bear a variety of names, such as city, county, borough, township, village, parish, district, etc.

Grant, Forest Legacy Program – Mechanism to provide Federal financial assistance that is awarded to a State Lead Agency to administer the FLP and/or acquire forested land or interest in land that ensures perpetual protection of that forested land.

Grant narrative – A written description of the proposed tasks that will accomplish the purposes of the grant.

Grantee – (1) The party who receives title to land or interest in land from the grantor (by sale or donation) by a deed, conservation easement, or conservation restriction. The grantee is sometimes referred to as the buyer, donee, or holder (in the case of conservation easements). (2) The term can also refer to the entity that receives Federal financial assistance from a grant and referred to as grant recipient in this document in locations where conservation easement and fee simple deed language are provided.

Grantor – (1) The party who transfers title or interest in real property to another by a deed, conservation easement, or conservation restriction. The grantor is sometimes referred to as the seller, donor, or landowner. (2) In portions of this document where Federal financial assistance is discussed the term grantor may also refer to the Forest Service rather than the conveyor of the property interest.

Indirect costs – Management and administration costs not readily assignable to a specific FLP activity. (See OMB Circular 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.)

Interest in land – Any ownership, possessory, or nonpossessory right with respect to real property, including ownership in fee, an easement, a leasehold, and any subsurface or mineral rights.

In-kind contributions – Noncash contributions, including third-party contributions. In-kind contributions are expenditures of funds (or eligible goods or services) that directly benefit and are specifically identifiable to FLP activities, and would be allowable if the Federal Government were to pay for them. (See Appendix H – Grant and Cost-Share Requirements for applicable OMB Circulars.)

Land trust – A nonprofit organization, as described in 501(c) of the Internal Revenue Code of 1986, that protects land by working with landowners who wish to donate or sell fee title or conservation easements to maintain conservation values associated with the land.

Landowner – Generally refers to the party possessing the fee interest in a property.

Market value – The amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting on any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. (*Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000*)

Mineral determination – An assessment of the mineral potential of a tract of land and the likelihood of mineral extraction that impact the surface estate and the conservation values to be secured.

Monitoring, conservation easement – A periodic inspection (the Forest Legacy Program requires that this inspection occur at least annually) documented in writing of a tract under conservation easement (CE) that documents the condition of the property and ongoing activities on the property.

Monitoring, grant – Actions by the R/A/I to ensure that the grantee is complying with the terms of the grant.

Multi-Resource Management Plan – A site-specific plan approved by the State forester or designee that meets or exceeds the Forest Service Forest Stewardship Program Standards and Guidelines. The plan documents and addresses the multiple natural resources present on a tract of FLP land, highlights the landowner's objectives, and describes actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, fish and wildlife resources, and other conservation values identified on the tract.

Multi-State entity – A government-established organization involving two or more States whose jurisdiction encompasses all or portions of the land area of a Forest Legacy Area.

National Association of State Foresters (NASF) – The organization representing State forestry organizations in all 50 States, the Territories, and the District of Columbia.

Non-cost share donated tract – A tract of land or interests in land given to the State FLP at the request of the landowner in which no Federal dollars were used to pay the landowner for the land or interests in land acquired (although project or administration funds may have been used for due diligence). These tracts count toward the overall FLP accomplishments and value, but are not applied to meet the cost-share requirements for a specific project grant.

Non-Federal cost share – Non-Federal assets or in-kind goods or services used to meet the minimum cost-share requirement of 25 percent of a project's cost. These may include cash, donations of land or interest in land, and payment of due-diligence costs that meet the timing, terms, and conditions of the grant.

Nonforest lands, compatible – Other land types that are compatible with the purposes of the FLP, such as cultivated farmland, pasture, grassland, shrubland, open water, and nonforested wetlands.

Nonforest uses – Activities or improvements that negatively impact forest values and benefits, such as multi-unit residential subdivisions, office buildings, commercial parking lots, hotels and resort developments, surface mining, sports fields, commercial signage, unmanaged off-road vehicle use, dumps, and casinos.

Non-trust allotment lands – Fee simple lands owned by tribal members and, if they are forested and located within an approved FLA, are eligible for the FLP. Trust lands and reservations are already protected through the trust relationship between the U.S. Department of the Interior and the tribe and are ineligible for the FLP.

Other units of government – A reference to entities eligible to own land or interests in land purchased using FLP funds. In some instances these entities may include a unit of local government such as a city, county, borough, parish, or other entity formed by an act of a State legislature for a specific purpose.

Owner – See Landowner.

Pass-through – A land transaction whereby a third party, such as a land trust, acquires interests in lands with the intent to convey such interests to a unit of government. The transaction can include a full or partial donation or a sale at market value.

Private benefit – A substantial benefit received by amending a conservation easement. Private benefit can be remedied by having the recipient of the benefit make cash payment or conserve additional land. (See Appendix R – Supplemental Amendment Information for additional explanation.)

Private inurement – An illegal benefit realized by a recipient or a related party as a result of a conservation easement amendment. Private inurement cannot be remedied by cash payment or by conserving additional land. (See Appendix R – Supplemental Amendment Information for additional explanation.)

Program funds – Forest Legacy Program (FLP) funds that are appropriated by Congress and allocated by the Forest Service to three categories: Project funds, Administration funds, and Assessment funds.

Program performance report – A required written report prepared by the grantee and submitted to the Forest Service disclosing the accomplishments and the financial expenditures of a grant. The frequency of reporting is determined by the terms and conditions of the Federal award, but no less than annually nor more than quarterly while the grant remains open.

Project evaluation criteria – Criteria developed by a State, in consultation with the State Forest Stewardship Coordinating Committees (SFSCC), to evaluate the eligibility of tracts submitted for inclusion in the FLP.

Project review panel or National Review Panel – A 12-member panel composed of Forest Service program managers and State FLP coordinators, meeting annually, that reviews and ranks all new project proposals to determine which projects will receive funding.

Public access – Access that is provided on a nondiscriminatory basis at reasonable times and places, but may be limited to protect cultural and natural resources or public health and safety. Public access refers to how open the property is to the general public, either in full or in specific areas, and is specified in conservation easement language. Public access is expected in deed acquisitions.

Purpose statement – A provision in a conservation easement or fee simple deed that declares the conservation purposes for protecting the subject tract.

Quality Assurance Inspection (QAI) – An inspection, occurring every 5 years, that reviews all aspects of a State’s appraisal program to ensure compliance with Section 16 – Appraisal and Appraisal Review.

Real Estate Investment Trust (REIT) – A corporation that invests in real estate with the purpose of reducing or eliminating corporate tax.

Relocation – Refers to the provision in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (Public Law 91-646 or 42 USC 4601 et seq.) which requires Federal agencies and programs to pay for the relocation of a person displaced by a federally funded real estate transaction.

Reserved interest deed – An acquisition where the grantee (government) acquires all rights, titles, and interests in a property, except those rights, titles, and interests that are expressly reserved by a grantor (landowner).

Reversion provision – A statement placed in a conservation easement or deed that requires financial reimbursements if the legal protections are removed or the use of the property changes. This is now called an extinguishment or disposal provision.

Scoring guidance – A document that directs how project proposals will be evaluated and scored in the national competitive process.

Secretary – refers to the Secretary of the U.S. Department of Agriculture or designee.

SF-424 – The Federal standard form required for use as a cover sheet for submission of grant applications.

Shape file – A data file for a geographic information system (GIS) composed of an integral set of files acting as one and containing polygons, points, and lines with associated attribute information.

State – refers to the U.S. States, Territories, and Commonwealths eligible to participate in the FLP.

State Forest Action Plan – a document that describes a State’s forest resources and provides the management strategies for conservation; formerly known as the Statewide Forest Resource Assessment and Strategy.

Statewide Forest Resource Assessment and Strategy – A document that has been renamed the State Forest Action Plan.

State Forest Stewardship Coordinating Committee (SFSCC) – A committee assisting the FLP that is defined and their duties described in Section 19(b) of the CFAA (16 USC 2113). Each committee is chaired and administered by a State forester, or equivalent State official, with membership composed of representatives from the following agencies, organizations, and individuals: Forest Service; Natural Resources Conservation Service; Farm Services Agency; Cooperative State Research, Education, and Extension Service; local government; consulting foresters; environmental organizations; forest products industry; forest landowners; land trusts; conservation organizations; the State fish and wildlife agency; and others determined appropriate by the Secretary. The SFSCC makes recommendations to the State Lead Agency regarding the FLP and proposed project priorities.

State Lead Agency – A unit of State government responsible for coordinating the establishment and implementation of the FLP in the State, as designated by the Governor or pursuant to State law. The State Lead Agency is usually a forestry agency, but may be another natural resource agency.

State Forest Legacy Program (FLP) coordinator – The person responsible for coordinating the FLP at the State level.

Stewardship endowment – A sum of money or obligated services provided to a holder of a conservation easement to defray the costs of monitoring, enforcement activities, and to help mitigate violations.

Subordinate/subordination – The process by which a party’s rights or interests are ranked below a superior interest. For example, a mortgage holder agrees to subordinate a mortgage to a conservation easement.

Survey – (v) The physical act of measuring the boundaries of a parcel of land or a lineal feature on the land (such as the centerline of a road or utility easement). (n) The data or description that provides a legally defined boundary.

Third-party rights – Rights held by an entity that does not own the subject tract nor hold the conservation easement. These can include water rights, mineral rights, and the beneficiary of leases and contracts.

Timber Investment Management Organization (TIMO) – A management group that aids institutional investors in managing their timberland investments.

Timber supply agreement – An agreement between a landowner and another party that outlines terms and conditions for supplying timber, such as prices, volume, and timing of harvest and sale.

Title – A document that defines the parcel(s) under consideration, shows evidence of ownership, and documents outstanding third-party interests.

Title assurance – An attorney’s opinion of title based on the examination of public records.

Title binder – A commitment that binds a title company during the real estate process to issue an insurance policy subject to the requirements being met.

Title exceptions – Reservations or interests that are excluded from coverage of title insurance.

Title insurance – A form of insurance intended to protect an owner against loss from disputes related to property ownership.

Uniform Relocation Assistance and Real Property Acquisition Act (1970) (Uniform Act) – An act ensuring fair treatment of those displaced through eminent domain by federally funded programs, federally assisted programs, or State and local agencies receiving Federal funds.

USDA Forest Service – U.S. Department of Agriculture, Forest Service.

Violations, major – Violations of the conservation easement that have caused or could cause severe or irreparable harm to the protected resources and may require court intervention to limit or remedy the impact; for example, buildings or construction, road development or running of utilities that were not authorized. These violations have significant negative impact on the conservation purposes of the conservation easement.

Violation, minor – Violations of the conservation easement that have no tangible negative physical impact or only a negligible resource impact. This includes technical violations, such as failure to give notice of a sale of the conserved land. These violations have minimal negative impact on the conservation purposes of the conservation easement.

Water rights – The legal right of an individual to use water from a specified source for a specified purpose.

Yellow Book – The common name for the Federal appraisal standards found in the document named Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA).

27. Forest Legacy Program Abbreviations

ABA – Architectural Barriers Act

ADA – Americans with Disabilities Act

AON – Assessment of Need

BDR – Baseline Documentation Report

BLM – U.S. Department of the Interior, Bureau of Land Management

CE – Conservation Easement

CF – Community Forest

CFAA – Cooperative Forestry Assistance Act

CFR – Code of Federal Regulations

CWA – Clean Water Act

DUNS – Data Universal Numbering System

EFT – Electronic Funds Transfer

EHR – Erosion Hazard Rating

EIN – Employer Identification Number

ESA – Endangered Species Act

ESM – Ecosystem Service Market

ESRI – Environmental Systems Research Institute

FERC – Federal Energy Regulatory Commission

FLA – Forest Legacy Area

FLIS – Forest Legacy Information System

FLP – Forest Legacy Program

FSM – Forest Service Manual

GIS – Geographic Information System

GPS – Global Positioning System

IRS – Internal Revenue Service

IITF – International Institute of Tropical Forestry

LWCF – Land and Water Conservation Fund

MOA – Memorandum of Agreement

MOU – Memorandum of Understanding

NA – Northeastern Area

NASF – National Association of State Foresters

NEPA – National Environmental Policy Act

NHPA – National Historic Preservation Act

NIC – National Information Center

NMAS – National Map Accuracy Standard

NOAA – U.S. Department of Commerce, National Oceanic and Atmospheric Administration

NPS – U.S. Department of the Interior, National Park Service

NRCS – U.S. Department of Agriculture, Natural Resources Conservation Service

OMB – Office of Management and Budget
PLSS – Public Land Survey System
QAI – Quality Assurance Inspection
R/A/I – Forest Service Regions/Northeastern Area/International Institute of Tropical Forestry
REIT – Real Estate Investment Trust
SAM – System for Award Management
SF – Standard Form
SFSCC – State Forest Stewardship Coordinating Committee
TIMO – Timber Investment Management Organization
TSA – Timber Supply Agreement
USC – United States Code
UASFLA – Uniform Appraisal Standards for Federal Land Acquisitions (aka Yellow Book)
USDA – U.S. Department of Agriculture
USFWS – U.S. Department of the Interior, Fish and Wildlife Service
USPAP – Uniform Standards of Professional Appraisal Practice
WO – U.S. Department of Agriculture, Forest Service, Washington Office



Part IX



Part IX – Appendixes

Appendix A – Authorizing Legislation for the Forest Legacy Program

U.S. Code – Title 16–Conservation –
Chapter 41–Cooperative Forestry Assistance
16 USC 2103c – Forest Legacy Program

(a) Establishment and purpose

The Secretary shall establish a program, to be known as the Forest Legacy Program, in cooperation with appropriate State, regional, and other units of government for the purposes of ascertaining and protecting environmentally important forest areas that are threatened by conversion to nonforest uses and, through the use of conservation easements and other mechanisms, for promoting forest land protection and other conservation opportunities. Such purposes shall also include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values.

(b) State and regional Forest Legacy Programs

The Secretary shall exercise the authority under subsection (a) of this section in conjunction with State or regional programs that the Secretary deems consistent with this section.

(c) Interests in land

In addition to the authorities granted under section 515 of this title and section 428a (a) of title 7, the Secretary may acquire from willing landowners lands and interests therein, including conservation easements and rights of public access, for Forest Legacy Program purposes. The Secretary shall not acquire conservation easements with title held in common ownership with any other entity.

(d) Implementation

(1) In general

Lands and interests therein acquired under subsection (c) of this section may be held in perpetuity for program and easement administration purposes as the Secretary may provide. In administering lands and interests therein under the program, the Secretary shall identify the environmental values to be protected by entry of the lands into the program, management activities which are planned and the manner in which they may affect the values identified, and obtain from the landowner other information determined appropriate for administration and management purposes.

(2) Initial programs

Not later than November 28, 1991, the Secretary shall establish a regional program in furtherance of the Northern Forest Lands Study in the States of New York, New

Hampshire, Vermont, and Maine under Public Law 100–446. The Secretary shall establish additional programs in each of the Northeast, Midwest, South, and Western regions of the United States, and the Pacific Northwest (including the State of Washington), on the preparation of an assessment of the need for such programs.

(e) Eligibility

Not later than November 28, 1991, and in consultation with State Forest Stewardship Coordinating Committees established under section 2113 (b) of this title and similar regional organizations, the Secretary shall establish eligibility criteria for the designation of forest areas from which lands may be entered into the Forest Legacy Program and subsequently select such appropriate areas. To be eligible, such areas shall have significant environmental values or shall be threatened by present or future conversion to nonforest uses. Of land proposed to be included in the Forest Legacy Program, the Secretary shall give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values; riparian areas; fish and wildlife values, including threatened and endangered species; or other ecological values.

(f) Application

For areas included in the Forest Legacy Program, an owner of lands or interests in lands who wishes to participate may prepare and submit an application at such time in such form and containing such information as the Secretary may prescribe. The Secretary shall give reasonable advance notice for the submission of all applications to the State forester, equivalent State official, or other appropriate State or regional natural resource management agency. If applications exceed the ability of the Secretary to fund them, priority shall be given to those forest areas having the greatest need for protection pursuant to the criteria described in subsection (e) of this section.

(g) State consent

Where a State has not approved the acquisition of land under section 515 of this title, the Secretary shall not acquire lands or interests therein under authority granted by this section outside an area of that State designated as a part of a program established under subsection (b) of this section.

(h) Forest management activities

(1) In general

Conservation easements or deed reservations acquired or reserved pursuant to this section may allow forest management activities, including timber management, on areas entered in the Forest Legacy Program insofar as the Secretary deems such activities consistent with the purposes of this section.

(2) Assignment of responsibilities

For Forest Legacy Program areas, the Secretary may delegate or assign management and enforcement responsibilities over federally owned lands and interests in lands only to another governmental entity.

(i) Duties of owners

Under the terms of a conservation easement or other property interest acquired under subsection (c) of this section, the landowner shall be required to manage property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program and shall not convert such property to other uses. Hunting, fishing, hiking, and similar recreational uses shall not be considered inconsistent with the purposes of this program.

(j) Compensation and cost sharing

(1) Compensation

The Secretary shall pay the fair market value of any property interest acquired under this section. Payments under this section shall be in accordance with Federal appraisal and acquisition standards and procedures.

(2) Cost sharing

In accordance with terms and conditions that the Secretary shall prescribe, costs for the acquisition of lands or interests therein or project costs shall be shared among participating entities including regional organizations, State and other governmental units, landowners, corporations, or private organizations. Such costs may include, but are not limited to, those associated with planning, administration, property acquisition, and property management. To the extent practicable, the Federal share of total program costs shall not exceed 75 percent, including any in-kind contribution.

(k) Easements

(1) Reserved interest deeds

As used in this section, the term “conservation easement” includes an easement utilizing a reserved interest deed where the grantee acquires all rights, title, and interests in a property, except those rights, title, and interests that may run with the land that are expressly reserved by a grantor.

(2) Prohibitions on limitations

Notwithstanding any provision of State law, no conservation easement held by the United States or its successors or assigns under this section shall be limited in duration or scope or be defeasible by—

- (A) the conservation easement being in gross or appurtenant;
- (B) the management of the conservation easement having been delegated or assigned to a non-Federal entity;
- (C) any requirement under State law for re-recording or renewal of the easement; or
- (D) any future disestablishment of a Forest Legacy Program area or other Federal project for which the conservation easement was originally acquired.

(3) Construction

Notwithstanding any provision of State law, conservation easements shall be construed to affect the Federal purposes for which they were acquired and, in interpreting their terms, there shall be no presumption favoring the conservation easement holder or fee owner.

(l) Optional State grants

(1) In general

The Secretary shall, at the request of a participating State, provide a grant to the State to carry out the Forest Legacy Program in the State.

(2) Administration

If a State elects to receive a grant under this subsection—

- (A) the Secretary shall use a portion of the funds made available under subsection (m) of this section, as determined by the Secretary, to provide a grant to the State; and

(B) the State shall use the grant to carry out the Forest Legacy Program in the State, including the acquisition by the State of lands and interests in lands.

(3) Transfer of Forest Legacy Program land—

(A) In general

Subject to any terms and conditions that the Secretary may require (including the requirements described in subparagraph (B)), the Secretary may, at the request of the State of Vermont, convey to the State, by quit-claim deed, without consideration, any land or interest in land acquired in the State under the Forest Legacy Program.

(B) Requirements

In conveying land or an interest in land under subparagraph (A), the Secretary may require that—

- (i) the deed conveying the land or interest in land include requirements for the management of the land in a manner that—
 - (I) conserves the land or interest in land; and
 - (II) is consistent with any other Forest Legacy Program purposes for which the land or interest in land was acquired;
- (ii) if the land or interest in land is subsequently sold, exchanged, or otherwise disposed of by the State of Vermont, the State shall—
 - (I) reimburse the Secretary in an amount that is based on the current market value of the land or interest in land in proportion to the amount of consideration paid by the United States for the land or interest in land; or
 - (II) convey to the Secretary land or an interest in land that is equal in value to the land or interest in land conveyed.

(C) Disposition of funds

Amounts received by the Secretary under subparagraph (B)(ii) shall be credited to the Wildland Fire Management account, to remain available until expended.

(m) Appropriation

There are authorized to be appropriated such sums as may be necessary to carry out this section.

Appendix B – National Environmental Policy Act (NEPA) Categorical Exclusion Letter

FINDING OF NO SIGNIFICANT IMPACT

FOREST LEGACY PROGRAM
USDA FOREST SERVICE
WASHINGTON D.C.

I have reviewed the attached environmental assessment for the Forest Legacy Program and have determined that the proposed guidelines for compliance with the provisions of Title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 will not have a significant effect on the human environment and, therefore, will not require the preparation of an environmental impact statement. I have arrived at this determination based on the following factors.

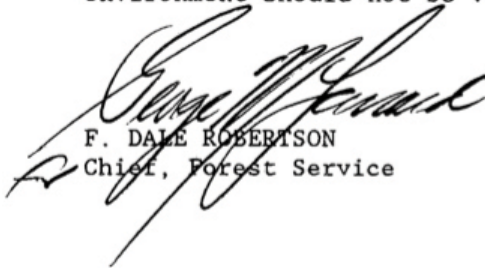
1. The program is a national program as set forth in guidelines for administering this program. These proposed guidelines establish eligibility requirements and limit program practices to those that will cause little environmental harm. The program was established to maintain and enhance the environment, and although the context of this program is national, the actual administration and approval of projects will be done on a case-by-case basis at the Regional level. The program is also a voluntary program. All these factors make this program limited in context.
2. The direct environmental impacts from this program will be local. The long term effects will be positive. The overall effects of the program over time will be environmentally beneficial by maintaining and enhancing wetlands, wildlife habitat, forest health, and recreational opportunities.
3. This program will not have significant risks to public health and safety. In those cases where pesticides are used, proper safety regulations and procedures will be followed to ensure no risks to workers and the public as outlined in the environmental assessment.
4. The emphasis of this program is to protect forest resources and other significant environmental values, such as wetlands, wildlife critical areas, and cultural and historical areas. These areas will be protected under this program and, therefore, there will be no adverse effect to these resources.
5. The approved practices outlined in the program are well established means for protecting, maintaining, or enhancing forest multiple use management. The effects of these practices are well established and are not highly controversial or involve unique or unknown risks.

6. This program does not establish a precedent for future actions involving the Forest Legacy Program that might have significant environmental effects.

7. There have been no cumulative effects identified with this program that when viewed with other programs for nonindustrial forestlands, industrial forestlands, or Federal and state lands would lead to significant cumulative effects.

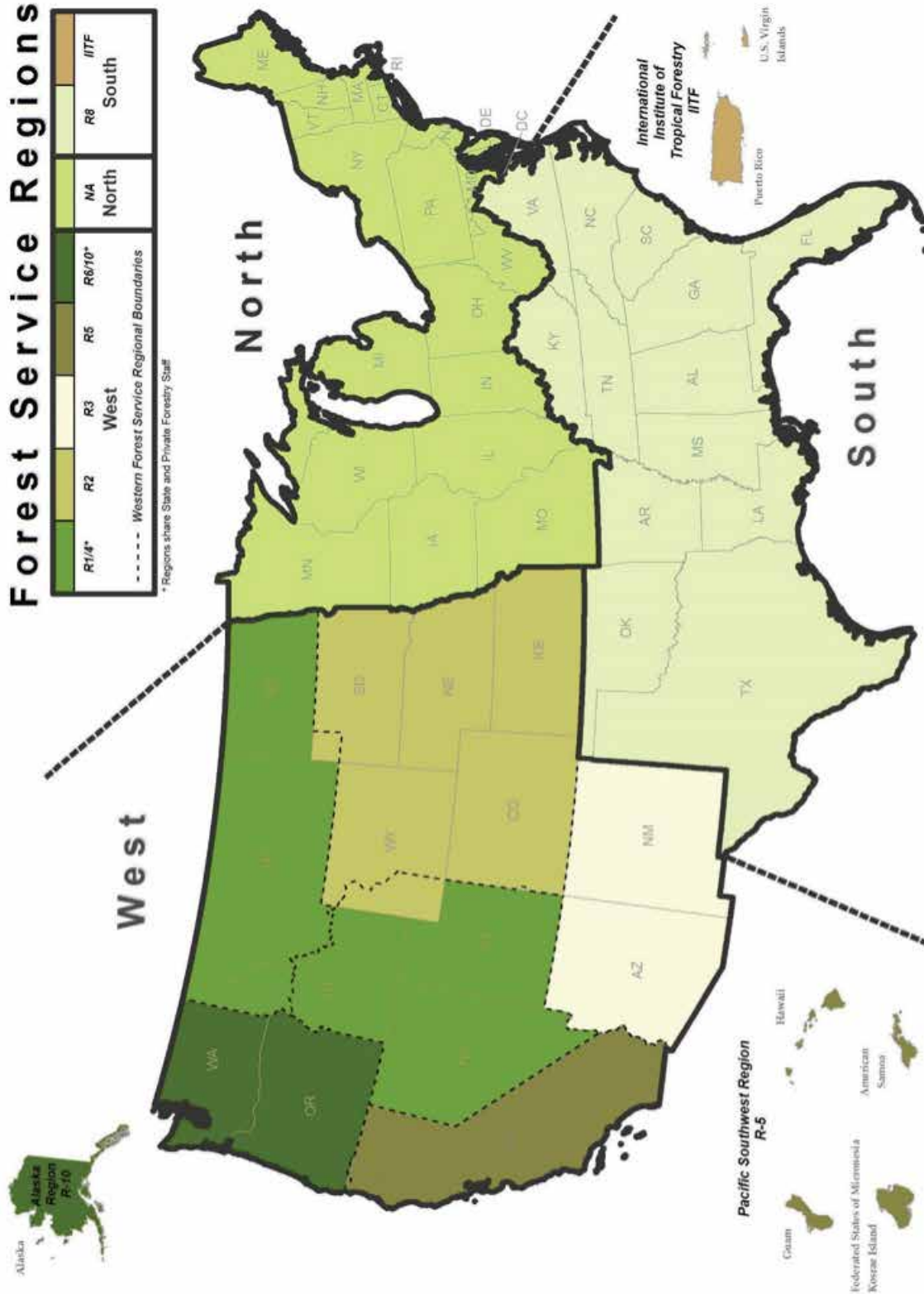
8. One of the practices in this program is the restoration, protection, and enhancement of habitat to sustain or expand threatened and endangered plant and animal species. Therefore, this program will not adversely impact threatened or endangered species.

9. This program also requires that each project be in compliance with other Federal, state and local law and regulations. Therefore, law and regulations imposed for the protection of the environment should not be violated.


F. DALE ROBERTSON
Chief, Forest Service

6/9/92
DATE

Appendix C – USDA Forest Service Map



Appendix D – Landowner Application

The application below is an example that can be adapted for an individual State. Maintaining the format is not essential. However, it is necessary to capture the information listed in the Applicant Information subsection of Section 8 – Project Eligibility and Development.

ANY STATE’S FOREST LEGACY APPLICATION

(This application is available electronically)

Submit by date for consideration for the next funding cycle (revised date)

The [State Name] Forest Legacy Program uses Federal funds, and non-Federal cost-share funds, to purchase conservation rights through fee title or conservation easements on environmentally important forests in [State Name] so these threatened properties remain intact and continue to provide traditional forest benefits.

Applicant Information		Authorized agent for landowner (if different)	
Landowner’s name:		Agent’s name:	
Address:		Address:	
City, State, Zip:		City, State, Zip:	
Phone:		Phone:	
Fax / email:		Fax / email:	
Please list all co-owners of this property (or any others with interest in it):			

Property Information			
1	County: Section: Township:	Range: Boundary & Mapping Parcel#:	
2.	What is the land currently zoned as?		
3.	What are the current uses of the property?		
4.	Are there any encumbrances (liens, mortgages, easements, and/or leases) on this property?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	If yes, please list and explain in the Confidential Financial Information Section.		
5.	Total property acres:	Total acres forest:	
6.	How much of the total acres above are you nominating for the Forest Legacy Program?		
	Forest acres: Open or cleared acres:	Acres of water: Total:	

7.	I am interested in a <input type="checkbox"/> conservation easement, or <input type="checkbox"/> transferring total ownership of the land. Do you have a preference as to what government entity holds title? Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If yes please indicate the entity.</i>
8.	Is any of this area Certified Forest or in a Habitat Conservation Program?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	How many acres?	

Landowner Goals and Objectives		
1.	Please describe your long-term goals and objectives for the nominated property. (It might help to think about – Why is the property important to you? Why did you buy it? What would you like to do on and with this property?) Use as much space as needed	
2.	Do you have a written forest management plan? Yes <input type="checkbox"/> No <input type="checkbox"/>	
	If yes, please send a copy with your application (Please note that a multi-resource forest management plan that complies with Forest Stewardship standards is a requirement for inclusion into the program at the time of closing on a conservation easement)	
3.	Have you been working with a forester or other natural resource professional who could provide technical information about your forest? Yes <input type="checkbox"/> No <input type="checkbox"/>	
May we contact him/her?	Yes <input type="checkbox"/>	Forester's name:
	No <input type="checkbox"/>	Phone #: _____ License #: _____

Tract Evaluation

Landowner: Please help us picture the uniqueness of your property. Your comments help us in our evaluation of the eligibility

Riparian or Hydrologic Areas: Water and watershed protection is an important forest value. Explain the water resource values of the proposed property (rivers, lakes, streams, wetlands, etc.). **Information on Threatened and Impaired Watersheds and 303(d) listed watersheds are available from the State Water Resources Department**

- A. Existing or Potential Public Recreational Opportunities:** Public recreation opportunities are defined as those having noncommercial and nonlandowner users. Explain the recreational values of the proposed property.
- B. Scenic Resources:** The scenic aspects of a natural resource area may often be subjective. Describe the special qualities making your tract stand out as a scenic resource.
- C. Known Cultural, Historical, or Prehistoric Areas:** Material evidence of previous human occupation (petroglyphs, house pits, midden, bedrock mortars, etc.) comprises a unique and irreplaceable resource, as do other historic features such as cemeteries, pioneer home sites, old grist and sawmill sites, etc., and natural landscape features. Explain the archaeological values of your tract.
- D. Roads and Improvement:** Please discuss amount (approximate total length, type (dirt, rocked, paved, etc.) and condition of roads on the property. Are there any road conditions that need to be improved, eliminated, or replaced? What structural improvements exist on the property? Include houses, barns, shops, power lines, fences, etc.

- E. Traditional Forest Productivity:** Traditional forest uses provide timber and other forest products and amenities for an improved quality of life. Explain the traditional forestry resource values of the tract. The Site Class is a measure of timberland productivity. The Erosion Hazard Rating (EHR) is a method of calculating the potential for erosion of soils. **If you don't know your Site Class or EHR, you can get help determining this from a local registered professional forester, a forestry assistance specialist at your local [State Name] forestry office, or call the forest legacy coordinator.**
- F. Fish and Wildlife Habitat:** Protecting and enhancing wildlife features on and off the property is crucial to maintaining viable wildlife populations. Explain how your tract contributes to healthy wildlife habitats.
- G. Known Rare, Threatened, and Endangered Species:** As urbanization and subdividing of forest lands continue, the need to give special attention to rare, threatened, and endangered species of fish, wildlife, and plants increases. Explain the rare plants and habitats found on or near your tract. **For more information on threatened and endangered species or Natural Diversity Database Sites that may be present on or near your property contact your local Department of Fish and Game, a local registered professional forester, a forestry assistance specialist at your local forestry office, or call the forest legacy coordinator.**
- H. Ecological Community and Connectivity Values:** In addition to the characteristics already outlined, a tract may have other exceptional ecological conditions important to the area. Explain the other ecological values or important traits of your property (such as geology, proximity to public lands).
- I. Type and Level of Conversion Threats:** There are various kinds and degrees of threat to valuable forested areas, such as encroaching housing and recreational development, commercial and/or utilities development, illegal activities such as drug labs or marijuana gardens, zoning or ownership that would preclude traditional forestry values, and the dividing of land ownership in smaller parcels. Explain how your property is either threatened by development or conversion to other uses, or can slow the development pressures in your area.
- J. Level of Support and Strategic Values:** Even if a forested tract is threatened with conversion to nonforest use, protecting it under the Forest Legacy Program is not always easy. Describe the level of support for your proposal and how it complements other land conservation efforts.

Landowner's Comments
Other comments you may wish to add about your Forest Legacy Nomination or property uniqueness.

Confidential

The following financial, deed, and lien information shall remain confidential until such time as:

- (1) the application has been approved and all transactions are concluded, or
- (2) all title-holders give written permission to release the information.

Financial Information

The following estimates are for preliminary use only. Any final offer cannot exceed fair market value, as determined by an appraisal meeting federal and/or state appraisal standards.

1. What is the estimated total value of this property?
2. What is the estimated value of the interests proposed to be transferred by conservation easement to the State's Forest Legacy Program?
3. How was this value determined? (Examples: landowner's personal estimate, licensed appraiser, realtor, written legal appraisal).

If appraised, date of the appraisal:

4. Are you willing to donate part of the conservation easement value? Yes No
 - What percentage are you willing to donate?
 - What is your approximate asking price for the interest being offered?
5. Do you have another source such as a Land Trust or another Federal or State agency willing to fund part of the purchase price? Yes No
 - If yes, who is the partner and what is the relationship?
 - How much are they willing to contribute to the cost of the conservation easement?

NOTE: *Donations may constitute a charitable contribution for income tax purposes, depending on applicable Internal Revenue Service guidelines and regulations.*

Comments:

Liens and Encumbrances

Please list any and all liens and encumbrances on the property proposed for enrollment in the State's Forest Legacy Program. Examples of liens and/or encumbrances include: mortgages, utility easements, public rights of way, water flow or water use restrictions, septic systems or water easements, deed restrictions or covenants, mineral extraction rights (gas, oil, coal, stone, etc.), tax liens, dump sites, underground fuel tanks, other environmental hazards, etc.

Preliminary Identification of Rights to be Retained

It is important the following section be carefully and fully completed. The information you provide will directly affect the desirability of the tract, appraised value, and its priority as a Forest Legacy tract. Please indicate which of the following uses or interests you wish to retain as part of the conservation easement.

Note: Checking **YES** or **NO** does not commit you to anything at this time; it merely assists the Forest Legacy Committee when inspecting, prioritizing, and evaluating your tract. Also, note that development rights are the minimum rights purchased on Forest Legacy Tracts and therefore are not included on the list below.

Yes	No	Unsure	Forest use or interest
			Will you retain the right to commercially harvest timber?
			Will you wish to retain unrestricted access to minerals (coal, gravel, etc.)?*
			Will you wish to retain restricted surface occupancy mineral rights?***
			Will you wish to retain unrestricted access with oil and gas?*
			Will you wish to retain restricted surface occupancy oil and gas rights?
			Will you wish to limit or control public access to your property? Public access is not a requirement of the Federal Forest Legacy Program.
			Will you wish to retain rights to graze open areas? ([__] acres)
			Will you wish to retain rights to farm open areas? ([__] acres)
			Will you wish to retain the right to build or rebuild roads (other than forest management/protection roads)
			Will you wish to retain the right to build or rebuild roads (other than forest management/protection roads)
			Other. Please specify:

*Retention of unrestricted mineral or oil/gas rights will exclude that portion of your property from consideration in [State Name] Forest Legacy Program.

**Gravel pits for on-property use may be acceptable.

Testimony and Permission

The information in this application is true to the best of my knowledge and belief. I (we), as the landowner(s) or landowner's authorized agent (proof of authorization must accompany the application) agree to allow inspection, appraisal, and survey of my property being offered for consideration under [State Name] Forest Legacy Program. I agree to allow members of the [State Lead Agency], [State Name] Forest Legacy committee or their designated staff to inspect my property at any mutually agreeable time for the purposes of this application. I understand I shall be notified in advance of all inspection visits.

I also understand that this property will not be purchased if negotiations do not reach an amicable agreement or if the property does not meet the needs or qualifications of [State Name] Forest Legacy Program. Conservation easements will only be purchased from willing sellers.

Signature(s) of landowner(s) or legal agent

Date

Mail completed application to:

[Name], Forest Legacy Coordinator

[State name] Department of Forestry

P.O. Box XX
[City], [State] [Zip]
Phone: [Phone Number]

Must be signed in ink.

Appendix E – Examples of Forest and Nonforest Uses

Compatible uses and the allowance for designated improvement areas may vary from project to project or tract; for example, hunting may be compatible with a 10,000-acre community forest (CF) in Maine, but it may not be compatible with a 100-acre CF with numerous high-use trails and surrounded by housing developments in California. Likewise, an owner-occupied residence or caretaker cabin may be noncompatible with an 80-acre forest along a river in New Jersey but compatible with a 7,000-acre ranch, where trespass is an issue and road maintenance is a full-time job. High-intensity educational recreation, like a YMCA camp with thousands of children may be appropriate for some areas, but it might be incompatible with an area where the focus is serene recreation and hiking. States should consider location, size, scale, and duration when determining compatible uses and allowing for designated improvement areas in a Forest Legacy Program (FLP) project. Below are three examples that demonstrate how the same “use” could be compatible and noncompatible in different situations, and where designated improvement areas could be helpful.

Example A

Compatible Use:

Landowner A has 3,500 acres of mixed woodlands. In addition to managing the property for timber production and wildlife habitat, the landowner has a sugarbush managed exclusively for maple syrup production. On the property is a 20' x 20' sugar house used to boil sap and bottle the finished syrup. The landowner is a small producer, selling to friends and at local farmer's markets. The sugar house has no electricity; a wood stove is used for boiling.

- In New England, tapping sugar maple trees to harvest sap and produce maple syrup is a traditional use.
- It is common for a sugar house to be located on the property, within close proximity to the sugarbush. This sugar house is modest in size and will have a minimal impact on the property's conservation values
- This use supports the conservation purposes of the conservation easement.

Non-Compatible Use:

Landowner B has 3,500 acres of mixed woodlands. In addition to managing the property for timber production and wildlife habitat, the landowner has a sugarbush managed exclusively for maple syrup production. On the property is a 10,000-square-foot maple syrup production facility that includes storage, refrigeration, commercial boilers and evaporators, and a small office. In addition to using sap collected from the 3,500-acre project property, the landowner purchases sap from other landowners. The site also includes a garage for trucks used to transport sap to the facility and syrup from the facility to regional grocery stores.

- While maple syrup production is a traditional use, the scale of this operation is not.
- Inclusion of the developed portion of the property does not enhance the conservation values and may, in fact, negatively impact the conservation values.

Excluding this area from the conservation easement will not have a negative impact on the property.

Example B

Allowed Designated Improvement Area:

Landowner A owns 7,200 acres of forested property used primarily for timber production, secondarily for grazing and hunting. Topography varies from moderate to very steep. There are 12.6 miles of class 1 watercourses (perennial-fish bearing) on the

property. Nearly all of the 72 miles of primary haul roads and 9 miles of secondary haul roads are rocked. Road maintenance is a constant job with emphasis on maintaining the 172 stream crossings.

The family has lived and managed the property for four generations and derives its entire income from timber sales, cow and calf leases, and guided deer and bear hunting. There are two single-family residences on the property. The first house is used by the matriarch of the family and the second house is used by her son and his family. The homes are separated by more than a half a mile and surrounded by timber. Additionally there are numerous barns and workshops and one hunting cabin. All structures are nearly a mile from the county road and are adjacent to, or just off, main haul roads.

It is common and necessary to have full-time residences on timbered ranches in this area of the State. Year-round maintenance is highly beneficial to preserve water quality and reduce erosion into creeks. Rain fall in the area is over 70 inches per year. There is no impact on the conservation values in this instance.

Separating the structures from the property would create a potential for development of “trophy” homes and absentee ownership unconcerned with management of the property. Separating the residences from the property could lead to conflict over the maintenance and use of the haul roads, which also serve as ingress and egress for the residences.

Non-Allowed Designated Improvement Area:

Landowner B has a property of 620 acres to be added to the city’s CF. The property is surrounded by housing subdivisions and adjacent to the existing CF that is open to public access 7 days a week. The property will have more than 16 miles of public trails and numerous day-use picnic areas. Service roads for the public and associated parking areas at trail heads will be paved. All maintenance will be done by the city though proceeds from timber sales which are one of the management objectives of the CF. The landowner has three residences along the county road and adjacent to the subdivision.

It would be incompatible for this property to include the residences because their use would not support the conservation values that include a high-use recreational area open to the public. A residence in this case is not needed to provide for maintenance or management of the property and does not enhance the conservation values. Excluding the areas with the residences from the final project would not cause a conflict with the future use of the property.

Example C

Compatible Use:

A 1,000-acre FLP tract bordered by the White River is owned by the State and has been used to enlarge the White River State Park. Two of the conservation values associated with the FLP tract are the viewshed from the river and the recreational use of canoes and kayaks. The State Park officials have proposed to construct a canoe launch operated by a vendor on 2 acres of the FLP tract. This is the only suitable launch site in the White River State Park. An existing road will provide suitable access to the launch. A parking lot, a canoe storage facility, the launch area, and an office/restroom building can be constructed with minimal impacts to the river viewshed. The canoe storage building will hold a maximum of 20 canoes, the office/restroom facility will be in a 20’ x 20’ building, and the parking lot will be designed for 15 cars.

- Canoe and kayak enthusiasts have enjoyed floating the White River for years, but changes in property ownership have curtailed this recreational opportunity.

- The location, the vegetation, and terrain work together to minimize the view of the canoe launch facilities, protecting the river viewshed.
- This use supports the conservation purposes of the tract.

Non-Compatible Use:

A 1,000-acre FLP tract bordered by the White River is owned by the State and has been used to enlarge the White River State Park. Two of the conservation values associated with the FLP tract are the viewshed from the river and the recreational use of the river. The State Park officials have proposed to construct a canoe launch operated by a vendor on 8 acres of the FLP tract. There is another suitable launch site in the original White River State Park. A road will need to be constructed to access the canoe launch. The proposed site has limited vegetation, is flat and on a long straight section of the river. This will be the primary access for the public and the recreational demand will support 200 canoes and kayaks. A parking lot, a canoe storage facility, the launch area and an office/restroom building can be viewed from many points along a portion of the river. The canoe storage building will hold a maximum of 200 canoes, the office/restroom facility will be in a 30' x 30' building, and the parking lot will be designed for 150 cars. To make this a viable operation snack food, camping supplies, and local crafts will be sold.

- While recreational use is a conservation value in this FLP tract, the scale of this operation is overwhelming this portion of the tract.
- Development of new access to this site will affect other portions of the FLP tract.
- Other suitable sites off of the FLP tract should be chosen first.
- The viewshed from the river will be negatively affected in the vicinity of the canoe launch.

Appendix F – Compatibility Analysis Tool

This analysis tool offers general sideboards on the most common questions regarding compatible land uses or compatible land types on existing or proposed Forest Legacy Program (FLP) tracts/projects. The tool is not meant to be used to make decisions on allowable uses or types but to serve as a point of reference for discussions with the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) FLP program manager and the State FLP coordinator on compatibility questions. States may have further restrictions on what is considered a compatible land use or land type in the State Forest Action Plan.

The examples of land uses or land types are not a definitive determination of compatibility; every FLP tract and State is different, and allowable land uses and land types will depend on the facts and circumstances of each case.

1. Does the tract that the proposed use occurs on meet the definition of forest according to your States Forest Action Plan?

Yes – Go to 2.

No – Go to 6.

2. Is the proposed use defined as a forest use in the FLP portion of the State Forest Action Plan and the FLP Implementation Guidelines?

Yes – Go to 3.

No – Generally, only allowable forest uses are allowed on FLP acquisitions or conservation easements. Consult the State Forest Stewardship Coordinating Committee (SFSCC) to determine if the proposed use should be considered a forest use. If the proposed use should be considered, update the Forest Action Plan.

3. Will the proposed use negatively impact the forest values and benefits that the property was entered into the FLP?

Yes – The proposed use should not be allowed on the property as it will not protect the forest values and benefits of the property.

No – Go to 4.

4. Is the proposed use intensive or non-intensive?

Intensive – Examples are heavy recreational use (the property is a popular recreation destination, and unmanaged recreational use would likely lead to negatively impacting the forest values and benefits), alteration of the landscape (buildings, communication towers, cultivations), and forest management – go to 5.

Non-intensive – If allowed on the property, activities are dispersed and non-motorized, such as hunting, hiking, bird watching, hobby mushroom collecting, or other uses that have limited to no impact on the forest values and benefits are compatible. Monitor the property to observe any potential impacts from the use that could lead to a violation of the FLP purposes if not managed.

5. Is the proposed use prescribed for through a management plan (examples are FLP Multi-Resource Management Plan, recreational management plan, or an agricultural conservation plan on nonforested portions), and/or allowed on FLP fee acquisitions?

Yes – The proposed use should be compatible; monitor the use for compliance with the conservation easement or allowed uses on fee acquisitions.

No – State FLP coordinator should consult with landowner to determine if the proposed use is necessary. If determined a necessary use, the State FLP coordinator shall

determine if the proposed use is allowable under the purposes of the FLP and consult with the R/A/I program manager as appropriate. If determined to be an allowable use by the State FLP manager, the landowner must amend or create an appropriate management plan for the proposed use in consultation with the FLP conservation-easement holder or FLP fee interest owner and State FLP coordinator.

6. Does the proposed tract have a natural land type or feature that will not be converted to another use? (Examples: wetlands, open water, prairie, shrub-land).

Current nonforested lands that have an FLP Multi-Resource Management Plan in place that will establish a forest or reforest the tract within 10 years of project closing and the tract is capable of supporting forests growth on it do not need to be counted in the nonforest land area.

Yes – Natural land types are considered compatible nonforest uses on the FLP property as long as the sum of all compatible nonforest land and uses do not exceed 25 percent (or less if required in the State Action Plan) of the FLP acquisition or conservation easement. Monitoring of any area planned for afforestation or re-forestation must occur to ensure the new forest area meets the definition of forest in the State Forest Action Plan.

No – Go to 7.

7. Is the proposed activity a surface or subsurface use?

Surface – Go to 8.

Subsurface – If the activity occurs subsurface and has minimal surface disturbance that does not impact the forest values and benefits being protected, then the proposed use could possibly be allowed with USDA Forest Service concurrence. If the proposed use adversely impacts values being protected, do not include in the FLP protected area. State FLP Coordinator should consult with the R/A/I FLP program manager for discussions and determination.

8. Does the existing or proposed use support or enhance the forest values and benefits and the FLP conservation purposes for which the property was entered into the FLP?

Yes – Go to 9.

No – This is a noncompatible use and this area should not be included in the conservation easement or fee purchase. Examples of noncompatible uses are surface mining, erection of permanent structures that do not enhance the management of the property, and commercial, residential, or industrial development.

9. Is the proposed use on the nonforested land agricultural in nature (such as row crops, pasture, orchard) or is the use a compatible use as defined in the FLP Implementation Guidelines, and is the proposed use allowed on FLP tracts according to the State Forest Action Plan?

Yes – This is possibly a compatible use; State FLP Coordinator should consult with the R/A/I FLP program manager for discussions and determination. Monitor the use at least yearly to ensure that the forest values and benefits are not degraded.

No – Go to 10.

10. Does the proposed use have a limited localized permanent impact on the land that supports the forest values and benefits of the property? Examples: barn, storage of equipment for property management, limited gravel pits for maintenance of onsite roads, recreation kiosks, trail head parking, maple sugar house, etc.

Yes – This is possibly a compatible use; State FLP Coordinator should consult with the R/A/I FLP program manager for discussions and determination. Monitor the use at least yearly to ensure that the forest values and benefits are not degraded.

No – Go to 11.

11. Is the proposed use temporary in nature and any impacts will be reclaimed to a natural setting? Example: parking on open fields a few times a year for a forestry workshop field day or other educational events versus parking every weekend for various uses.

Yes – This is possibly a compatible use, State FLP Coordinator should consult with the R/A/I FLP program manager for discussions and determination. Monitor the use at least yearly to ensure that the forest values and benefits are not degraded.

No – Go to 12.

12. Is the tract the proposed use is on tied to the property and cannot be conveyed separately?

Yes – Example: residence for the landowner or property caretaker to maintain a presence on the tract, depending on the scale and scope. This is possibly a compatible use; State FLP Coordinator should consult with the R/A/I FLP program manager for discussions and determination. Monitor the use at least yearly to ensure that the forest values and benefits are not degraded.

No – This should not be included as it is a noncompatible use.

Appendix G – Forest Legacy Program Project Selection Cycle

Action	Timeframe
Forest Legacy Program (FLP) landowner application submission deadline to the State to accommodate project proposal preparation for State Forest Stewardship Coordinating Committee (SFSCC) meeting	State determines date according to planned SFSCC meeting time – Year
SFSCC approves/evaluates project proposal(s) and provides recommendations to the State Lead Agency	Summer through Fall, the SFSCC meeting date varies by State – Year
State Lead Agency assigns priority (if any) and submits to Forest Service regions/ Northeastern Area/International Institute of Tropical Forestry (R/A/I) program manager	Submission to R/A/I is determined by each R/A/I – Year
R/A/I program manager submits all projects to National Review Panel	November – Year
National Review Panel meets and recommends project ranking and grant amounts for the President’s Budget release	January for National Review Panel – March for President’s Budget – Year plus 1
Congressional Action	Summer through Fall – Year plus 1
Federal Budget enacted and USDA Forest Service successful project award notification	Fall through Winter – Year plus 1 or Year plus 2
Successful project grant agreement processing (successful States and Forest Service)	Spring – Year plus 2
Successful project grant funds available to States for closing	Spring through Summer – Year plus 2

Note: The “Year” is the start of the cycle and is equal to the year of the FLP landowner application submission deadline date for the State.

Appendix H – Grant and Cost-Share Requirements

Grant Policy – The Office of Management and Budget (OMB) Circular and Code of Federal Regulations (CFR) provide guidance for the administration of grants. All Forest Legacy Program (FLP) grants will comply with the OMB Circular 2 CFR 200 Omni Circular – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Cost Principles establish principles and standards for determining allowable costs for Federal awards. The circular identifies factors affecting allowable costs, defines reasonable and allowable costs, clarifies direct and indirect costs, and outlines principles to be applied in establishing allowable costs. Grantees should use this circular to assess allowable costs (including all types of cost share), how to document cost share, and how to determine the value of cost share. Application of the cost principles is based on the fundamental premise that:

“(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary to assure proper and efficient administration of the Federal award.”

The Cost Principles in 2 CFR 200 guide which expenditures can or cannot be reimbursed or used as cost share for the FLP (see below for an example). If questions remain as to whether an expense is allowable after reviewing the Cost Principles, the best advice is to use another funding source.

Public Recognition Ceremony: Holding a public ceremony to recognize the accomplishment of an FLP acquisition is an important conclusion for an FLP project. The following references, found in Subpart E of OMB Circular 2 CFR 200, directly apply to a celebration and can be used to determine whether or not an expense is allowable:

(200.421) Advertising and Public Relations. Allowable public relations expenses include cost of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards. In other words, these costs are considered necessary as part of the outreach effort for the Federal award. Unallowable advertising and public relations costs include: costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(200.423) Alcoholic Beverages. Costs of alcoholic beverages are unallowable.

(200.432) Conferences. The cost of conferences (defined as a meeting, retreat, seminar, symposium, workshop, or event) is allowable if the primary purpose is dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. These expenses may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to the meeting.

(200.438) Entertainment costs. Amusement, diversion, social activities, and any associated costs are unallowable. For example, paying for a bluegrass band to provide entertainment at a signing ceremony would not be an allowable expense.

Based on the references above, it may be appropriate to provide light refreshments (such as beverages and snacks) depending on the location and timing of the meeting. However, holding a barbeque dinner to attract attendees at a function to explain the benefits of the recently acquired FLP tract is not appropriate. The primary purpose of an FLP celebration is not to provide “technical information,” and thus this justification does not apply. The most important consideration for holding a celebration is documenting the activity in the award narrative and budget, and having U.S. Department of Agriculture, Forest Service, approval prior to the activity.

Administrative Requirements establish uniform administrative rules for all recipients of Federal financial assistance. Subpart D of OMB Circular 2 CFR 200 specifies the performance and financial requirements for grantees. The following references address grant recordkeeping, cost-share, and monitoring requirements for grantees:

§200.306 (b) Cost-sharing or matching records. Costs and third-party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and sub-grantees or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was derived.

§200.306 (i) (1) Cost sharing or matching, value of donated land. In some cases under paragraph (d) of this section, it will be necessary to establish the market value of land. In these cases, the Federal agency may require that the fair market value be established by an independent appraiser, and that the value be certified by the grantee.

§200.328 (a) Monitoring by the non-Federal entity. Grantees are responsible for oversight of the day-to-day operations of grant and sub-grant supported activities. Grantees must monitor grant and sub-grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

Appendix I – Forest Legacy Program Award Provisions

Attachment C: Forest Legacy Program Project Grant Award Provisions – The following information is to be inserted in a Forest Legacy Program project grant document and establishes the terms and conditions of a Forest Legacy project grant.

- A. Background.** The Cooperative Forestry Assistance Act of 1978, as amended, (16 USC 2103c et. seq.) provides authority for the U.S. Secretary of Agriculture to establish the Forest Legacy Program (FLP) to protect environmentally important forest areas that are threatened by conversion to nonforest uses. Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; Public Law 104-127; Title III - conservation; Subtitle G - Forestry; Section 374, Optional Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out the FLP in the State, including the acquisition by the State of lands and interests in lands. Forest Legacy Program delivery is guided by the National FLP Implementation Guidelines (dated January 2017).
- B. Support Program Goals.** The State must ensure that all acquisitions conducted under an FLP grant meet the conservation objectives and goals of the Forest Legacy Program, which can be found in the Forest Legacy Program’s authorization, Forest Legacy Program Implementation Guidelines, and the State Forest Resource Assessment and Strategy (Forest Action Plan) and associated Forest Legacy Program Assessment of Need.
- C. Funding**
1. FLP grant funds must be used for the acquisition of eligible lands or interests in lands.
 2. Funds may also be used for directly related real estate transaction costs incurred by or at the request of the State, including but not limited to: appraisals and appraisal review, land surveys, closing costs (document preparation and recording fees), establishing baseline information, title work, purchase of title insurance, conservation easement negotiations and drafting (travel and attorney fees), and other real estate transaction expenses for the project tracts.
 3. FLP grant funds may be expended to develop a Multi-Resource Management Plan for the FLP project tract(s).
 4. FLP grant funds may also be expended to facilitate donations of land, or interests in lands, to a qualified and willing donee for FLP purposes. The State may use FLP grant funds to pay for expenses directly related to the donation, including but not limited to, land surveys, conservation easement drafting, title work, and establishing baseline information.
 5. Forest Legacy Program funds **are prohibited** from being used for: (1) management of acquired lands or interests in lands including, monitoring of conservation easements; (2) costs associated with setting up an endowment or stewardship fund; (3) enforcement actions and associated activities; or (4) payment for appraisals of donated property or interest when the donation represents the full and total value.
 6. In addition, Forest Legacy Program project funds **are prohibited** from being used for: (1) general expenses of the FLP; (2) indirect costs; and (3) other project costs outside the area of the project in the grant award except for qualified donations.
 7. For advance payments, the grant recipient must notify the U.S. Department of Agriculture, Forest Service’s FLP manager at least 60 days in advance of the acquisition closing date, and submit all necessary documentation for final review

and concurrence. Advance payments must be approved by the Forest Service's FLP manager. The funds will not be made available to the State more than 30 days in advance of the acquisition closing date.

8. For third-party payments direct to a title company or attorney, the State must follow the following procedures in advance of the acquisition closing date:
 - The State must formally request that payment be made to the title company or attorney on its behalf. This must be in writing and signed by the State Lead Agency signatory. An email request is not acceptable.
 - The title company or attorney must be registered in SAM (System for Award Management) at www.sam.gov, and provide their Data Universal Numbering System (DUNS) and Employer Identification Number (EIN).
 - The Forest Service will draft a modification to the FLP grant showing the title company or attorney as an alternate payee. The request letter from the State Lead Agency must be attached as documentation. Both the State and Forest Service will sign the modification.
 - No sooner than 30 days before closing on the purchase, the State Lead Agency must submit an SF-270, or HHS-PMS payment request. The SF-270 must show the State as the award recipient in block 9 and the title company or attorney as the payee in block 10. The request for payment must be signed by the State.
 - The State Lead Agency is responsible for all financial and program reporting, as well as any audit. There is no grantee/grantor relationship between the title company and the Forest Service.

D. Cost Share

1. FLP cost-share requirements limit Federal funding to 75 percent of the total project cost. The non-Federal cost share may include cash, donation of land or interest in lands, and/or in-kind services, and must be documented on a project basis.
2. Endowment funds for conservation easement stewardship or ongoing management of the property cannot be used as cost share.
3. If the State plans to use mitigation funds for cost share, the State must ensure that an official determination has been made that the funds can be treated as non-Federal or consult with the Forest Service to obtain a determination.
4. Any donation of land, or interest in lands, used for cost share for an FLP grant must comply with the following requirements:
 - i. The donation contributes to the objectives and priorities of the State FLP as set forth in the State Forest Action Plan and associated Forest Legacy Program Assessment of Need.
 - ii. All or part of the tract being donated must be within the boundaries of a Forest Legacy Area.
 - iii. The donor documents their desire that the value of the interests may be used as cost share for the FLP project.
 - iv. The donation of land, or an interest in land, must contain perpetual covenants to assure that the tract will be managed in a manner compatible with the goals for which the Forest Legacy Program and the specific Forest Legacy Area were established.
 - v. The donee (holder of donated rights) must be a unit of government or a nonprofit conservation organization (land trust) that meets the eligibility requirements for holding a conservation easement established by the Internal

Revenue Service and has as its purpose the management of lands or interests in land consistent with FLP purposes.

- vi. If the donation is in the form of a conservation easement, the easement must include a provision that will reimburse or make whole the United States for its proportionate share of the value of the Easement or the portion thereof that is extinguished. The United States' "proportionate share" is determined by dividing the portion of the value of the Easement that, at the time of its conveyance, was used to meet the cost-share requirement by the value of this Easement at the time of its conveyance.
- vii. If the donation is in the form of a fee simple tract, the deed must include a provision to reimburse or make whole the United States for its proportionate share of the value of the fee simple tract or the portion thereof that is disposed. The United States' "proportionate share" is determined by dividing the portion of the value of this fee simple tract that, at the time of its conveyance, was used to meet the cost-share requirement by the value of the entire fee simple tract at the time of its conveyance.
- viii. The respective portion of the donation must not have been previously credited towards any Federal program's non-Federal cost share.
- ix. The State approves the donation as contributing to the cost share.
- x. For cost-share tracts, the State must determine the value of the donation. The State may use an existing appraisal, a new appraisal, or another documented analysis to determine value. Appraisals for cost-share tracts do not need comply with Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or Yellow Book) and do not need to be reviewed.
- xi. All cost share must be incurred during the life of the grant, including acquisition of cost-share tracts, unless pre-award costs are approved by the appropriate Forest Service line officer.

E. Approval of Project Changes. The State must submit, in writing, any significant changes to the project configuration as described in the approved grant narrative. Before submitting proposed changes to the Forest Service for approval, the changes must be reviewed by the State Forest Stewardship Coordinating Committee. Such changes include, but are not limited to: type/degree/extent of public access, proposed reserved rights by landowners, acreage, and conservation values of the property.

F. Program Requirements. The State shall ensure that all land(s) or interests in land(s) acquired under an FLP grant, meet the following requirements:

1. Are located within or partially within, the boundaries of an approved Forest Legacy Area as identified in the State Forest Resource Assessment and Strategy (Forest Action Plan) and associated Forest Legacy Program Assessment of Need.
2. Prior to acquisition of a conservation easement, a Multi-Resource Management Plan will be prepared and approved by the landowner and approved by the State forester or designee. This plan must include the environmental values to be protected, the management activities that are planned, and how they affect the environment values identified (16 USC 2103 (d)(1)) (16 USC 2103 (i)). Modifications to the plan are to be agreed to by the State forester or designee.
3. For tracts acquired in fee, a Multi-Resource Management Plan must be created for the tract or the tract must be incorporated into an existing management plan for surrounding conservation lands. A natural resource professional shall prepare the Multi-Resource Management Plans and shall include provisions to meet the purposes of the FLP. Such plans identify the management objectives of the

property and describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, fish and wildlife resources, and other conservation values identified on the tract. Approval shall be granted by the State forester or designee (if the State Lead Agency is other than the State Forestry Agency, then the plan may be approved by the head of that Agency) upon determination that the plan meets the FLP Multi-Resource Management Plan requirements.

4. Ensure that the title is free and unencumbered and/or that title insurance is secured in the name of the State for the full value of the encumbered property. Identify any existing easements, covenants, or long-term contracts, recorded or unrecorded, or any rights that may be held by a third party. These agreements/encumbrances could be (or could include) recorded or unrecorded. Any encumbrance to the title must be deemed by the State as not affecting the purpose for which the land or interests in land is being acquired. Title insurance is not an alternative to free and unencumbered title.
5. Evaluate any preexisting severed mineral reservations or leases and make a determination as to whether the acquisition of mineral rights, prohibition on reserved areas, or an exclusion of the area that does not comply with FLP would be necessary in order to protect the other rights that are being considered for acquisition. In some situations, it may be impossible to protect environmentally important forest areas without acquiring the mineral rights.
6. Notify the landowner in writing of the market value of the property, that eminent domain will not be used, and that the property will not be acquired if negotiations fail to result in an amicable agreement.
7. Complete a baseline documentation for each conservation easement tract and ensure it depicts the attributes of land on the day it is restricted by a conservation easement.
8. Ensure that the State or its assignee will monitor the lands annually for conformance with the terms of the conservation easement.
9. The State Lead Agency shall monitor fee simple and cost-share tracts periodically, including those owned and managed by other governmental entities within the State (such as other State agencies or local governments), and submit a self-certifying statement to the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) as part of the State FLP Program Review every 5 years. Similarly, for fee simple cost-share tracts held by a qualifying nonprofit conservation organization, the State Lead Agency shall acquire from the fee interest holder a self-certifying statement and submit it to the R/A/I as part of the State FLP Program Review every 5 years.
10. The consideration paid to any landowner must be no more than the market value of the conveyed lands or interests as determined by an appraisal that conforms to the most current version of the Uniform Appraisal Standards for Federal Land Acquisitions and meet the following requirements:
 - i. Be completed by an appraiser licensed in the State where the project is located and who meets the qualifications specified in the Forest Legacy Program Implementation Guidelines;
 - ii. Be reviewed by a qualified review appraiser who meets the qualifications specified in the Forest Legacy Program Implementation Guidelines;
 - iii. The appraiser and review appraiser will engage in an initial consultation before the project appraisal takes place;

- iv. The review appraiser will develop project-specific appraisal instructions for the appraiser as a result of this consultation;
- v. The effective date of value must reflect current market conditions;
- vi. The review appraiser attests to Federal Appraisal Standard conformance; and
- vii. The State may be asked to consult with a qualified USDA Forest Service review appraiser prior to or during the appraisal process even if a non-Federal review appraiser is used for the assignment.

G. Acquisitions Requirements. The Grant Recipient shall ensure that the recorded deed(s) or conservation easement(s) for all land or interests in land acquired under this grant contain the following:

1. Clearly state that the acquisition supports Forest Legacy Program goals and include a citation to the Forest Legacy Program’s authorizing language.
2. Limit or prohibit the subdivision of the encumbered land. If allowed, the easement should specify the number, sizes, and locations of divisions, and ensure that the conservation easement will be rerecorded for all parcels at the time of subdivision.
3. Prohibit industrial or commercial uses inconsistent with maintaining forest cover and that could negatively impact the conservation values protected by the easement.
4. Limit or prohibit structures or other improvements that could impact the conservation values protected by the easement. When allowed, these uses (such as house, barn, remote recreation camps) should be in a designated improvement area and the easement language must identify the specific location and limit of the allowed activities.
5. Prohibit extensive surface disturbances including residential, commercial, and industrial development, and mining. Limited excavation of sand and gravel for onsite use for roads and landings may be allowed, and the conservation easement must clearly describe the extent and location.
6. Require the landowner to manage the property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program, and that the landowner shall not convert the property to other noncompatible uses.
7. For each fee simple and conservation easement tract, require that all management activities be conducted in accordance with the approved Multi-Resource Management Plan, described above.
8. Limit or exclude nonforest uses that are inconsistent with maintaining a minimum of 75 percent forest cover. Up to 25 percent of the total Forest Legacy Program tract may be compatible nonforest land uses, including cultivated farmland, pasture, grassland, shrub-land, open water, and nonforested wetlands. Tracts with greater than 25 percent compatible nonforest uses must have an approved Multi-Resource Management Plan that ensures reforestation/afforestation within 10 years of project completion, if sivilculturally possible.
9. Ensure the conservation easement refers to the baseline documentation report.
10. Ensure the conservation easement provides the right to enter the property to conduct conservation easement monitoring.
11. Establish the roles of all parties involved in potential conservation easement violations and identify those responsible for addressing them.

12. Include terms that limit additional easements, leases, or contracts that negatively impact the conservation purposes of the conservation easement and include language to ensure any subsequent easement or agreements must be approved in advance.
13. Include the required provisions for conservation easements (ecosystem service markets, transfer, amendment, and extinguishment) and deeds (ecosystem service markets as applicable, transfer, and disposal) as specified in the Forest Legacy Implementation Guidelines

H. Project Conclusion. The State shall complete the following actions upon completion of the Forest Legacy Project:

1. As a condition of this grant, the State may be required to publicly acknowledge (through news articles, posting of Forest Legacy signs on the land, and/or inclusion in publications) the United States Department of Agriculture, Forest Service and specifically the Forest Legacy Program as the/a source of funding for the project(s).
2. Update the Forest Legacy Information System (FLIS) with the closing dates, final acreages, and Forest Legacy payments and cost-share information for the project.
3. Provide a geographic information system (GIS) shape file in accordance with FLP data standard, of the rights acquired to the Forest Service.
4. Comply with the FLP recordkeeping requirements as outlined in the Forest Legacy Program Implementation Guidelines.

I. Post-Grant Requirements. The State shall complete the following actions upon closing of the FLP grant:

1. The State or its assigns shall monitor and manage lands for conformance to Forest Legacy purposes and the conservation easement to which they are subject and in accordance with the Forest Legacy Program Implementation Guidelines. Monitoring shall occur periodically, but not less than annually.
2. In addition, the State or its assigns shall periodically monitor and manage fee simple and cost-share tracts for conformance to Forest Legacy purposes and in accordance with the Forest Legacy Program Implementation Guidelines.
3. As a condition of this grant, the Forest Service may request an annual report on the status of monitoring and management of the lands or interests in lands that were entered into the Forest Legacy Program.

	Date
USDA Forest Service	Date

Appendix J – Examples of Cost-Share Calculations

Equation for Calculating Cost-Share Requirement

$$(\text{Federal FLP Share}) \div 3 = \text{the minimum Non-Federal Cost Share}$$

OR

$$(\text{Total Project Costs}) \times (0.75) = \text{the maximum Federal Contribution}$$

Principles To Guide Calculating the Cost-Share Requirements

- To calculate the minimum cost-share requirement, the State Forest Legacy Program (FLP) Coordinator should use the Federal FLP contribution, and not the total project costs.
- The Federal contribution (U.S. Department of Agriculture, Forest Service’s FLP plus all other Federal contributions) cannot exceed 75 percent of the total project costs (all cost requirements to complete the project, including Federal and non-Federal contributions).
- The non-Federal cost-share portion cannot be used as cost share for another Federal program that also requires a cost share.

Example 1. An FLP grant is going to be used to protect Jane Smith’s 3,000-acre tract. The total cost of protecting that tract is \$1 million. What is the maximum Federal FLP contribution? What is the minimum non-Federal contribution?

Total Project Costs	Federal FLP Contribution	Minimum Non-Federal FLP Contribution	Other Federal Contribution	Remainder Above Minimum Non-Federal FLP Contribution
\$1,000,000	\$750,000	\$250,000	\$0	\$0

Federal contribution cannot exceed \$750,000 ($\$1,000,000 \times 0.75$).

The minimum non-Federal cost-share requirement is at least \$250,000 ($\$750,000 \div 3$).

Example 2. John Doe Ranch is planning to conserve 6,500 acres of land. The total cost of protecting the land is \$4 million. The Federal contribution, through FLP, will be \$1,000,000, and the non-Federal contributors will provide \$3,000,000, which includes a cost-share component for the FLP. Does the Federal FLP contribution exceed the maximum amount? Is there enough non-Federal contribution to meet the minimum amount?

Total Project Costs	Federal FLP Contribution	Minimum Non-Federal FLP Contribution	Other Federal Contribution	Remainder Above Minimum Non-Federal FLP Contribution
\$4,000,000	\$1,000,000	\$333,333	\$0	\$2,666,667

The Federal contribution cannot exceed \$3,000,000 ($\$4,000,000 \times 0.75$); since the FLP contribution is \$1,000,000, the Federal contribution is not greater than 75 percent of the total project costs.

The minimum non-Federal cost-share requirement is at least \$333,333 ($\$1,000,000 \div 3$); there are adequate non-Federal cost-share funds.

Example 3. ABC Tree Company is planning to conserve 8,300 acres of land. The total cost of protecting the land is \$4 million. Both the Forest Service’s FLP and the U.S. Fish and Wildlife Service (USFWS) are each contributing \$1.6 million toward the project. In addition,

\$800,000 of non-Federal money has been secured to cover the cost-share requirements for the FLP and USFWS contributions, as well as to pay for additional project costs. The USFWS grant requires a 50-percent non-Federal cost share. Does the Federal contribution exceed the maximum amount? Is there enough non-Federal contribution to meet the minimum amount required for each Federal program?

Total Project Cost	Federal FLP Contribution	Minimum Non-Federal FLP Contribution	Remainder After Minimum Non-Federal FLP Contribution is Applied
\$4,000,000	\$1,600,000	\$533,333	\$266,667

The Federal contribution cannot exceed \$3,000,000 ($\$4,000,000 \times 0.75$). Since the FLP and USFWS contributions combined are \$3,200,000, the Federal contribution is greater than 75 percent of the total project costs.

The minimum non-Federal FLP cost-share requirement is at least \$533,333 ($\$1,600,000 \div 3$). There are adequate non-Federal FLP cost-share funds. Since FLP and USFWS cannot have the same cost-share component, the remaining non-Federal funds after the minimum cost share is applied to the FLP grant are \$266,667 ($\$800,000 - \$533,333$). Therefore, non-Federal funds are insufficient to match the USFWS grant Federal funds.

Appendix K – Baseline Documentation Report Sample

All Forest Legacy Program (FLP) conservation easements, including cost-share tracts, must have a Baseline Documentation Report completed and signed by closing. The following outline is a guide to help develop this report. Keep in mind that baseline documentation should:

- Be clearly presented and easy to understand long after the report authors and conservation easement creators have moved on.
- Include maps, images, and/or geographic information system (GIS) files that adequately, accurately, and clearly describe the conservation easement, its conditions, and surroundings at the time of protection.
- Ensure all photos include a description and location information, and help document specific values to be protected by the conservation easement.
- Be developed and stored digitally when possible for easy future access, security, and added consistency and availability of information across projects.

Sample Outline and Content:

1. Cover Page: Identify the property and date of the baseline documentation.

- Name and location of property
- Signature of the author/collector
- Date of baseline documentation and conservation easement establishment
- Signature page with landowner and State forester signature (mandatory)

2. Table of Contents: Orient the reader to the contents of the Baseline Documentation Report.

3. Background Information: Place the property and conservation easement in context.

- Ownership contact information (including name, address, email, and phone number of property owner)
- Historical information on the donation/acquisition (brief chronological description of events that led to the protection of the property)
- Evidence of the significance of the protected property, as established either by the government policy (include copies of documents) or by the long-term protection strategy developed by the grantee
- Purpose of conservation easement or easement document
- Summary of conservation easement provisions (specific prohibitions, restrictions, retained rights, as derived from the language of the easement document)
- Corporate or agency resolution accepting gift (minutes of the meeting at which a gift is accepted or acquisition is approved are adequate)
- USDA Forest Service Grant Agreement
- An overview of data collection methods and collector qualifications

4. Legal Condition: Identify legal aspects and boundaries of the conservation easement.

- Owner Acknowledgment of Condition (see Treas. Reg. Section 1.170A-14(g)(5)(i)(D))
- A copy of the signed, recorded, conservation easement document
- An assessor's parcel map

- A clear title statement or preliminary title report, noting any liens against the property that could compromise its natural qualities or invalidate the conservation easement
- Copies or list of any other relevant easements/encumbrances or water rights associated with the property

5. Ecological Features: Catalog significant and at-risk forest and other ecological features that the conservation easement will help protect; the Multi-Resource Management Plan should be used as a guide.

- A general description of the ecological features that are currently on the property and that the conservation easement seeks to protect, such as forest and plant communities, soil characteristics, and habitat
- An inventory of rare, endangered, and/or threatened species and habitat found on the property (as applicable)
- Reports from wildlife biologists or other specialists that document the status of significant natural elements

6. Working Land Features: Catalog uses or features on the property.

- Catalog the location intensity, and boundary of working forests, farms, and grazing areas

7. Scenic Features: Catalog scenic features or passive recreational use on or near the property.

- Official policies citing property's scenic value
- Number of people who frequent nearby public places (roads, trails, parks) from which they can view property
- Archeological, cultural, and historical sites and resources found within the property, with a focus on those resources that the conservation easement seeks to protect

8. Human-Created Features: Catalog constructed features and active or evidence of human use on the property.

- Improvements (structures, trails, fences, wells, power lines, pipelines, irrigation systems, etc.)
- Trespass damage and disturbed land (stray animals, introduced species, evidence of vehicular trespass, etc.)
- Areas of high use (such as tourism attractions) and access points along the property for public and equipment

9. Photographs: Document the property from the ground, capturing significant human-created, scenic, agricultural, or environmental features.

- Aerial photos
- Onsite photos (recording photo points, direction of the shot, distance and azimuth from structures or other fixed points, and signing and dating all photos)
- All attachments should have an accompanying description that states the significance of how the media relates to the protected values in the conservation easement

10. Maps: Document the property from above, capturing significant human-created, scenic, agricultural, or environmental features.

- A State map showing conservation easement location

- An 8 ½” X 11” section of a local roadmap or other map showing conservation easement location, no-build areas, photo points, and other significant easement conditions, landscape features, and/or preservation specifics
- The most local-scale U.S. Geological Survey topographical map available (usually at a scale of 1:24,000, called a 7.5-minute scale), showing conservation easement boundaries

11. Survey: Provide additional detail to supplement maps and legal information.

- Surveys generally are not required, but may be helpful

For Additional Information on Baseline Documentation:

- Land Trust Alliance Standards and Practices – Available at The Learning Center, an online resource for Land Trust Alliance member land trusts, partner organizations, contractors, and donors
- Land Trust Alliance. 2001. *Working Forest Conservation Easements*
- “Digitally Documenting Baseline and Stewardship Data,” *Exchange*, Fall 2000 (Vol. 19 No. 4)
- “Baseline Documentation and Easement Monitoring – Keys to a Successful Future Defense,” *Exchange*, Summer 1998 (Vol. 17 No. 3)
- Land Trust Alliance and Trust for New Hampshire Lands. 1991. *The Conservation Easement Stewardship Guide*
- Land Trust Alliance and Trust for Public Land. 2005. *The Conservation Easement Handbook*

Appendix L – Amicable Agreement Acknowledgment Letter

The acknowledgment example below may be used. This example would be sent on official agency letterhead, and signed by the seller.

RE: [FLP Project Name] Amicable Agreement Acknowledgment for [FLP Tract name]

To Whom It May Concern:

The appraisal of the proposed acquisition on the [FLP Tract name] that is part of the [Project Name] Forest Legacy Project was completed by [List appraiser name/company] and was reviewed and determined to meet the Uniform Appraisal Standard for Federal Land Acquisition by [List review appraiser name/company]. In conjunction with the proposed acquisition by [List entity acquiring the property] on [Enter number of acres of acquisition] acres owned by [List Landowner's name], and in accordance with the Forest Legacy Program Project Grant # [Enter Full Grant Number], the following notifications are acknowledged:

- The market value of the [fee acquisition of the property or acquisition of a conservation easement on the property] has been determined to be [enter appraised value] by an appraisal prepared and completed for [List entity acquiring the property] by [List appraiser name/company] and has been reviewed to be in compliance with the Uniform Appraisal Standards for Federal Land Acquisitions.
- [List landowner's name] has agreed to sell the [property or conservation easement] to [List entity acquiring the property or conservation easement] for [enter amount that property or conservation easement will be sold for] including a Forest Legacy Program payment of [\$XXX,XXX].
- The sale of this [property or conservation easement] is strictly voluntary and eminent domain will not be used if negotiations don't result in an amicable agreement.

Acknowledged by:

[Landowner Name (IN CAPS)]

Date [Enter date]

If a nonprofit organization is the landowner,

Insert the authorized signatory's

[Name (IN CAPS)] _____

[Title] _____

[Organization Name] _____

Appendix M – Conservation Easement Language Examples

The examples below are intended to be used as a resource when composing a conservation easement. The applicable example(s) can be adapted according to circumstances/legal requirements and inserted in the draft conservation easement.

Purpose provision

Example 1

WHEREAS, the purpose of this Conservation Easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC – 2103c) as amended.

WHEREAS, the Conservation values of the Property are consistent with the goals of the Forest Legacy Program and the establishment of this Conservation Easement will provide public benefits by: preventing future conversions of forest land and forest resources; protecting and enhancing water quality and water supplies; protecting wildlife habitat and maintaining habitat connectivity and related values to ensure biodiversity; protecting riparian area; maintaining and restoring natural ecosystem functions; and maintaining forest sustainability and the cultural and economic vitality of rural communities.

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property. The data and explanatory text are presented in the Baseline Documentation Report, dated [Insert date], which consists of reports, maps, photographs, and other documentation that the parties agree to provide.

Example 2

*The purpose of this Conservation Easement is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, Public Law 95-313 as amended (codified at 16 USC 2101 et seq), on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian areas, and other ecological values, and to ensure that the Property is available for the sustainable and cost-effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program. The purposes also include encouragement of management for and the production of economically sustainable and commercially viable forest products consistent with the other purposes of this easement and also include the long-term protection of the Conservation Property's capacity to produce economically valuable forestry products, and the encouragement of management of the property for industrial or commercial forestry **only** if consistent with the other purposes of this conservation easement.*

Example 3

The purpose of this Conservation Easement is to effect the Forest Legacy Program in accordance with the provisions the Cooperative Forestry Assistance Act of 1978, Public Law 95-313 as amended (codified at 16 USC 2101 et seq), on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values.

Limitation on structures and other improvements that could impact conservation values

Example 4

No structures shall be constructed or placed in, on, over, under, or upon the Protected Property except as otherwise provided for in the Conservation Easement. For the purposes of this Conservation Easement, the term “structure” shall be defined as broadly as possible, and shall include but not be limited to any building, facility, edifice, or man-made development of any kind or nature, whether of a permanent or temporary nature, including but not limited to any residence, commercial or industrial building, tower, antenna, mobile home, bridge, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, camp, cabin, or other structure. Both Grantor and Grantee may erect signs, gates, fences, or other barriers as may be necessary to carry out their rights and obligations hereunder.

There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that the Grantor may erect and maintain reasonable signs including but not limited to signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, directional signs, memorial plaques, informational and interpretive signs, for sale signs, and signs limiting access or use (subject to the limitations of section [Insert section of conservation easement allowing for signage]). Grantee may erect and maintain signs designating the Protected Property as land under the protection of the Grantee.

No residential, commercial, industrial, or mining activities shall be permitted and no building, structure or appurtenant facility or improvement shall be constructed, created, installed, erected, or moved onto the Protected Property, except as specifically permitted under this Grant.

Example 5

There shall be no development, construction, installation, expansion or maintenance of structures of any kind including but not limited to: buildings; residences; facilities; radio towers, cell towers, or other towers of any kind; power lines; commercial camping accommodations or mobile homes; windmills; bridges; tanks; dams; impoundments; docks; sewage or other waste disposal facilities; billboards; signs; poles and cable; canoe platforms; permanent deer stands and steps; or other structures, other than:

non-residential accessory structures customarily incidental and subordinate to necessary Forest Management Activities on the Protected Property (“Forest Management Structures”), including culverts, bridges, fences, barriers, and the following Temporary and Portable nonresidential accessory structures customarily incidental and subordinate to necessary Forest Management Activities on the Protected Property: generators, toilet facilities, machine and storage sheds, sawmills, dry kilns, warming huts and maple sugar houses. For purposes of this Subsection [Insert subsection number], “Temporary” means that the temporary and portable Forest Management Structures will be removed within 60 days of cessation of their use for Forest Management Activities. For purposes of this Conservation Easement, “Portable” means that the related equipment or structure is designed and capable of being moved to another location.

Designated improvement areas

Example 6

Improvement Areas: Grantor shall have the right to designate one contiguous area of not more than 40 acres where improvement and development will be contained (“Improvement Areas”), provided the following standards are met.

Within Designated Improvement Areas, an area not to exceed 5 acres may be selected by the Grantor (“Residential Building Envelope”), where residential development may

occur as allowed by this Easement. The location of Residential Building Envelopes (when selected) and Improvement Areas (when designated) must be generally depicted on a map, marked on the ground and corners monumented, and provided to Grantee. Once an Improvement Area is designated, said improvement area may not be moved or relocated once improvements or development have begun (building roads, utilities, buildings, etc.). A survey is not required by this provision, but the baseline will be updated to show the area with GPS reference points. The parties agree that the location of these Improvement Areas will be deemed consistent with the Easement Purposes provided the following standards are met:

- (i) Within Improvement Areas, development shall be avoided within 100 feet of any watercourse. If avoidance is not possible, such as a watercourse-crossing, then all State Laws that are applicable shall be followed.
- (ii) Within Improvement Areas, development shall not occur within wetlands as defined by the United States Environmental Protection Agency or other State or Federal regulatory authority.

Within each Residential Building Envelope, the Grantor may construct or place and repair, improve or replace one single-family residence and one guesthouse, as well as one additional outbuilding, which may be a garage for motor vehicles, a shed, or greenhouse, provided that more than one outbuilding may be acceptable only if reviewed and approved by Grantee pursuant to Section [Insert section number describing approval process], which approval shall not be unreasonably withheld. Additional outbuildings shall not include dwelling spaces of any kind nor be used for human habitation. At Grantor's discretion, Grantor may also construct, repair, and replace, instead of an allowed residence or guesthouse, one hunting lodge in the Residential Building Envelope.

The residential buildings (residence and guesthouse, or hunting lodge and residence or hunting lodge and guesthouse) shall not exceed 2½ floors above the ground. The total combined "footprint" of the residential buildings shall not exceed 5,000 square feet. The "footprint" is defined as the enclosed space—that is, enclosed by four walls and covered by a roof, but not including a basement (finished or unfinished) or an attached garage.

Improvement Areas may also include: ancillary structures, sheds and greenhouses, landscaping, parking, telecommunications, storage, water facilities, ponds, fences and such structures or facilities necessary for the support, maintenance, and ongoing operation of permitted agricultural, residential, recreational, and forest uses. Recreational uses consistent with this Easement within the Improvement Areas may be commercial. Legally permissible forms of recreation, which are consistent with the Conservation Values and Easement Purposes and supporting structures, including but not limited to, equestrian training facilities, are permitted within the Improvement Areas. The Improvement Areas shall not include dwelling spaces of any kind for human habitation outside the Residential Building Envelopes.

Prohibition on surface disturbance such as mining or drilling

Example 7

There shall be no quarrying, ditching, draining, diking, filling, excavating, dredging, removal of topsoil or other materials, nor change in the topography of the land in any manner nor exploration for or development or extraction of minerals, peat, gas, oil, other hydrocarbons, sand, rock, gravel, or other deposits by any surface or subsurface mining or other method, on the Protected Property, unless the exploration or extraction is limited and localized, not adversely impacting the purposes of the FLP, or except that the Grantor may extract sand, gravel, and rocks as reasonably necessary for use on roads, trails, and landings on the Protected Property, in accordance with the Forest Management Plan and the Forest Management Standards as defined in Subsection [Insert

number of forest management subsection], in compliance with all applicable local, State and Federal laws, and as permitted in the U.S. Internal Revenue Service's regulations implementing Section 170(h) of the Internal Revenue Code, as amended.

Example 8

There shall be no disturbance of the surface, including but not limited to filling, excavation, and removal of topsoil, sand, gravel, rocks, or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under the terms of this Grant. Surface mining of subsurface oil, gas, or other minerals is not permitted unless the extraction is limited and localized, not adversely impacting the purposes of the FLP.

There shall be no manipulation of natural watercourses, marshes, or other water bodies, nor shall there be activities conducted on the Protected Property that would be detrimental to water purity, or that could alter natural water level or flow, except as reasonably necessary to carry out the uses permitted on the Protected Property under this Grant.

Requirement for development of and adherence to a Multi-Resource Management Plan

Example 9

Plan Requirements:

Compliance with the elements of an approved Forest Stewardship Plan or Amended Forest Stewardship Plan is a requirement of this easement. The Forest Stewardship Plan and any Amended Forest Stewardship Plan shall be consistent with the Purposes of this Grant. The Forest Stewardship Plan shall be based on the most current science and strive to improve stand quality and maintain important wildlife habitats consistent with current stand conditions and site quality and shall include at least the following elements:

- a. Landowner's forest management objectives;*
- b. An appropriately scaled, accurate map indicating such items as forest stands, streams and wetlands, and major access routes (truck roads, landings, and major skid trails);*
- c. Forest stand (treatment unit) descriptions (forest types, stocking levels before and after harvesting, soils topography, stand quality, site class, insect and disease occurrence, previous management history, and prescribed silvicultural treatment);*
- d. A feasible strategy and timeline for practice and activity implementation;*
- e. Plant and wildlife considerations (identification of known significant habitats and management recommendations, and Grantor's plan with regard to retaining snag trees, den trees, and downed trees);*
- f. Recreational considerations; and*
- g. Historic and cultural resource considerations (identification of known resources and associated management recommendations).*

The Forest Stewardship Plan shall be updated at least once every 10 years. Amendments to the Forest Stewardship Plan shall be required in the event that Grantor proposes a treatment not included in the Forest Stewardship Plan, but no such amendment shall be required for any change in timing or sequence of treatments if such change does not vary more than 3 years from the prescription schedule set forth in the Forest Stewardship Plan as approved by the Grantee. Grantee may rely upon the advice and recommendations of such foresters, wildlife experts, conservation biologists, or other experts as Grantee may select to determine whether the Forest Stewardship Plan or Amended Forest Stewardship Plan would be detrimental to the Purposes of this Grant.

Harvesting Restrictions:

Heavy Cuts – Disapproval by Grantee of a Forest Stewardship Plan proposing a heavy cut (as defined below) shall not be deemed unreasonable. Grantee, however, may approve a Forest Stewardship Plan or an Amended Forest Stewardship Plan that includes a heavy cut in its sole discretion if consistent with the Purposes of this Grant, including the following purposes:

- a. To release a well-established understory,*
- b. To permit the planting of different species of trees,*
- c. For wildlife management purposes, or*
- d. To promote natural regeneration.*

“Heavy cuts” shall mean the harvesting of wood products below the “C-Line” or minimum stocking level on the Protected Property as determined by applying the protocol set forth in the current U.S. Department of Agriculture, Forest Service Silvicultural Guidelines for the Northeast or by applying a similar, successor standard approved by the Grantee.

Surface Water Buffer Zones – Except for use of existing roads, any harvesting or other forest management activities conducted within 75 feet of any wetland buffer, or the banks/shores of streams, rivers, and ponds depicted on the Forest Stewardship Plan or Amended Forest Stewardship Plan, must be consistent with a Forest Stewardship Plan approved by Grantee that takes into account the potential effects of such activities on water quality and the plant and wildlife habitat associated with such areas. The number and width of stream crossings in the foregoing areas shall be kept to a minimum and said crossings shall include the installation of all erosion-control devices and employ, at a minimum, all recommended practices described in the [Insert appropriate reference to State document], or successor standard approved by the Grantee.

Baseline documentation**Example 10**

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property. The data and explanatory text are presented in the Baseline Documentation Report, dated [Insert date], which consists of reports, maps, photographs, and other documentation that the parties agree to provide.

Limitations on additional easements**Example 11**

Except as otherwise specifically permitted under this Conservation Easement, no rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or easement shall be constructed, developed, or maintained into, on, over, under, or across the Protected Property, without the prior written permission of the Grantee. Grantee may grant such permission if it determines, in its sole discretion, that any such improvement would be consistent with the objectives of this Conservation Easement.

No additional easements or deed restrictions that conflict with the purposes of this Conservation Easement shall be placed on the Protected Property without the prior written permission of the Grantee. Grantee may grant such permission if it determines, in its sole discretion, that any such easement or deed restriction would be consistent with the objectives of this Conservation Easement.

Example 12

Easements and Rights-of-Way – No easements or rights-of-way shall be granted within the subject land after the date of this instrument unless such encumbrances are approved, in advance and in writing, by the Grantee. The Grantee may give such approval if it determines, in its sole discretion, that such improvement or encumbrance would be consistent with the purposes of this Easement and would not affect the forestry potential or scenic beauty of the subject property.

Other considerations when drafting conservation easements:

Example 13 – Mitigation

The Conservation Easement may not be used to satisfy any requirement or condition imposed by any permit, agreement, authorization or entitlement for use (mitigation), including but not limited to any requirement to compensate for or otherwise offset impacts of an activity, without the written approval of the Grantee or its successor.

Example 14 – Transfer of Development Rights

The Protected Property and/or any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or to increase natural resource extraction on other land or to achieve other regulatory mitigation credits for discharge of pollutants or other similar accommodation on land not subject to this Conservation Easement.

Example 15 – Development and Building Rights

The development and building rights associated with the Protected Property are hereby extinguished and, as a result of such extinguishment, shall not be available for transfer to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Neither the Protected Property nor any portion thereof shall be included as part of the gross area of any other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open-space requirements under an otherwise applicable statute, regulation, or ordinance controlling land use and building density.

Example 16 – Notice of Grant Agreement

The [Insert name State Lead Agency], the grant recipient and its successors and assigns, and [Insert fee owner name], the landowner and its successors and assigns, and [Insert name of nonprofit or government entity], the Easement Holder and its successors and assigns pursuant to the grant agreement [Insert Grant Name and Full Grant Number] awarded by the United States Department of Agriculture (USDA), Forest Service on [Insert Grant Date] to the [Insert name State Lead Agency], acknowledge that the below-described Conservation Easement serves as a cost-share tract to the Forest Service Forest Legacy Program authorized by the Cooperative Forestry Assistance Act of 1978, Public Law 95-313 as amended (codified at 16 USC 2101 et seq).

The title and agreement number of the grant agreement with the Forest Service are housed in the Forest Service [Insert Region/Area/IITF] Office at [Insert Forest Service Region/Area/IITF Office Address] or in an archival facility per Agency policy. The [Insert name State Lead Agency], as the grant recipient and the [Insert name of nonprofit

or government entity], the easement holder acknowledge that they are responsible for ensuring that the Easement is used and will continue to be used in a manner consistent with the purposes of the Forest Service Forest Legacy Program.

Forest Legacy Tract Easement Name:

Location:

Towns:

County:

Easement Holder:

Conservation Easement Acreage and Deed Recording Information:

Acreage:

Book #

Page #

Date: Signed

Recorded

Should the Easement be transferred, the Easement Holder agrees that the Easement may be transferred or assigned only (i) to another entity that (a) is eligible to hold the Easement under the Forest Legacy Program (FLP), (b) is willing and able to hold the Easement for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed on the holder by the terms of the Easement and (ii) with the consent of [Insert name State Lead Agency].

The Easement may be amended only with the written approval of the [Insert name State Lead Agency]. An amendment may be approved by the [Insert name State Lead Agency] only if it will (i) serve the public interest and not diminish the benefits provided to the public, (ii) have a beneficial or neutral effect on the conservation values protected by the Easement, (iii) be consistent with the purpose of the FLP and the purpose of the Easement, (iv) not confer an economic benefit on private persons (private inurement or private benefit in the case of a charitable organization holder), (v) be consistent with the intent of the original grantor of the Easement and any funding entities, (vi) not diminish the perpetual duration of the Easement or negatively affect the status or rights of the Easement Holder, and (vii) otherwise comply with all applicable Federal, State, and local laws and regulations. Amendments must be recorded in the appropriate local land use records and a copy of the recorded amendment must be provided to the [Insert name State Lead Agency] within 30 days of recordation. Any purported amendment that is recorded without the prior written approval of the [Insert name State Lead Agency] will be null and void.

The grant recipient and the Easement Holder acknowledge and agree that the Easement cannot be extinguished, in whole or in part (whether through release, termination, exchange, or otherwise) unless the [Insert name State Lead Agency] consents in writing to the action and reimbursement for the loss of cost-share value is received. The form of reimbursement, whether it is received in cash or in kind, shall be approved by the [Insert name State Lead Agency] but shall in all events be used for conservation purposes consistent with the FLP. The Easement shall not be deemed extinguished until the State receives reimbursement.

The “value of the Easement or the portion thereof that is extinguished” shall be the value of such interest immediately before the extinguishment as determined by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) and by a certified general appraiser approved by the [Insert name State Lead Agency]. The “proportionate share” shall be the portion of the value of the Easement that was used to meet the cost-share requirement at the time of the Easement’s conveyance, expressed as a percentage. The [Insert name State Lead Agency] stipulates to have a [Insert number] percent proportionate share in the fair market value of the conservation easement. The proportionate share has been determined at the time of conveyance by dividing the fair market value of this conservation easement by the FLP cost-share commitment. The proportionate share will remain constant over time.

If the landowner and/or the easement holder are notified of a proposal to condemn all or any portion of the property subject to the Easement, the [Insert name State Lead Agency] must immediately be notified.

The [Insert name State Lead Agency], as grant recipient, and the [Insert name of nonprofit or government entity], the Easement Holder hereby confirms its obligations and responsibilities with regard to the conservation easement pursuant to the terms and conditions associated with grant agreement [Insert Grant Name and Full Grant Number].

Signed and Witnessed...

Appendix N – Guide to Evaluating Appraisal Risk Factors

Forest Legacy Program Risk Factors

The Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) program manager must evaluate the State Forest Legacy Program (FLP) and tract risk factors to determine if a Federal review should be involved—and to what extent—in an FLP appraisal. The purpose of evaluating FLP risk factors is to determine if a State has sufficient policies, procedures, and controls in place to ensure compliance with Federal appraisal standards. If it does not, there is a risk that these standards may not be met.

Forest Legacy Program risk factors to consider:

Quality assurance inspections have identified the following performance issues:

- Lack of or insufficient review of appraiser qualifications,
- No instructions provided in advance to the appraiser by a review appraiser,
- No pre-work meetings or discussions between the appraiser and review appraiser, and
- Appraisal or appraisal review report in file not in compliance with Federal appraisal standards.

Limited experience of State FLP coordinators or where there is fragmented responsibility for implementation of the FLP in the State:

- Limited staff time to oversee the State FLP appraisal process;
- History of a lack of coordination from State appraisal/review staff with State FLP;
- Lack of applicable appraisal training or experienced State staff to oversee appraisal services. This could include knowing what services to ask for, understanding appraisal/review products they receive, being experienced in managing contracts for appraisal services, or being effective in communicating Federal appraisal standards to providers of appraisal services; and
- Acquisition policy/procedures/contracting responsibilities are housed with a State unit other than the FLP lead agency, leaving the FLP coordinator little to no input or control over how the State contracts for appraisers and/or review appraisers.

Lack of qualified appraisers/reviewers:

- Limited pool of qualified appraisers and/or review appraisers in the State.

Conflicting State laws, regulations, and policies:

- Some States have requirements that their staff reviewers provide a “certification of value.” The requirements of these “certifications” are not the same as a technical review report prepared in compliance with Uniform Standards of Professional Appraisal Practice (USPAP) Standard Rule 3, which is required for the FLP, but in some cases have been substituted for a technical review report. The “certifications of value” required by some States should not be accepted in lieu of a USPAP-compliant technical review report.
- Some States will not pay for an appraisal review until after an appraisal has been completed and an offer to purchase has been made to the landowner. This State policy conflicts with the FLP requirement that the reviewer conduct a pre-work conference with the appraiser.

Acquisitions involving partners:

- A potential conflict of interest exists when a partner assumes an extensive oversight role in the contracting process for appraisals or appraisal reviews, especially when

the partner is the property owner. There should be a clear definition of roles and responsibilities if significant acquisition activities are ceded to a partner.

Project Tract Risk Factors

Tract risk factors depend on the complexity of the assignment. The R/A/I program manager will discuss the tract with State staff to evaluate the tract risk factors. In certain instances it is relatively easy to determine the project tract complexity, as listed in Item 1 below. Other items of complexity (Items 2-5) may not be discovered until an appraisal is underway. To the extent possible, the R/A/I program manager, in coordination with the State coordinator, should evaluate all risk factors to determine the level of involvement of a Federal review appraiser before the start of an appraisal assignment.

Project tract risk factors to consider:

Initial complexity of the appraisal assignment:

- A property with multiple contributory value components—This type of appraisal might require the use of outside consultants to determine the contributory value of timber, minerals, improvements, and outstanding interests.
- An acquisition where a portion of a property will be acquired in fee and a conservation easement will be acquired on a portion of the property.
- An acquisition where only a portion of a larger property will be acquired or encumbered by a conservation easement.

Lack of clarity of the interests to be appraised (such as outstanding rights, improvements, unrecorded legal agreements and contracts):

- The purpose of the appraisal should be to provide an opinion of value for the “as is” rights, title, and interest in the property that the owner can legally convey. For FLP project tract appraisals, the purpose should also be to identify the property, or parts of a property, that are eligible for FLP funding. This may require an allocation of the value to the parts eligible for FLP funding and to the part not eligible.
- In order to identify the “rights, title, and interest” that a property owner can convey, it is often necessary to have a title report. Deeds often do not contain sufficient information to identify outstanding rights (such as easements, mineral interests, deed restrictions, or pre-existing conservation easements). Unrecorded legal agreements and contracts (wood supply agreements, timber sale agreements, hunting leases, etc.) may also have significant impacts on value.

Potential for larger parcel/ownership issues:

- One of the most common deficiencies is an incorrect identification of the larger parcel. States often only provide appraisers with a legal description and/or map of the proposed acquisition and receive appraisals that value only the acquisition.

Lack of or insufficient legal access and surveys:

- Tax maps and GIS maps often do not provide sufficient detail to determine legal access, even when it appears that a tract has frontage along a public road. Legal access is a very significant factor influencing value.

Potential for contributory values from timber, minerals, and improvements:

- A common appraisal deficiency is the use of consultation reports to consider contributory value without adequate support from market data. Inadequate consideration of contributory values in the “before” and “after” analyses for conservation easement appraisals can also be a compliance issue.

Appendix O – Sample Content of a Multi-Resource Management Plan

All Forest Legacy Program (FLP)-acquired conservation easement lands and fee lands must have a Multi-Resource Management Plan that meets the plan criteria, plan elements, and additional information content requirements of the current U.S. Department of Agriculture, Forest Service, Forest Stewardship Program’s National Standards and Guidelines, and the Forest Stewardship Program plan requirements of the State in which the project is located.

Included is information from the Forest Service Forest Stewardship Program’s *National Standards and Guidelines—Revised October 2015*. Also refer to the State’s Forest Action Plan for additional information on Forest Stewardship plan content requirements.

Plan Criteria

All Forest Stewardship Management Plans or Multi-Resource Management Plans must:

- Be prepared or verified as meeting the minimum standards of a Forest Stewardship Management Plan by a professional resource manager, and be approved by the State forester or a representative of the State forester.
- Document authorship.
- Include landowner information.
- Include location and plan maps.
- Clearly state landowner objectives.
- Describe current forest condition.
- Describe desired forest condition.
- Include practices and activities aimed at reaching the desired forest condition or condition class.
- Document a feasible strategy and timeline for practice and activity implementation.
- Describe any suggested monitoring activities to be done by the forester or landowner.
- Be developed for a specified management period that adequately allows for progress with the landowner’s long-term stewardship objectives.
- Be reviewed and renewed, revised or rewritten at the end of the specified management period or sooner as needed, to be considered current.

Landowners must be involved in plan development by setting clear objectives, timetables, and targets, and clearly understanding the plan’s details and desired outcomes.

Plan Elements

The plan preparer will consider, describe, and evaluate resource elements present and their importance to the ownership. The extent to which a management plans addresses these elements will depend upon their prevalence on the property and their importance with respect to the landowner’s primary objectives. The intent of this guidance is that all approved Forest Stewardship plans be multi-resource in scope and adequately comprehensive with respect to forest ecosystem management.

The plan preparer will consider, describe, and evaluate plan elements and their importance to the ownership when they are present. Plan elements to be considered include:

- Soil and water
- Biological diversity
- Range
- Agroforestry

- Aesthetic quality and desired timber species
- Recreation
- Wood and fiber production
- Fish and wildlife
- Threatened and endangered species
- Forest health and invasive species
- Conservation-based estate planning / legacy planning information
- Archeological, cultural, and historic sites
- Wetlands
- Fire
- Carbon sequestration and climate resilience
- Forests of Recognized Importance (FORI) (to be considered when aligning forest Stewardship Management Plans or Multi-Resource Management Plans with American Tree Farm Standards)

Management recommendations and alternative strategies, consistent with landowner objectives, will be provided to protect or enhance all plan elements that are present. Prescriptions or treatments must be stand- or site-specific. An ownership map drawn to scale or photo that accurately depicts vegetation cover types, hydrology, and other significant forest-related resources, with a legend, is required.

The professional resource manager will discuss the Forest Stewardship Management Plan or Multi-Resource Management Plan with the landowner, following plan completion, and periodically to assure understanding and encourage plan implementation.

Additional Information

The landowner's understanding may be improved by including additional information appendixes. Appendixes might include:

- Descriptions of assistance available and financial incentive programs
- Educational materials
- A glossary of terms
- An explanation of applicable Federal, State and/or county regulatory programs, especially as they apply to:
 - o Archeological, cultural, and historical sites
 - o Wetlands
 - o Threatened and endangered species

Appendix P – Tract Boundary Submission Standards for Forest Legacy Information System

A current geographic information system (GIS) boundary for each proposed and completed Forest Legacy tract must be maintained. A separate GIS layer containing the boundary must be uploaded for each tract. The GIS data must be uploaded in digital format (the [Environmental Systems Research Institute {ESRI}] shapefile set must be placed in a single .zip file) as a polygon (not a line or point) onto the Forest Legacy Information System (FLIS) website. When uploading the zipped GIS tract shapefile set to FLIS, all attribute information will automatically be removed. The upload process will create a unique ID attribute, which links the GIS data to the tract information already in FLIS. The GIS layer must be in the North American Datum 1983 (GCS_North_American_1983 or NAD 83) projection according to the following parameters:

- Angular Unit: Degree (0.017453292519943295)
- Prime Meridian: Greenwich (0.000000000000000000)
- Datum: D_North_American_1983
- Spheroid: GRS_1980
- Semimajor Axis: 6378137.000000000000000000
- Semiminor Axis: 6356752.314140356100000000
- Inverse Flattening: 298.257222101000020000

The tract boundary can be manually digitized (suggested sources are a survey, deed, or county assessor parcel map) or collected using a global positioning system (GPS). If manually digitized, the GIS-calculated acreage must be within plus or minus 5 percent of the acreage stated for the tract in FLIS. If the tract boundary is collected with GPS, follow the National Map Accuracy Standard (NMAS) for horizontal accuracy.

Horizontal accuracy. *For maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch. For example a 1:12,000 map 1/30 inch (.033) is 33 feet (10.1 meters), 1:24,000 map 1/50 inch (.02) is 40 feet (12.19 meters)*

(U.S. Bureau of the Budget, June 17, 1947, <http://rockyweb.cr.usgs.gov/nmpstds/nmas.html>)

Scale 1:X	NMAS Standards (90% accuracy)	
	Feet +	Meters +
1:100	0.3	0.08
1:500	1.4	0.42
1:1000	2.8	0.84
1:2000	6	1.68
1:5000	14	4.19
1:10000	28	8.38
1:12000	33	10.06
1:20000	55	16.76
1:24000	40	12.19
1:63360	106	32.19
1:100000	167	50.80
1:250000	417	127.00

Appendix Q – Forest Legacy Program Recordkeeping

Project Records

USDA Forest Service

The following specifies what documents are required or recommended to be held in perpetuity for the Forest Legacy Program (FLP) at the Federal level for each closed tract. These documents are separated into two categories: (1) Mandatory – documents that the Forest Service is required to obtain and maintain, and (2) Recommended – documents that are good for the Forest Service to obtain, but existing guidance does not require it to obtain. This document is consistent with the Forest Service Records Management Handbook (FSH 6209.11-2013-4 issued September 18, 2013), which requires that all records pertaining to the use of Federal funds to acquire lands or interest in land under FLP will be filed under File Code 3360. Once the grant has been finalized, the grant documents should merge with FLP documents to make the file complete. The Federal program manager should require the State to send copies of mandatory documents before closing out the grant (see Table 1 below).

Mandatory

1. Grant documents:
 - a. Application for Financial Assistance SF 424, SF 424c, and SF 424d (SF 424a and SF 424b for older FLP project grants);
 - b. Pre-award letter with all signatures;
 - c. Grant narrative;
 - d. Final Performance Report/Grant Close-out report;
 - e. SF 425 Federal Financial Forms, signed by authorizing official, as appropriate;
 - f. FS 6500-235, De-Obligation/Close-out Request Form; and
 - g. All amendments, modifications, and invoices.
2. Copy of recorded acquired interest in land (whether conservation easement or fee deed including any conservation easement amendments) with signatures, and book and page stamp from recording.
3. Final title insurance policy or letter from the State assuring title.
4. Minerals determination (if mineral rights are severed).
5. Cover and signature page(s) of the original Multi-Resource Management Plan.
6. Appraisal Review Report indicating appraisal conformance with Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book).
7. Amicable Agreement Acknowledgment or documentation that the landowner has been notified of the appraised value and understands that FLP is a voluntary program.
8. Cover and signature page(s) of Baseline Documentation Report (not required if fee purchase).
9. GIS shapefiles of the boundaries of the conservation easement or fee acquisition.
10. Documentation establishing value for cost-share tracts, if used for cost share.*
11. Amendments to conservation easements.*

*New items –Not required in December 21, 2011, Recordkeeping Policy

Recommended

12. Copy of Settlement/Closing Statement, including signatures, or other proof of payment (copy of check or electronic funds transfer).

13. Maps of FLP tracts of conservation easement or fee acquisition and cost-share tracts.
14. Documents of publicly crediting Forest Service FLP as a source of funding for the project through a publicly available periodical or photographic proof of the posting of an FLP sign.

Table 1. U.S. Forest Service Mandatory and Recommended FLP Project Documentation

Documents	Conservation Easement	Fee Purchase	Donated Cost Share	Donated Non-Cost Share
1. Grant documents (items a–g)	X	X	X	
2. Recorded acquired interest in land, CE, or fee deed	X	X	X	X
3. Final title insurance policy or assurance of title letter	X	X		
4. Minerals determination	X	X	**X	**X
5. Multi-Resource Management Plan cover and signature page	X	X	X	X
6. Appraisal review report	X	X		
7. Amicable agreement acknowledgment	X	X	**X	**X
8. Cover and signature page of Baseline Documentation Report	X		**X	**X
9. GIS shapefile of FLP boundaries	X	X	X	X
*10. Documentation establishing value of cost-share tracts			X	
*11. Amendments to conservation easements	X		X	X
**12. Copy of settlement/closing statement and check or EFT statement	X	X		
**13. Maps of FLP tracts	X	X	**X	**X
**14. Evidence of publicly crediting U.S. Forest Service FLP	X	X		

CE = conservation easement; EFT = electronic funds transfer; FLP = Forest Legacy Program; GIS = geographic information system.

*New items – Not required in December 21, 2011, Recordkeeping Policy

**Recommended

State

The following specifies what documents the State Lead Agency is responsible for in accordance with the State’s recordkeeping policy for each closed tract. If a policy does not exist, see the last paragraph of this section for recommended best practices for long-term storage of FLP

records. These documents are separated into two categories: (1) Mandatory – documents that the State is required to obtain and maintain, and (2) Recommended – documents that are good for the State to obtain, but existing guidance does not require it. All final documents shall be held in perpetuity by the State Lead Agency or its designee (required State central archive) in a safe location. Copies of required FLP documents shall be easily accessible for inspection during Quality Assurance Inspections (QAI) or FLP Program Reviews. No later than 3 months after closing, a complete set of documents shall be in its safe location and copies of any outstanding documents forwarded to the Forest Service (see Table 2 below).

Mandatory

1. Current landowner contact information (name, address, phone, email).
2. Original signed Baseline Documentation Report and all updates.
3. Recorded acquired interest in land (whether conservation easement or fee deed) with signatures and copy of deed for each subsequent landowner.
4. Final title insurance policy or letter from the State assuring title.
5. Minerals determination (if mineral rights are severed).
6. Final appraisal, with appraisal instructions, and appraisal review report indicating appraisal conformance with Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book). (Donated tracts can use another documented value analysis and appraisal instructions are not required.)
7. Certification of appraiser and non-Federal review appraiser, in accordance with Section 16 – Appraisal and Appraisal Review.
8. Current Multi-Resource Management Plan.
9. Settlement/Closing Statement, including signatures, or other proof of payment (copy of check or electronic funds transfer).
10. Monitoring records/history (not required for fee acquisitions).
11. Amicable Agreement Acknowledgment or documentation that the landowner has been notified of the appraised value and understands that FLP is a voluntary program.
12. Documentation of establishing value for cost-share tracts if used for cost share.
13. For donated tracts, letter or other form of documentation of the landowner's willingness to use property as cost share for FLP.
14. Copy of Grant documents.
15. Amendments to conservation easements.*

*New item – Not required in December 21, 2011, Recordkeeping Policy

Recommended

16. Copies of any leases, covenants, or other restrictions on the use of the property.
17. Environmental site inspection/assessment documentation, including hazardous materials review.
18. Documentation of location of transaction/negotiation summary and history:
 - a. Landowner inspection consent agreement (some States may not enter one).
 - b. Option agreement (some States may not enter one).
 - c. Notification of county or local government (if required).
 - d. Maps of FLP tracts of conservation easement or fee acquisition and cost-share tracts.

Table 2. Mandatory and Recommended FLP Project Documentation for States

Documents	Conservation Easement	Fee Purchase	Donated Cost Share	Donated Non Cost Share
1. Current landowner info	X	X	X	X
2. Original and updates to Baseline Documentation Report	X		**X	**X
3. Recorded acquired interest in land, CE or fee deed	X	X	X	X
4. Title insurance policy	X	X		
5. Minerals determination	X	X	**X	**X
6a. Final Appraisal with appraisal instructions and technical appraisal review report that meets Yellow Book standards	X	X		
6b. For donated tracts, a documented value analysis			X	X
7. Certification of appraiser and review appraiser qualifications	X	X		
8. Current approved Multi-Resource Management Plan	X	X	X	X
9. Copy of settlement/closing statement and check or EFT statement	X	X		
10. Monitoring Records	X			
11. Amicable agreement acknowledgment	X	X		
12. Documentation establishing value of cost-share tracts	X		X	
13. Landowners willingness to use property as cost share			X	
14. Grant documents required by the State	X	X		
*15. Amendments to conservation easements	X		X	X
**16. Copies of leases, covenants, or other restrictions	X	X	X	X
**17. Environmental site inspection report	X	X	X	X
**18. Documentation of location of transaction/negotiation summary and history (items a.-d.)	X	X		

CE = conservation easement; EFT = electronic funds transfer; FLP = forest legacy program.

*New items – Not required in December 21, 2011, Recordkeeping Policy

**Recommended

Program Records

The following mandatory program documents are required to be held in perpetuity at the Federal and State level. In addition, recommended documents, if kept, are required to be held in perpetuity. (See Table 3 and Table 4 below.)

Forest Service

Mandatory

1. Annual State monitoring report summary for all State conservation easements as documented in FLIS.
2. State’s “self-certifying statement” for all fee tracts acquired through the FLP documenting condition and confirming that they have not been converted to another use.
3. State and R/A/I FLP program review reports.
4. Quality Assurance Inspections and QAI follow-up reports.
5. State Forest Action Plans, including Assessment of Needs incorporated by reference.

Recommended

6. Tract monitoring plan or copy of established State policy for monitoring conservation easements.
7. Statement of Assurance identifying the State’s safe location for FLP records.
8. FLP-applicable State policies, including enforcement policy, monitoring policy, and recordkeeping policies.

Table 3. Forest Service Mandatory and Recommended FLP Program Documentation

Documents	Mandatory
1. Annual State monitoring report summary for all State CEs as documented in FLIS	X
2. State’s “self-certifying statement” for all fee tracts acquired through the FLP documenting condition and confirming that they have not been converted to another use	X
3. State and R/A/I FLP program reviews	X
4. Quality Assurance Inspections and QAI follow-up reports	X
5. State Forest Action Plans, including Assessment of Needs incorporated by reference	X
6. Tract monitoring plan or copy of established State policy for monitoring CEs	**
7. Statement of Assurance identifying the State’s safe location for FLP records	**
8. FLP-applicable State policies, including enforcement policy, monitoring policy, and recordkeeping policies	**

CE = conservation easement; FLIS = Forest Legacy Information System; FLP = Forest Legacy Program; QAI = Quality Assurance Inspections; R/A/I = Forest Service regions, Northeastern Area, International Institute of Tropical Forestry.

**Recommended

States

Mandatory

1. Self-certifying statement for all fee tracts acquired through the FLP, documenting condition and confirming that they have not been converted to another use.
2. State FLP program reviews.
3. Quality Assurance Inspections and QAI follow-up reports.
4. State Forest Action Plans, including Assessment of Needs incorporated by reference.
5. FLP-applicable State policies, including enforcement policy, monitoring policy, and recordkeeping policies.

Recommended (to assist with succession planning and continuity of the State FLP)

6. Documentation of the State’s policy on FLP, which may include, but is not limited to, FLP promotions and annual solicitation for new FLP projects, and outreach efforts.
7. Action plans from FLP program reviews and QAIs.
8. Documentation of State Forest Stewardship Coordinating Committee (SFSCC) meetings.

Table 4. State Mandatory and Recommended FLP Program Documentation

Documents	Mandatory
1. State’s “self-certifying statement” for all fee tracts acquired through the FLP, documenting condition and confirming that they have not been converted to another use	X
2. State FLP program reviews	X
3. Quality Assurance Inspections and QAI follow-up reports	X
4. State Forest Action Plans, including Assessment of Needs incorporated by reference	X
5. FLP-applicable State policies, including enforcement policy, monitoring policy, and recordkeeping policies	X
6. Document the State’s policy on FLP, which may include, but is not limited to, FLP promotions and annual solicitation for new FLP projects, and outreach efforts	**
7. Action plans from FLP program reviews and QAIs	**
8. Documentation of State Forest Stewardship Coordinating Committee meetings	**

FLP = Forest Legacy Program; QAI = Quality Assurance Inspections.

**Recommended

Recommended Recordkeeping Storage Practices

To ensure the documents are in a “safe location” and held in perpetuity, it is recommended that States follow the industry standards for recordkeeping, as described in Practice 9G of the Land Trust Standards and Practices found at www.landtrustaccreditation.org. These standards include:

- Keeping originals and copies of all documents in separate locations;
- Protecting original documents from daily use and from fire, floods, and other foreseeable hazards; and
- Developing systems for any electronically stored documents to ensure the data are updated periodically so the documents can be accessed using current technology.

Appendix R – Supplemental Amendment Information

I. Amendment Procedures*

The following guide is to help a State agency or qualified land trust develop a list of amendment procedures to bring consistency in the conservation easement (CE) program and to inform landowners of the requirements and procedures to amend a conservation easement.

- A. The CE holder reserves the right to charge a fee for review and execution of the amendment.
- B. Landowner and the CE holder will discuss the proposed amendment and the CE holder's Amendment Policy.
- C. Landowner or the CE holder submits to the other party a written request to amend the conservation easement that:
 1. Outlines reasons for the amendment, and
 2. Provides maps, photos, and other necessary documentation.
- D. The CE holder may conduct a field review and meet with landowner as necessary.
- E. The CE holder will review the amendment request and documentation using the following criteria:
 1. Will the amendment have a beneficial or neutral effect on the conservation values protected by the conservation easement and satisfy the other requirements set forth in the amendment provision included in the easement?
 2. Does this amendment confer a private benefit to the landowner or any other individual?
 3. Does this amendment result in private inurement for any board member, staff person, or contract employee, or other person? (See IRS Reg. 1.501(c)(3)-1(c)(2).) If so, the amendment must be denied or dropped.
 4. Is there any other conflict of interest affecting this amendment request? If so, the conflict of interest must be resolved before approving this amendment.
 5. Does the CE require notification or approval of amendments by any other parties? If so, have these requirements been addressed?
 6. Will this amendment undermine the public's confidence in the CE holder?
 7. Will the granting or denial of the amendment request create a bad precedent for future amendment requests?
 8. Will the amendment affect the CE holder's ability to steward or defend the CE?
 9. Should the amendment be reflected in a restatement of the original CE or in an amendment to the CE?
- F. The CE holder will coordinate with funders or individuals as required in the original CE.
- G. The CE holder will require title information to assure that the correct parties are engaged in amending the CE.
- H. The presiding CE holder official will make the final decision, subject to the requirement of approval by other parties.

- I. If the terms of the amendment are approved, the CE holder will review the title status of the property to determine whether further title insurance and subordination of lenders is required to assure that the amended CE is covered by any policy and any lenders will be subject to the amendment.
- J. The CE amendment or restatement will be recorded in the county or counties in which the property is located.
- K. All amendments shall be reported to the contacts listed in the CE notification section as well as the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) FLP program manager.

II. Amendment Policy*

States or qualified land trusts are encouraged to develop a written amendment policy. The following ideas can be used to develop such a policy.

- A. Prohibition on private inurement and impermissible private benefit.
- B. Compliance with the land trust's conflict of interest policy.
- C. Compliance with any funding requirements.
- D. Compliance with amendment provision in the CE.
- E. Role of the staff and Board of Directors established.
- F. Requirement that any amendment must have a positive, or not less than neutral, impact on the conservation values identified by the original CE.
- G. Requirement that any amendment be consistent with organization's mission.
- H. Submission contents, timing, payment of fees, frequency of requests.
- I. Philosophy of CE holder with respect to amendments, including the circumstances under which an amendment request will be considered.
- J. Who must be notified and/or consulted about the amendment?
- K. Who must review the amendment request?
- L. Whether the grant of an amendment creates a precedent for future approvals.

*Both Amendment Procedures and Amendment Policy were adapted from sample procedures and policy found in the online Land Trust Alliance Learning Center, Amendment Section.

Appendix S –State Forest Legacy Program Reviews

Every 5 years, or more frequently as needed, the Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/Is) will conduct reviews of the State implementation of the Forest Legacy Program (FLP). The following outlines the process and questions for State reviews:

Review Team

The review needs to include R/A/I and State FLP staff and, whenever possible, at least one representative from another R/A/I and State FLP. In addition, the review should include leadership from both the R/A/I and the State, whenever possible. Washington Office FLP staff should also be invited to the review.

Meeting Locations

Meetings should be conducted in locations that minimize travel costs while maximizing understanding of the FLP. A field portion of the review is optional. If there is a specific issue that the review team wishes to look into, the team may request a field visit. Looking at files will be a critical component of the review and should be done before the close-out meeting.

Process

- a. Pre-Meeting Background Information Gathering and Coordination: During the 2 months before the meeting, the R/A/I will coordinate with the State Lead Agency, gather information (described below), review documents, identify issues, and talk with staff and partners. In addition, the R/A/I should ask the State Lead Agency if there are any specific issues they would like the review to include.
- b. Meeting: Conduct a meeting of appropriate length in the State to follow-up on issues, discuss findings, and identify recommendations and action items. The meeting may include a field visit, but a field visit is not required. This meeting can be either FLP-specific or combined with a multiple-program cooperative management review.
- c. Documentation: The R/A/I develops a draft report; the State then has an opportunity to comment and collaboratively work with the R/A/I in development of the action plan. The R/A/I develops the final report, signs, and sends it to the State for signature. The State signs and returns the report with the action plan. Barring unforeseen circumstances, the entire process should take no longer than 6 months to complete.

Background Information Gathering

The following tasks should be completed before the meeting.

- a. Summary Tables: Obtain from the National Information Center summary tables that identify (1) errors in the Forest Legacy Information System (FLIS) project information, such as insufficient cost share and cost share identified as “null,” (2) length of time to complete tracts, and (3) FLP accomplishments.
- b. Budget Information: Obtain budget information, including unspent and unobligated funds.
- c. Grant Information: Obtain grant information, including open grants by fiscal year.
- d. Past FLP Program Review: Obtain a copy of the most recent State reviews completed by the R/A/I and any follow-up actions.
- e. State Forest Action Plan: Obtain a copy of the FLP portion.

- f. Other State FLP policies: Obtain copies of the State's FLP monitoring, recordkeeping, and other relevant policies.
- g. Interviews: Conduct interviews with R/A/I employees, State staff, members of the State Forest Stewardship Coordinating Committee (SFSCC), and partners.
- h. Review of Files: Review project files to determine if the files comply with the FLP recordkeeping policy.
- i. Federally Held Tracts: If applicable, obtain information on land and interest in lands held by the Federal Government.
- j. Fee Tracts: State's self-certifying statement identifying and documenting the condition of each fee tract. (Have there been changes in title? Has land converted to a nonforest use? Are there uses inconsistent with the purposes of the FLP?)

Review Questions/Checklist

Forest Legacy Program Delivery

1. What are the FLP's biggest opportunities for improvement in the future, and how can the USDA Forest Service assist?
2. Describe any major impediments to FLP delivery and what can be done to overcome them.
3. Are there any technical assistance needs that are not being met?
4. Is the State Forest Action Plan updated and being implemented?
5. Is the SFSCC operating consistently with the State Forest Action Plan?
6. What is the status of the last FLP program review and its action items?
7. Are the State's conservation easements consistent with the FLP program guideline requirements?
8. How are conflicts of interest addressed on the SFSCC?
9. How does the State work with partners, including the R/A/I, conservation organizations, and other Federal land conservation programs?
10. Does the State have adequate capacity to deliver the FLP?
11. How is the Forest Service recognized during a State or partner announcement or celebration?
12. If applicable, what oversight and monitoring is provided for any federally acquired FLP land or conservation easements within the State? Does the State have a conservation easement monitoring policy in place, is it sufficient, and is it being implemented?

Grants

13. Are the project/grant files consistent with the FLP recordkeeping policy?
14. What oversight is in place to ensure that the State is complying with grant requirements, including ensuring sufficient documentation for cost share?

15. Is the State FLP complying with the Civil Right requirements, including ensuring FLP is accessible to all, displaying the “And Justice For All” poster, using the nondiscrimination language, and providing FLP information in different formats?
16. Has the Civil Rights compliance review record (FS-1700-6) been completed for all grants?

Funding and Performance

17. How does the State track spending of FLP dollars (project and administrative)?
18. How are FLP funds used by the State (that is, how much for purchases, staffing, due diligence, other administration)?
19. How does the State verify cost share, including ensuring sufficient documentation for cost-share tracts?
20. How does the State verify its accomplishments (tract acres, tract completion, etc.)?
21. What oversight does the State have for ensuring accurate information for closed tracts in final appraisal, recorded deed, FLIS, and shape files?
22. Does project information reported in FLIS reconcile with other project documents such as appraisals, shape files, other?
23. Are shape files for completed projects in the State up to date and accurate?
24. How does the State complete its appraisal work?

Appraisal Requirements

25. Has a Quality Assurance Inspection (QAI) been conducted? If so, what is the status of the State response and action plan implementation?

Accountability (How is the State complying with the FLP core program requirements identified below, and how are any deficiencies being addressed?):

26. Baseline Documentation Reports for all closed conservation easement tracts,
27. Multi-Resource Management Plan for all closed conservation easement tracts,
28. Annual monitoring conducted for all closed conservation easements tracts,
29. Addresses significant conservation easement violations and/or has a conservation easement violation plan,
30. Ensures fee lands are managed in accordance with FLP purposes,
31. Implements a recordkeeping protocol for all FLP tracts,
32. Has in place an action plan to address recommendations in a QAI,
33. The amount of unspent funds a State has in outstanding grants and up-to-date information on grant reporting requirements.

Appendix T – Forest Service Regions/Northeastern Area/International Institute of Tropical Forestry Forest Legacy Program Reviews

The Washington Office (WO) will periodically conduct reviews of each Forest Service region/Northeastern Area/International Institute of Tropical Forestry (R/A/I) to ensure compliance with Forest Legacy Program (FLP) policies and procedures. The following outlines the process and questions for regional reviews.

Review Team

The review team needs to include WO and R/A/I program staff, and, whenever possible, at least one representative from another R/A/I. In addition, the review should include leadership from both the WO and R/A/I, whenever possible.

Meeting Location

The meeting should be conducted in a location that minimizes travel costs. A field portion of the review is optional. If there is a specific issue that the review team wishes to look into, the team may request a field visit. Looking at files in the R/A/I will be a critical component of the review and should be done before the close-out meeting.

Review Process

1. **Pre-meeting Coordination:** During the 2 months before the meeting, the WO will coordinate with the R/A/I, gather information (described below), review documents, identify issues, and talk with staff and partners. In addition, the WO should ask the R/A/I if there are any specific issues they would like the review to include.
2. **Meeting:** Conduct a week-long (or less) review meeting in the R/A/I to follow up on issues, discuss findings, and identify recommendations and action items. The meeting may include a field visit, but a field visit is not required.
3. **Finalize Report:** No later than a month after the meeting, finalize the report and associated action plan.

Background Information Gathering

The following tasks should be completed before the meeting.

1. **Summary Tables:** Obtain from the National Information Center (NIC) summary tables that identify: (1) errors in the Forest Legacy Information System (FLIS) project information, such as insufficient cost share and cost share identified as “null,” (2) length of time to complete tracts, and (3) FLP accomplishments.
2. **Budget Information:** Obtain budget information, including unspent and unobligated funds.
3. **Grant Information:** Obtain grant information, including open grants by fiscal year.
4. **Past FLP Program Reviews:** (1) Obtain a copy of the most recent R/A/I program review, and any followup actions, and (2) obtain copies of the most recent State reviews completed by the R/A/I, and any followup actions.
5. **Specific Documents:** Obtain any R/A/I specific documents, such as policies, FLP grant template, strategic plans, and organizational charts.
6. **Interviews:** Conduct interviews with R/A/I employees, State staff, and partners.
7. **Review of Files:** Review project files to determine if the files comply with the USDA Forest Service recordkeeping policy (Interim Directive 6209.11-2010-4 issued on October 19, 2010) and the FLP recordkeeping policy (Appendix Q – Forest Legacy Program Recordkeeping in the FLP Implementation Guidelines).

8. Federally Held Tracts: If applicable, obtain information on land and interest in lands held by the Federal Government.

Review Checklist

FLP Delivery

1. What are the FLP's biggest opportunities for improvement, and how can the WO assist?
2. Describe any major impediments to FLP delivery in the R/A/I, and what can be done to overcome them.
3. Are there any technical assistance needs that are not being met?
4. How does the R/A/I work with FLP partners, including the State Lead Agency, conservation organizations, and other Federal land conservation programs?
5. How does the R/A/I conduct FLP program reviews? How does the R/A/I follow up on action items? What are the major findings from the reviews?
6. How does the R/A/I ensure that the States' conservation easements are consistent with the FLP program guideline requirements?
7. Does the R/A/I have adequate capacity to administer the FLP?
8. How is the Forest Service recognized during a State or partner announcement or celebration?
9. If applicable, what oversight and monitoring is provided for any federally acquired FLP land or conservation easements within the R/A/I?

Grants

10. Are the project/grant files consistent with the Forest Service and the FLP recordkeeping policies?
11. What oversight does the R/A/I provide to ensure the States are complying with grant requirements, including ensuring sufficient documentation for cost share?
12. What oversight does the R/A/I conduct to ensure that the State FLP programs comply with Civil Right requirements, including ensuring FLP is accessible to all, displaying the "And Justice For All" poster, using the nondiscrimination language, and providing FLP information in different formats and address FSM 1462.11 Title VI Civil Right Act review requirements?
13. Has the Civil Rights compliance review record (FS-1700-6) been completed for all grants?

Funding and Performance

14. How does the R/A/I track spending of FLP dollars (project and administrative)?
15. How are FLP funds used by States in the R/A/I (that is, how much for purchases, staffing, due diligence, other administration)?
16. How does the R/A/I verify cost share, including ensuring sufficient documentation for cost-share tracts?
17. How does the R/A/I verify State accomplishments (tract acres, tract completion, etc.)?
18. What oversight does the R/A/I have for ensuring accurate information for closed tracts in final appraisal, recorded deed, FLIS, and shape files?

19. Does project information reported in FLIS reconcile with other project documents such as appraisals, shape files, other?
20. Are shape files for completed projects up to date and accurate?

Appraisal Requirements

21. What is the status of Quality Assurance Inspections (QAI) for the R/A/I?
22. What is the status of State responses to QAIs and action plan implementation?
23. What are the common concerns raised during QAIs? How is the R/A/I helping to address those concerns?
24. How is the R/A/I providing assistance to States to complete their appraisal reviews?

Accountability (How does the R/A/I oversee the FLP core program requirements identified below, and how are any deficiencies being addressed?):

25. Baseline Documentation Reports for all closed conservation easement tracts,
26. Multi-Resource Management Plan for all closed conservation easement tracts,
27. Annual monitoring conducted for all closed conservation easements tracts,
28. Addresses significant conservation easement violations and/or has a conservation easement violation plan,
29. Implements a recordkeeping protocol for all FLP tracts,
30. Has in place an action plan to address recommendations in a QAI,
31. The amount of unspent funds a State has in outstanding grants, and
32. Up-to-date on grant reporting requirements.

Appendix U – Process for Conducting Quality Assurance Inspections

The Quality Assurance Inspection (QAI) appraiser should be familiar with the Forest Legacy Program (FLP) and Federal appraisal requirements, and use the following process:

- Conduct pre-visit activities to become familiar with the FLP appraisal processes. Using contact information provided by Forest Service regions/Northeastern Area/International Institute of Tropical Forestry (R/A/I) program manager, contact the State agency points-of-contact to agree upon a schedule for conducting the QAI.
- Review FLP appraisal case files. For virtual reviews, request electronic files.
- Conduct a close-out meeting summarizing initial findings with the key State employees and the R/A/I program manager.
- Develop the QAI report based on the outline below.

Quality Assurance Inspection

(1) State Law – Policy and Procedures

- (a) Are there State laws that apply to the State Lead Agency’s appraisal related activities? (yes/no) If yes, obtain copy and review.
- (b) Does the State Lead Agency have a written appraisal and appraisal review policy? (yes/no) If yes, obtain copy and review.
- (c) Does the State Lead Agency have a written appraisal and appraisal review procedure? (yes/no) If yes, obtain copy and review.
- (d) If yes to a, b, or c, are there any conflicts with Federal requirements?
 - (i) If there are conflicts, how are they resolved?

(2) Human Resources

- (a) Will the State Lead Agency’s in-house staff require training to become familiar with the real estate appraisal and appraisal review requirements of Federal projects, including the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as amended? (yes/no)
- (b) If the answer to 2a is “yes,” has a reasonable plan been developed to provide such training? (yes/no)
- (c) Does the State Lead Agency’s in-house staff have sufficient real estate appraisal and appraisal review experience to meet its responsibilities for the FLP? (yes/no)
- (d) Can the State Lead Agency obtain qualified contractor support, if required, in a timely fashion? (yes/no)
 - (i) If the State Lead Agency contracts for appraisal reports or appraisal review reports, do they have qualified technical valuation staff to properly administer those contracts? If not, how have FLP oversight and monitoring requirements been met in terms of accountability?
- (e) Will the State Lead Agency likely request U.S. Department of Agriculture, Forest Service, assistance in completing technical appraisal reviews? (yes/no) (If “yes,” provide description).

(3) Contracting

- (a) What process does the State use to select contract services?

- (b) Does the State maintain a list of appraisers that currently meet minimum qualifications to accept FLP cases? (yes/no)
- (c) Was the Forest Service consulted during the appraiser/reviewer selection process? (yes/no)
- (d) How was the appraiser/reviewer evaluated in compliance with FLP Implementation Guidelines?
 - (i) By whom?
 - (ii) How was it documented?
- (e) Was a pre-work conference conducted with the appraiser/reviewer/Forest Service? (yes/no)
- (f) Were written instructions issued to the appraiser? (yes/no)

(4) Appraisal Assignment Data Requirements

- (a) Were the following items available to the appraiser before starting the assignment? (yes/no)
 - (i) Title report
 - (ii) Finalized conservation easement deed language
 - (iii) Legal description/map/acreage of the larger parcel
 - (iv) Legal description/map/acreage of the proposed conservation easement area
 - (v) Timber cruise data and report
 - (vi) Mineral reports or other estate information (if applicable)

(5) Appraisal Reports

- (a) Provide your findings regarding the appraisal reports examined during the inspection and their compliance (or noncompliance) with the UASFLA. Primary areas to consider include but are not limited to the following items:
 - (i) Larger parcel determination adequately developed
 - (ii) Before and after methodology appropriately applied
 - (iii) UASFLA Certification
- (b) Provide your findings regarding appraisal reports examined during the inspection and their compliance (or noncompliance) with the Uniform Standards for Professional Appraisal Practice (USPAP).

(6) Appraisal Review Reports

- (a) Provide your findings regarding the appraisal review reports examined during the inspection and their compliance (or non-compliance) with the UASFLA. Primary areas to consider include but are not limited to the following items.
 - (i) Larger parcel determination adequately developed
 - (ii) Before and after methodology appropriately applied
 - (iii) UASFLA Certification
- (b) Provide your findings regarding appraisal review reports examined during the inspection and their compliance (or noncompliance) with the USPAP.

(7) Compare Appraisal to Acquisition

(a) Of those appraisal reports examined during the inspection:

- (i) Was the appropriate interest in the larger parcel appraised?
- (ii) Do the conservation easement terms and conditions considered by the appraiser match the easement language provided by the client?
- (iii) Does the conservation easement language in the appraisal report match the easement language in the (draft or recorded) deed?
- (iv) For fee simple acquisitions, does the estate appraised match the acquisition?
- (v) Does the legal description and acreage of the area encumbered by the conservation easement in the appraisal report match the proposed acquisition deed?

(8) Provide a brief summary of the State's overall FLP appraisal process with particular emphasis on strengths and weaknesses of the State's FLP operations as well as any significant items of compliance and/or noncompliance with the FLP Implementation Guidelines and the UASFLA/USPAP standards.



Appendix V – Sample Graphics and Signs

The use of the Forest Legacy Program (FLP) graphics for FLP-related documents, websites, and signs is the single most visible appearance of the FLP to the public. Following are sample graphics for the FLP that can be used for signs, newsletters, articles, websites, landowner application forms, project completion celebration banners, meeting presentations, posters, pamphlets, and other FLP-related handouts.



Publically acknowledging the U.S. Department of Agriculture, Forest Service, FLP as a source of funds for the project completion can be easily accomplished with the posting of the FLP graphics with descriptive language about the FLP and the project. Basic boilerplate language has been created for both fee and conservation easement acquisitions. FLP administration or FLP project grant funds can be used for the acquisition of FLP signs for public display on the FLP-acquired tracts.



The suggested language below has been created and used on many FLP projects. The language can be updated to reflect the specific project and/or State needs; additionally, it can identify other funders and partners involved in the FLP project.

Forest Legacy Program Fee Acquisitions

This Forest Legacy-Program unded conservation land is protected from current and future development.

The U.S. Department of Agriculture Forest Service and the State Forester worked together to conserve this land in perpetuity for your benefit and for the benefit of future generations.

Please respect public lands.

For more information on the Forest Legacy Program contact:
State Forester's Office
00 Main Street
Everycity, ST 00000
555-555-5555

Forest Legacy Program Conservation Easement Acquisitions

This Forest Legacy Program-unded conservation land is protected from current and future development.

Working with the U.S. Department of Agriculture Forest Service and the State Forester, the landowner committed to conserving this land in perpetuity for your benefit and for the benefit of future generations.

This land remains in private ownership. Please respect the landowner's rights.

For more information on the Forest Legacy Program contact:
State Forester's Office
00 Main Street
Everycity, ST 00000
555-555-5555

The signs when posted should be posted in a location easily viewable by the public and at an appropriate distance in relation to the size of the sign.

Electronic versions for the FLP graphics are available in high resolution file types of .jpg, and .tif as well as vector graphic file type .eps at: <http://www.na.fs.fed.us/legacy/resources/>

